

**AGREEMENT FOR RETROFIT OF THE CITY OF REDLANDS'
TREATMENT FACILITY AT THE REES WELL FOR
PERCHLORATE TREATMENT**

This agreement for the retrofitting of the City of Redlands' Rees Well ("Agreement") is made this 19th day of January, 2010 ("Effective Date"), by and between Lockheed Martin Corporation ("LMC") and the City of Redlands ("City"). LMC and the City are sometimes individually referred to herein as a "Party" and, together, as the "Parties."

RECITALS

WHEREAS, LMC has been investigating and remediating a plume of trichloroethylene ("TCE") and a plume of perchlorate in the Bunker Hill Basin (together, the "Plume") pursuant to Cleanup and Abatement Orders Nos. 94-37, 97-58 and 01-56 issued by the Santa Ana Regional Water Quality Control Board (the "Regional Board"); and

WHEREAS, consistent with that effort, LMC prepared a Water Supply Contingency Plan (the "Plan") approved by the Regional Board in March 1997; and

WHEREAS, LMC has taken several measures since March 1997, to implement and execute the Plan, including the financing and construction of new potable water supply wells for the City and static mixing systems to improve blending capacity; and

WHEREAS, in July 2004, the Parties entered into an agreement to install temporary perchlorate treatment at the City's Rees Well; and

WHEREAS, concentrations of perchlorate decreased at the Rees Well to the point where treatment was no longer required to meet the City's water quality goals, allowing the temporary system to be decommissioned in September 2006; and

WHEREAS, monitoring and Plume tracking performed by LMC indicates that temporary treatment of perchlorate at the Rees Well is anticipated to again be required beginning in approximately the first quarter of 2010, and lasting for approximately one (1) year thereafter; and

WHEREAS, the City owns an existing, inactive treatment facility at the Rees Well that was built for anticipated treatment of volatile organic compounds using granular activated carbon, and LMC has determined that this treatment system could be retrofitted for treatment of ground water to remove perchlorate using ion exchange;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for such other good and valuable consideration the receipt of which is hereby acknowledged, the City of Redlands and Lockheed Martin Corporation agree as follows:

AGREEMENT

Section 1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

Section 2. Purpose and Intent

- 2.1 The purpose of this Agreement is to protect the public health, to fulfill in part the requirements set forth by the Regional Board (correspondence to LMC dated July 31, 1996) and to implement the Plan.
- 2.2 This Agreement's specific objective is to ensure that the City has use of its Rees Well, unencumbered by concentrations of perchlorate which may exceed the current Maximum Contaminant Level ("MCL").
- 2.3 This Agreement is not an admission or acknowledgement in fact or law by LMC that it is responsible for the TCE contamination, perchlorate contamination or any other contaminants, or their potential adverse effects on the public health or environment.

Section 3. LMC Responsibilities and Actions. LMC shall have the following responsibilities and actions:

- 3.1 LMC shall design and build retrofit equipment to allow perchlorate treatment on City property for the City's use and operation (the "Retrofit Work"). The Retrofit Work will be performed by LMC if the only anticipated inhibition to use of the Rees Well water is the perchlorate concentration (i.e., current issues with bacteria in the well water are resolved and concentrations of all other regulated water quality constituents are anticipated to remain at or below current levels). The retrofit equipment will be installed on the City's existing treatment facilities currently located at the Rees Well at approximately 1357 East Pennsylvania Avenue in Redlands, California ("Treatment Facility"). The Treatment Facility retrofit shall be designed to assure that water from the Rees Well is treated to comply with California Department of Public Health ("DPH") drinking water requirements for the concentration of perchlorate (i.e., the concentration must be below 80% of the state MCL). The Retrofit Work shall be designed to treat the historic maximum 24-hour production rate from the Rees Well. Conveyance systems to the existing Treatment Facility from the well and from the Treatment Facility to the drinking water distribution system have been inspected and have been concluded to have sufficient capacity to convey the amount of water produced by the Rees Well. In addition, based on the conditions at the well, Treatment Facility, and local distribution system, no boosting of pressure is believed to be required to move the water through the treatment system.
- 3.2 LMC shall provide the Treatment Facility retrofit's design plans and specifications to the City for its review and approval prior to construction. LMC shall consider, but shall not be obligated to accept or implement, alternate treatment technologies proposed by the City. LMC shall also prepare an operations and maintenance manual for the Treatment

Facility for review and approval by the City. In addition, during construction, LMC shall provide City with as-built plans, with any changes to the original design plans incorporated therein.

- 3.3 LMC shall only be responsible for the treatment and/or blending (and their associated costs) of perchlorate. If additional contaminants or degradation products attributable to past LMC operations at its former Mentone site are identified at concentrations exceeding applicable state and federal water quality standards (i.e., state or federal MCL or state NL), the Parties shall meet and confer to identify and implement a mutually-acceptable solution to the issue.
- 3.4 LMC shall reimburse the City for any necessary analytical testing related to the start up and operation of the Treatment Facility, and shall assist the City in the preparation of documentation required during any regulatory permitting process associated with construction and operation of the Treatment Facility. The City and LMC shall cooperate in obtaining all permits. LMC shall assist the City with its preparation of blend plans if requested.
- 3.5 LMC shall perform the profiling, transportation and disposal of treatment system wastes (such as spent treatment media) in compliance with all federal, state, and local laws and regulations unless the City is the sole operator of the Facility (i.e., all contracts for treatment media and other materials are held by the City and LMC is reimbursing the City for operations and maintenance costs). When reasonably possible, the City shall notify LMC at least ten (10) days in advance of when LMC needs to profile, transport, and dispose of Treatment Facility wastes. LMC shall be considered the generator of such waste. LMC shall not be responsible for any pre-existing waste or contamination at the site, except for contamination generated by the operation of the Treatment Facility.
- 3.6 LMC shall reimburse the City for all incremental costs incurred related to the Treatment Facility, including the City's design and construction review, and maintenance and operations, such as City staff time (with documentation of actual time spent on the project), additional water quality sampling and analysis, treatment media (including replacement, transportation, analysis, documentation, disposal, etc.), pre- and post-treatment filters, power, and repairs. LMC shall not be responsible for any costs associated with the normal operation (including pumping) and maintenance of the Rees Well. Reimbursement of costs is addressed in Section 7 of this Agreement. If preferred by the City, LMC shall directly support the City's operation of its Treatment Facility in accordance with the California DPH Operating Permit, for example by holding the contracts with media suppliers and qualified operations personnel, coordinating media change-outs, performing repairs, and supply filter bags and/or cartridges. LMC shall reimburse the City for such incremental costs of operations and maintenance only as long as the Rees Well water requires treatment to maintain perchlorate concentrations at least 20% below MCL.

Section 4. City Responsibilities and Actions. The City shall have the following responsibilities and actions:

- 4.1 The City shall make available a site on City property for LMC's construction and installation of the Rees Well Treatment Facility retrofit. The City shall provide access to the site without charge to LMC to perform its obligations under this Agreement. LMC shall not unreasonably interfere with the City's normal business operations at the site. The City and its lessees, licensees, employees, or agents shall not prohibit, interfere with, or obstruct the entry of LMC or its employees, agents, contractors, or subcontractors to the site, unless necessary to perform City business.
- 4.2 The City shall be responsible for treatment and/or blending of all constituents in the Rees Well water other than perchlorate. If additional contaminants or degradation products attributable to past LMC operations at its former Mentone site are identified at concentrations exceeding applicable state and federal water quality standards (i.e., state or federal MCL or state NL), the Parties shall meet and confer to identify and implement a mutually-acceptable solution to the issue.
- 4.3 The City shall continue to be the owner of the Treatment Facility and will own all new equipment installed as part of the retrofit provided for herein upon its completion and operational status and the City's acceptance that the new equipment meets the design requirements. Acceptance of the work is addressed in Section 6 of this Agreement. All guarantees and warranties relating to the design and construction of the retrofit equipment shall be assigned to the City if and where applicable and possible. The City is also the owner of the Rees Well and the pipelines to and from the Treatment Facility.
- 4.4 The City shall be responsible for, and shall provide properly-licensed personnel for operating and maintaining the production well and the Treatment Facility. The City shall be responsible for all normal sampling and testing required by local and state regulatory agencies, while LMC shall be responsible for the incremental cost relating to operational monitoring of the Treatment Facility (including perchlorate and constituents that the California DPH may require monitoring for because of the Treatment Facility, such as nitrosamines). The City shall utilize a laboratory that is mutually acceptable by the Parties.
- 4.5 LMC shall be responsible for replacement water should the Treatment Facility fail to meet the performance objectives (i.e., fails to treat the flow of the Rees Well for perchlorate to concentrations below water quality standards), in which case LMC shall reimburse the City for its full costs associated with obtaining replacement water during the period of time that the Treatment Facility fails to meet performance objectives. At such time, the City shall notify LMC that it has become necessary to obtain replacement water. The City shall thereafter provide LMC with such data and reports as may be necessary to demonstrate the continued need to purchase replacement water, as long as such need exists. The City shall promptly notify LMC when such need no longer exists, as well as whenever such need may re-occur, pursuant to the procedure set forth herein. LMC shall have no obligation to reimburse the City for replacement water if the Treatment Facility's non-performance is caused by the City's failure to operate and maintain the system in accordance with the approved Operation and Maintenance Plan. LMC shall return the existing GAC treatment equipment to original operational function

if another contaminant that LMC is not charged to remediate requires treatment and could be treated by GAC at the Rees site.

- 4.6 The City agrees to operate the Treatment Facility (i) according to California DPH-approved Operations and Maintenance Plan (ii) in accordance with all state and federal laws, (iii) in compliance with the applicable state and federal water quality standards (i.e., state or federal MCL or state NL). The City further agrees to handle and store hazardous materials in accordance with all federal, state, and local laws and regulations, including but not limited to the Uniform Fire Code. Where a conflict exists between the LMC-prepared Operations and Maintenance Manual and the state and federal laws and standards, the City shall operate the treatment system in accordance with the state and federal laws and standards. The City agrees to collect and analyze samples, and provide copies of all periodic reports required by regulatory agencies (not less than monthly well production data, treatment system specific flow rates, system pressure data, and all analytical data) to LMC.
- 4.7 If the City becomes the sole operator of the Treatment Facility, the City shall properly profile, transport and dispose of treatment system wastes. Sole operatorship of the Treatment Facility is defined as City operation of the Treatment Facility when treatment is not required to maintain the perchlorate concentration below 80% of the MCL. Until the City becomes the sole operator of the Treatment Facility, when possible, the City shall notify LMC at least ten (10) days in advance of when LMC needs to profile, transport, and dispose of treatment system wastes. LMC shall be considered the generator of such waste unless the City becomes the sole operator of the Treatment Facility.
- 4.8 The City shall be responsible for compliance with NPDES discharge requirements during well and Treatment Facility start-up, testing, operations and maintenance is being performed by City staff. LMC shall reimburse the City for any incremental costs related to (i) the amendment of the City's existing general NPDES permit, (ii) acquisition of a site-specific NPDES permit, and/or (iii) any related analytical testing for perchlorate, if required, and (iv) any treatment of perchlorate required for NPDES discharge during startup, operations, and maintenance.
- 4.9 The City shall provide start-up and disinfection water to LMC at no cost, except for any additional costs associated with the power, treatment (for perchlorate) and discharge of start-up and disinfection water.
- 4.10 The City shall be responsible for compliance with the California Environmental Quality Act ("CEQA") on all matters covered by this Agreement, where applicable.
- 4.11 The City shall be reimbursed for any permitting and related regulatory fees, including CEQA, related to the treatment facility and obtain any and all necessary water supply permits from local and state regulatory agencies, including a permit issued by the California Department of Public Health.

- 4.12 The City shall provide timely review, comment, and ultimate approval of any final plans and specifications prepared by LMC pursuant to this Agreement.
- 4.13 The City agrees to take no action against LMC on matters covered by this Agreement so long as LMC is performing within the scope of this Agreement.

Section 5. Defense and Indemnity Obligations

- 5.1 LMC shall defend, indemnify, and hold harmless the City and its elected officials, officers, and employees from and against any and all actions, damages, losses, causes of action, and liability imposed or claimed relating to the injury or death of any person, or damage to any property, including attorneys' fees (including fees for use of in-house counsel by the City) and other legal expenses, arising directly or indirectly from any negligent or intentionally wrongful act or omission of LMC in performing its obligations under this Agreement.
- 5.2 The City shall defend, indemnify, and hold harmless LMC and its officers, employees, and agents from and against any and all actions, damages, losses, causes of action, and liability imposed or claimed relating to the injury or death of any person or damage to any property, including attorneys' fees and other legal expenses, arising directly or indirectly from any negligent or intentionally wrongful act or omission of the City in performing its obligations under this Agreement.
- 5.3 The indemnities set forth in this Section 5 shall not apply to any third party toxic tort claims arising out of the presence of perchlorate or any other contaminant in water purveyed by the City to the City's customers. Nothing in this Agreement shall limit the right of either party to this Agreement to seek, by an appropriate civil action, indemnity, whether implied or equitable, from the other in the event of a claim by a third party, including but not limited to, a third party toxic tort claim against either party to this Agreement arising out of or related to perchlorate or any other contaminant from the Bunker Hill Basin.
- 5.4 LMC shall keep the site free and clear of any mechanic's liens or materialman's liens arising out of the subject work.

Section 6. Acceptance of Work. For the purposes of this Agreement, verification the Treatment Facility Retrofit Work meets the design requirements and performance specification shall constitute the City's acceptance of Treatment Facility, thereby fulfilling LMC's obligations set forth in Section 3. The design requirements for the purposes of acceptance are that the Treatment Facility can treat the historic maximum 24-hour flow of the Rees Well to the defined specification set forth within the Operations and Maintenance Manual. The performance specifications are those specifications related to performance that will be contained in the approved design.

Section 7. Procedure for Reimbursement

- 7.1 Within one hundred and twenty (120) days or as soon as possible, and prior to approval of the City's fiscal budget, the City shall provide LMC with an estimated Annual Budget for the operations and maintenance of the Treatment Facility. The Annual Budget shall contain the following cost categories relating to the Treatment Facility: direct labor, contracted-for labor, power, ion exchange resin (if City is performing resin change-outs), laboratory costs, supplies and materials, disposal costs (if City has elected to be responsible for disposal of spent resin), permitting costs, replacement costs, and any other cost categories related to the O&M activities with respect to the Treatment Facility that LMC and City agree are appropriate for cost accounting purposes. The Annual Budget shall be developed based on: (1) O&M expenditures with respect to the Treatment Facility during prior years or anticipated expenses; (2) City's estimate; (3) LMC's recommendations thereon, if any; and (4) any other cost estimating factors deemed relevant by the City and LMC.
- 7.2 Not less than ninety (90) days prior to approval of the City's fiscal budget, LMC and the City will meet to agree upon the final Annual Budget for the coming fiscal year.
- 7.3 City shall utilize the City's purchasing policy to secure any services and materials required to perform O&M activities with respect to the Treatment Facility that are susceptible to contract.
- 7.4 For those costs that LMC has agreed to pay pursuant to Section 3 above, LMC shall reimburse City within forty-five (45) days of receipt of complete and detailed invoices from City. Each invoice shall be broken down into the same cost categories as set forth in the Annual Budget. The statement shall include copies of all relevant documentation, including purchasing documents, backup documentation for all internal costs, and all invoices, including backup documentation to support all invoiced contracted-for costs, and a declaration by an authorized representative of City that each amount requested in the statement is due and payable to a party who provided materials or services for O&M activities with respect to the Treatment Facility. All invoices shall include copies of weekly timesheets/timecards and documentation substantiating any goods or services purchased. Invoices should be submitted on a monthly basis. City shall send its invoices to LMC, at the address provided by LMC, as per the terms and conditions of the LMC purchase order issued to City. Any invoice seeking payment for an expenditure outside a cost category in the Annual Budget and any statement which will cause the applicable Annual Budget cost category amount to be exceeded must be accompanied by an explanation of the necessity for that expenditure.

Section 8. Miscellaneous

- 8.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of California.

- 8.2 Modification. This Agreement may not be modified except in writing, signed by the Parties.
- 8.3 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties' respective representatives, successors and assigns.
- 8.4 Severability. If any provision of this Agreement shall be adjudged invalid by any court, the remaining provisions of this Agreement shall remain valid and enforced to the full extent permitted by law.
- 8.5 No Third Party Beneficiaries. There are no third party beneficiaries of any kind to this Agreement.
- 8.6 Attorneys' Fees. In the event any legal action or proceeding is brought to enforce or interpret any of the terms or conditions of this Agreement, the prevailing party, in addition to any costs and other relief, shall be entitled to recover its reasonable attorneys' fees, including fees for use of in-house counsel by a Party.
- 8.7 Cooperation. The Parties agree to cooperate with each other to accomplish the purposes of this Agreement, including exchanging data and information to assist LMC in completing the work under this Agreement.
- 8.8 Integration. This Agreement fully integrates the Parties' agreement and understanding with respect to all matters covered herein. Each Party agrees that it has not relied on any fact, statement or representation other than as specifically recited herein.
- 8.9 Assignment. This Agreement shall not be assigned without the prior written consent of the City. Any assignment or attempted assignment without such consent shall be null and void and, at the sole option of the City, may result in the immediate termination of this Agreement.

Section 9. Termination

- 9.1 LMC's obligations under this Agreement with regard to the construction of Treatment Facility retrofit shall terminate upon City's acceptance of work.
- 9.2 LMC's obligations under this Agreement to provide perchlorate treatment to water from the Rees Well shall terminate at the time the Santa Ana Regional Water Quality Control Board determines that LMC is no longer required to supply replacement water to water purveyors (which includes the City).

Section 10. Notices. All notices or other communications under or in connection with the Agreement shall be in writing and shall be given by (a) personal delivery, (b) telephone facsimile, (c) overnight courier, or (d) U.S. mail. Such notices shall be addressed to the Parties at the addresses set forth below:

Lockheed Martin Corporation (LMC)
David Constable, Vice President
6801 Rockledge Dr., MP CLE610
Bethesda, Maryland 20817

Municipal Utilities Director
City of Redlands
P.O. Box 3005
Redlands, CA 92373

Changes may be made to the names and addresses of the person to whom notices or reports are to be given by giving notice pursuant to this section.

WHEREFORE, this Agreement has been executed by the Parties as of the date first written above in San Bernardino County, California.

CITY OF REDLANDS

LOCKHEED MARTIN CORPORATION

Pat Gilbreath, Mayor

David Constable, Vice President

ATTEST:

City Clerk