

MINUTE ITEM  
This Calendar Item No. 02  
was approved as Minute Item  
No. 02 by the State Lands  
Commission by a vote of 2  
0 at its 6-8-92  
meeting.

CALENDAR ITEM

A 34

02

06/08/92

W 24777

S 15

S. Sekelsky

Frey

AUTHORIZE EXECUTION OF CONTRACTS  
TO PROVIDE SERVICES FOR MITIGATION OF DUST  
AT OWENS LAKE

PARTIES:

Regents of the University of California  
Crocker Nuclear Laboratory  
University of California  
Davis, California 95616

Great Basin Unified Air Pollution  
Control Board  
157 Short Street, Suite 6  
Bishop, California 93514

AREA, TYPE LAND AND LOCATION:

Approximately 13,960 acres of State-owned sovereign lands in  
the dry bed of Owens Lake, Inyo County.

LAND USE:

Experimental mitigation and dust abatement program to limit  
particulate pollution from the dry bed of Owens Lake.

AB 884:

N/A

OTHER PERTINENT INFORMATION:

1. At its May 5, 1992 meeting, the State Lands Commission (SLC) approved a General Permit - Public Agency Use, a Memorandum of Agreement, and a Joint Power Agreement with the Great Basin Unified Air Pollution Control Board (GBUAPCB) for an experimental dust mitigation program on Owens Lake. The subject contracts between the SLC, GBUAPCB, and the University of California Regents (UC Davis) provide for the encumbering and transfer of monies to fund the dust mitigation program as outlined in the project descriptions and approved budgets.

2. The Commission, at its May 5, 1992 meeting, also determined that the program, as analyzed in EIR ND 587 State Clearinghouse No. 92032104, will not have a significant effect on the environment.

**EXHIBITS:**

- A. Land Description
- B. Location Map
- C. SLC - UCD Interagency Agreement for Research and Development Services (Dust Mitigation) C9175
- D. Joint Powers Agreement between Great Basin Unified Air Pollution Control District and State of California, State Lands Commission for the Provision of Vegetation Research and Development Services
- E. SLC - UCD Interagency Agreement for Vegetation Research and Development Services - C9176

**IT IS RECOMMENDED THAT THE COMMISSION:**

1. FIND THAT EIR ND 587 WAS ADOPTED ON MAY 5, 1992 FOR AN EXPERIMENTAL DUST MITIGATION PROGRAM AT OWENS LAKE; IT WAS DETERMINED THAT THE PROGRAM WOULD NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT AND THAT SUCH DOCUMENT AND FINDING APPLY TO THE PROPOSED ACTIVITY.
2. AUTHORIZE THE EXECUTIVE OFFICER, OR HIS DESIGNEE, TO ENTER INTO AND EXECUTE CONTRACTS BETWEEN THE STATE LANDS COMMISSION, GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT AND/OR REGENTS OF THE UNIVERSITY (U. C. DAVIS) IN SUBSTANTIALLY THE FORM ATTACHED AS EXHIBITS "C", "D", AND "E".

EXHIBIT A

All that portion of the following described lands lying waterward of the U.S. meander line of Owens Lake, Inyo County.

T. 16 S., R. 36 E., M.D.B. & M.

Projected Sections 13, 23, 24, 25, 26, 35 & 36

T. 16 S., R. 37 E., M.D.B. & M.

Projected Sections 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 & 36

T. 17 S. R. 37 E., M.D.B. & M.

Projected Sections 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15, 24, 25, 35 & 36

T. 17 S., R. 38 E., M.D.B. & M.

Projection Sections 4, 5, 6, 7, 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32 & 33

T. 18 S., R. 37 E., M.D.B. & M.

Projected Sections 1, 2, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, & 34

T. 18 S., R. 38 E., M.D.B. & M.

Projected Sections 5, 6, 7, 8, 18 & 19

T. 19 S., R. 37 E., M.D.B. & M.

Projected Sections 4, 5 & 6

Excepting all lands not under the jurisdiction of or presently under lease with State Lands Commission.

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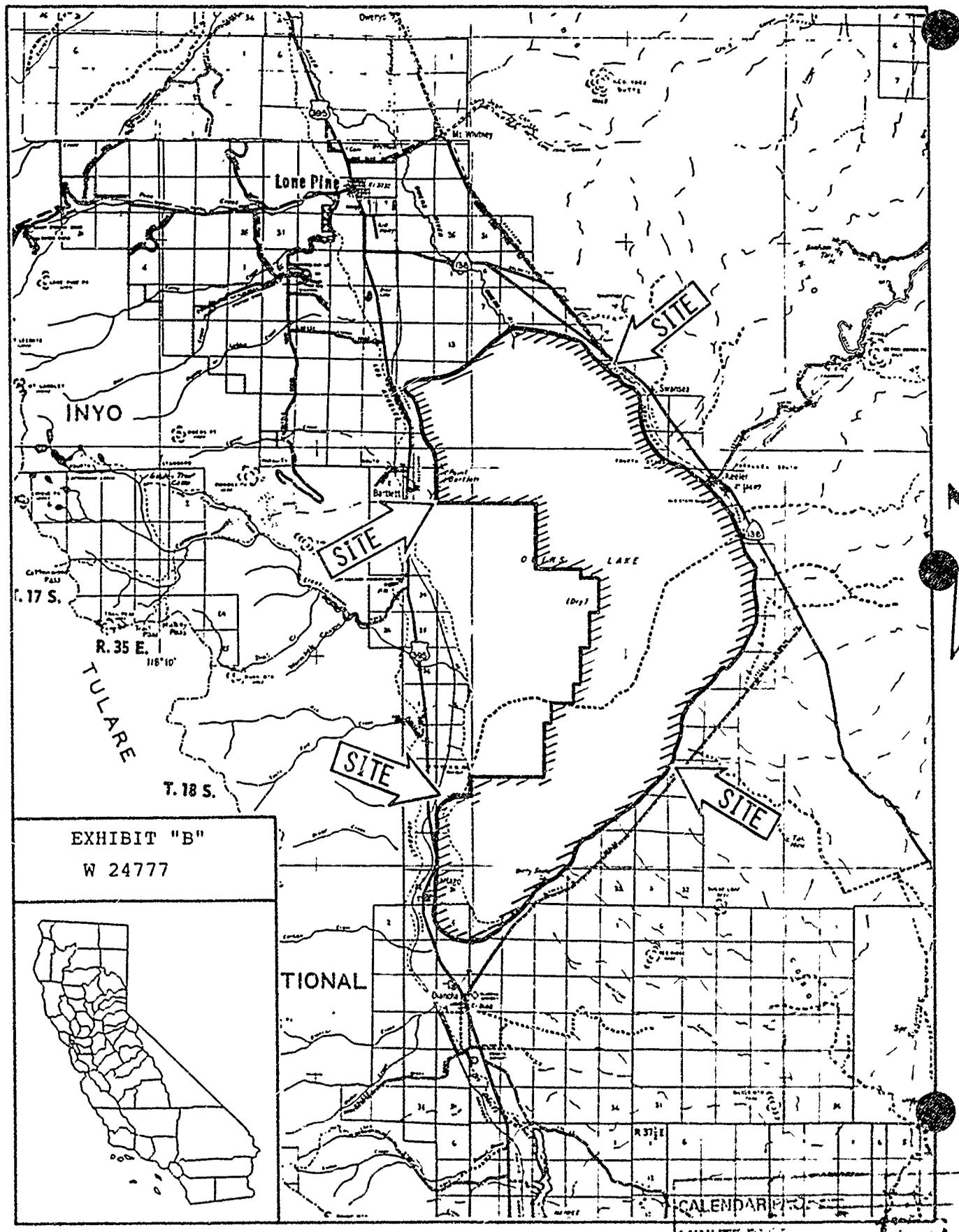


EXHIBIT "B"  
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CALENDAR  
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## INTERAGENCY AGREEMENT

STD. 13 (REV. 9-89)

NUMBER

C 9175

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
and between the undersigned State Agencies:

Set forth services, materials, or equipment to be furnished, or work to be performed, and by whom,  
time for performance including the terms, date of commencement and date of completion, and provision  
for payment per (1225 and 8752-8752.1 SAM.)

## Distribution:

- Agency providing services  
 Agency receiving services  
 Department of General Services  
(unless exempt from DGS approval)  
 Controller

I. The University agrees to provide all personnel, labor, materials and equipment necessary to perform the work described in the following documents:

a. Attachment A to that certain agreement entitled "Joint Powers Agreement Between Great Basin Unified Air Pollution Control District And State Of California, State Lands Commission For The Provision Of Research And Development Services" and entered into between the State Lands Commission and the Great Basin Unified Air Pollution Control District on June \_\_\_\_\_, 1992. A copy of said Agreement is attached hereto and incorporated herein as Exhibit B to this Agreement and is hereafter referred to as the Joint Powers Agreement.

b. Mitigation of Windblown Dusts and Reclamation of Public Trust Values, Owens Lake, California, 1992-1993 - Partial Mitigation of PM-10 Dust Episodes Through Control of Saltating Particles and Reduction of Wind Shear, 1992-1993 by the Owens Lake Task Group, University of California, Davis under the direction of Mr. Thomas A. Cahill and dated April 28, 1992. A copy of this document is attached hereto as Exhibit C and hereinafter referred to as the Dust Mitigation Plan.

(Continued on \_\_\_\_\_ sheets which are hereby attached and made a part hereof)

NAME OF STATE AGENCY RECEIVING SERVICES <b>State Lands Commission</b> CALLED ABOVE (SHORT NAME)		NAME OF STATE AGENCY PROVIDING SERVICES <b>University California, Davis</b> CALLED ABOVE (SHORT NAME)	
AUTHORIZED SIGNATURE ▷		AUTHORIZED SIGNATURE ▷	
PRINTED NAME AND TITLE OF PERSON SIGNING		PRINTED NAME AND TITLE OF PERSON SIGNING	
FUND NUMBER AND NAME		FUND NUMBER AND NAME	
AMOUNT ENCUMBERED BY THIS DOCUMENT \$ 193,500	PROGRAM/CATEGORY (CODE AND TITLE) (OPTIONAL USE)	FUND TITLE	
PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT \$	ITEM	CHAPTER	STATUTE
TOTAL AMOUNT ENCUMBERED TO DATE \$	OBJECT OF EXPENDITURE (CODE AND TITLE)		
I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.		T.B.A. NO	B.R. NO
SIGNATURE OF ACCOUNTING OFFICER		DATE	
X			

Department of General Services  
Use Only

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- II. The State agrees to compensate the University a total amount not to exceed \$193,500.00 as consideration for the work performed and in accordance with the cost estimates contained in Exhibit B hereto.
- III. For purposes of this Agreement the direct and indirect costs (with the indirect cost expressed as a percentage of direct costs) allowable for payment shall be as identified in this Agreement.
- IV. The following documents are hereby incorporated and made a part of this Agreement by reference:
- a. Exhibit A - Special Provisions.
  - b. Exhibit B - Joint Powers Agreement Between Great Basin Unified Air Pollution Control District And State Of California, State Lands Commission For The Provision Of Research And Development Services.
  - c. Exhibit C - Mitigation of Windblown Dusts and Reclamation of Public Trust Values, Owens Lake, California, 1992-1993 - Partial Mitigation of PM-10 Dust Episodes Through Control of Saltating Particles and Reduction of Wind Shear, 1992-1993.
- V. In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:
- a. Interagency Agreement/Form 13.
  - b. Exhibit A.
  - c. Exhibit B.
  - d. Exhibit C.

Exhibit A - Special Provisions  
State Lands Commission - University Of California  
Interagency Agreement

1. **Cost:** Upon completion of the work described in Attachment A of Exhibit B the SLC shall pay the University an amount equal to the University's cost of performance as computed in accordance with Section 8752 of the State Administrative Manual and in accordance with cost estimates as presented in Exhibit B, and in an amount not to exceed \$193,500.
2. **Payments & Invoices:** Payment shall be made monthly upon receipt of an invoice and progress report in triplicate. With respect to the payment period completed, the invoice shall set forth in detail, in accordance with the contract budget, charges for direct costs and overhead costs, including employee fringe benefits; and an itemization of time expended, the classification of personnel involved in such time expenditure, and the salaries and wages for such personnel by monthly, weekly or hourly rates, as appropriate. The invoice shall also contain an itemization of all travel and all equipment purchased from any source with SLC funds, or procured from the State, including the type of equipment, serial number and cost. Any reimbursement for travel expenses incurred under this agreement shall not exceed the rates established by the State Department of Personnel Administration regulations for civil service employees. Nothing herein contained shall preclude advance payments pursuant to Article 1, Chapter 3, Part 1, Division 3, Title 2 of the Government Code.
3. **Audits:**
  - a. The University shall maintain books, records, documents, and other evidence pertaining to the reimbursable costs, and any matching costs and expenses, and hold them available for audit and inspection by the Auditor General for a minimum of four (4) years.
  - b. The University grants the SLC, upon reasonable prior notice and identification of materials to be examined, permission to examine University records pertinent to direct costs payable under this Agreement solely for the purpose of determining that the direct costs are consistent with those identified in this Agreement.
4. **Retentions:** The SLC may withhold final payment of an amount not to exceed ten (10) percent of the total agreement cost until completion of all work and submission to the SLC of all

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reports required by the Agreement.

5. **Term & Time Of Performance:** Performance shall not commence until final approval of this Agreement by all necessary State agencies. This Agreement shall be effective from the last of the approval dates and shall remain in effect until April 30, 1995 unless it is terminated sooner under the provisions of this Agreement.

6. **Modification Of Work Program:** Funding for this Agreement comes from two sources: a legislative grant to the SLC and payment from Great Basin Unified Air Pollution Control District (Great Basin). In the event that funding from Great Basin is reduced or cancelled, the SLC reserves the right to modify the work program to reflect such reduction or cancellation of funding.

7. **Termination:**

(a) Each party shall have the right to terminate this Agreement at its sole discretion upon thirty (30) days written notice to the other party. In case of early termination by the SLC, a final payment shall be made to the University upon receipt of an invoice in triplicate and report in triplicate covering services to the termination date. Such payment shall be for all incurred costs including time expended, equipment purchased or utilized to termination at the actual rates incurred including proration of indirect costs. However, the total amount shall not exceed the total contract amount.

(b) Portions of the funding of this Agreement come from the Great Basin Unified Air Pollution Control District (GBUAPCD). In the event that funding from GBUAPCD fails, is reduced, or is modified, the SLC shall have the option to cancel, reduce, or modify the scope of work in this Agreement upon thirty (30) days written notice to the University.

8. **Information & Research Data:**

a. The University prepare and submit to the SLC the reports described in Attachment A to the Joint Powers Agreement at the times designated in said Attachment A. Copies of such reports shall be submitted to the Great Basin Unified Air Pollution Control District at the same time as those to the SLC.

b. The SLC shall have the right at reasonable times during the term of this Agreement to inspect and reproduce any written or printed matter developed under this Agreement by the University.

c. Any information or research data generated under this Agreement shall become the joint property of the University and the SLC.

d. The University shall be entitled to release or make available reports, information or other data prepared or assembled by it pursuant to this Agreement in scientific journals and other publications and at scientific meetings, provided however, that a copy of the publication shall be submitted to the SLC for review and comment forth-five (45) days prior to such publication. Further, the University shall place the following disclaimer statement in a conspicuous place in all such reports or publications:

The opinions expressed in this publication represent those of the University of California and not necessarily those of the State Lands Commission for whom the work was originally done.

Nothing in this provision shall be construed to limit the right of the SLC to release information obtained from the University or to publish reports, information or data in SLC publications.

9. Equipment:

a. Title to all personal property, fixtures and real property improvements purchased with funds under this Agreement shall be in the SLC unless released to the University.

b. The University shall maintain and administer, in accordance with sound administrative and industrial practice, a program for the utilization, maintenance, repair, protection and preservation of SLC equipment so as to assure its full availability and usefulness for the performance of this Agreement or as long as this equipment remains in the control or possession of the University.

c. The University shall provide, with the final invoice, a final equipment inventory to the SLC. Possession and control of personal property shall be delivered to the SLC within thirty (30) days of termination of this Agreement.

10. Designation of Representatives: The SLC and the University each hereby name a representative who shall represent it during the term of this Agreement. The SLC or the University may change its representative by notifying the other as provided for in Paragraph 11.

The SLC's representative for technical matters shall be:

Mr. Steve Sekelsky  
State Lands Commission  
1807 13th Street  
Sacramento, CA 95814

The SLC's representative for contractual matters shall be:

Mr. David Brown  
State Lands Commission  
1807 13th Street  
Sacramento, CA 95814

The University's representative for technical matters shall be:

Mr. Thomas Cahill  
University of California, Davis  
Crocker Nuclear Laboratory  
Air Quality Group  
Davis, CA 95616

The University's representative for contract matters shall be:

Mr. Keith Young  
Office of Research  
410 Mrak Hall  
University of California, Davis  
Davis, CA 95616

11. Notice: Any notice, communication, amendments, additions, or deletions to this Agreement, including change of address of either party during the term of this Agreement, which the SLC or the University shall be required or may desire to make shall be in writing and may be personally served or sent by prepaid first class mail to the respective parties as follows:

SLC: Owens Lake Project Coordinator  
State Lands Commission  
1807 13th Street  
Sacramento, CA 95814

University: University of California, Davis  
Crocker Nuclear Laboratory  
Air Quality Group  
Davis, CA 95616

12. Disputes: Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under or relating to the performance of this Agreement which is not disposed of by agreement shall be decided by the SLC's representative, who shall reduce his decision to writing and shall transmit a copy thereof to the University. The decision of the SLC's representative shall be deemed final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the University transmits to the SLC a written appeal. Said appeal shall be supported with specificity. In connection with any appeal proceeding under this clause, the University shall be afforded an opportunity to be heard before the State Lands Commission and to offer evidence in support of its appeal. Pending the final resolution of any such dispute, the University shall proceed diligently with the performance of this Agreement and in accordance with the written decision of the SLC's representative which is the subject of the University's appeal.

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Exhibit B

JOINT POWERS AGREEMENT BETWEEN  
GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT  
AND STATE OF CALIFORNIA, STATE LANDS COMMISSION  
FOR THE PROVISION OF  
RESEARCH AND DEVELOPMENT SERVICES

INTRODUCTION

WHEREAS, the Great Basin Unified Air Pollution Control District (hereinafter referred to as "District") has the need for the Research and Development services of the State of California State Lands Commission (hereinafter referred to as "State"), and in consideration of the mutual promises, covenants, terms, and conditions hereinafter contained, the parties hereby agree as follows:

TERMS AND CONDITIONS

1. SCOPE OF WORK:

The State shall furnish to the District, those services and work set forth in Attachment A, attached hereto and by reference incorporated herein.

Services and work provided by the State under this Agreement will be performed in a manner consistent with the requirements and standards established by applicable federal, state, and County laws, ordinances, regulations, and resolutions. Such laws, ordinances, regulations, and resolutions include, but are not limited to, those which are referred to in this Agreement.

2. TERM:

The term of this Agreement shall be from May 1, 1992 to April 30, 1995 unless sooner terminated as provided below.

3. CONSIDERATION:

A. Compensation.

District shall pay State in accordance with the Schedule of Fees (set forth as Attachment B) for the services and work described in Attachment A which are performed by State.

B. Travel and per diem.

Costs of all travel and per diem which State incurs in providing services and work under this agreement are included

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in the compensation to be paid to State in the Schedule of Fees (Attachment B). State will not be entitled to any additional compensation for travel expenses or per diem incurred by State in performing this Agreement.

C. No additional consideration.

Except as expressly provided in this Agreement, State shall not be entitled to, nor receive, from District, any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement. Specifically, State shall not be entitled, by virtue of this Agreement, to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.

D. Limit upon amount payable under Agreement.

The total sum of all payments made by the District to State for services and work performed under this Agreement, shall not exceed \$50,000.00 (hereinafter referred to as "contract limit"). District expressly reserves the right to deny any payment or reimbursement requested by State for services or work performed which is in excess of the contract limit.

E. Billing and payment.

Billing and Payment will be in accordance with the Schedule of Fees (set forth as Attachment B).

F. Federal and State taxes.

(1) District will not withhold any federal or state income taxes or social security from any payments made by District to State under the terms and conditions of this Agreement.

(2) District has no obligation to withhold any taxes or payments from sums paid by District to State under this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of State. District has no responsibility or liability for payment of State's taxes or assessments.

4. WORK SCHEDULE:

State's obligation is to perform, in a timely manner, those services and work identified in Attachment A. State will coordinate with District to insure that all services and work will be performed within the time frame set forth by District.

5. REQUIRED LICENSES, CERTIFICATES, AND PERMITS:

State will be responsible for ensuring that any licenses, certificates, or permits required by the federal, state, county, or municipal governments for the services and work described in attachment A, are procured and valid at the time State begins performance of this Agreement. Further, during the term of this Agreement, State must ensure that such licenses, certificates, and permits remain in full force and effect. Licenses, certificates, and permits may include, but are not limited to, driver's licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force at no expense to the District. State will provide District, upon beginning performance of this Agreement, with evidence of current and valid licenses, certificates and permits which are required to perform the services identified in attachment A. Where there is a dispute between State and District as to what licenses, certificates, and permits are required to perform the services and work identified in attachment A, District reserves the right to make such determinations for purposes of this Agreement.

6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC:

State shall provide such office space, supplies, equipment, vehicles, reference materials, and telephone service as is necessary for State to provide the services identified in Attachment A to this Agreement. District is not obligated to reimburse or pay State, for any expense or cost incurred by State in procuring or maintaining such items. Responsibility for the costs and expenses incurred by State in providing and maintaining such items is the sole responsibility and obligation of State.

7. DISTRICT PROPERTY:

A. Personal Property of District.

Any personal property such as, but not limited to, protective or safety devices, badges, identification cards, keys, etc. provided to State by District pursuant to this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of District. State will use reasonable care to protect, safeguard and maintain such items while they are in State's possession. State will be financially responsible for any loss or damage to such items, partial or total, which is the result of State's negligence.

B. Products of State's Work and Services.

Any and all compositions, publications, plans, designs, specifications, blueprints, maps, formulas, processes, photographs, slides, video tapes, computer programs, computer disks, computer tapes, memory chips, soundtracks, audio recordings, films, audio-visual presentations, exhibits, reports, studies, works of art, inventions, patents,

trademarks, copyrights, or intellectual properties of any kind which are created, produced, assembled, compiled by, or are the result, product, or manifestation of, State's services or work under this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of the State. However, State hereby grants to District an irrevocable non exclusive right to use any such products for any District purpose without payment of any further compensation or requirement of prior State approval.

8. WORKERS' COMPENSATION:

State shall provide worker's compensation coverage, in the legally required amount, for all State's employees utilized in providing work and services pursuant to this Agreement. By executing a copy of this Agreement, State acknowledges its obligations and responsibilities to its employees under the California Labor Code, and warrants that State has complied and will comply during the term of this Agreement with all provisions of the California Labor Code with regard to its employees. Further, State will ensure that any contractor whom it engages to perform work or services under this Agreement will provide workers' compensation coverage for its employees.

9. INSURANCE:

A. General Liability.

State shall procure, and maintain during the entire term of this Agreement, a policy of general liability insurance or a self insurance program which covers all the work and services to be performed by State under this Agreement. Such insurance policy or a self insurance program will have a per occurrence combined single limit coverage of not less than \$6,000,000.00. Such policy or a self insurance program will not exclude or except from coverage any of the services and work required to be performed by State under this Agreement. Any policy of insurance will be issued by an insurer authorized to sell such insurance by the State of California, and having at least a "Best's" policyholder's rating of "A" or "A+." District will be named as "an additional named insured" on this policy. State will provide the District with evidence of a self insurance program or a copy of the policy and a certificate of insurance showing the District as "an additional named insured" and indicating that the policy will not be terminated, canceled, or modified without thirty (30) days written notice to the District.

B. Business Auto.

If State utilizes a motor vehicle in performing any of the work or services identified in Attachment A (Scope of Work), State shall cover such vehicle operations by a self insurance program or procure and maintain in force throughout the duration of this Agreement, a business auto liability

insurance policy with minimum coverage levels of \$300,000.00 per occurrence, combined single limit for bodily injury liability and property damage liability. The coverage shall include all State owned vehicles and all hired and non-owned vehicles used in performing under this Agreement.

Evidence of a self insurance program or a certificate of insurance shall be provided to the District at least ten (10) days prior to the start of work under this Agreement. Any policy shall contain a provision prohibiting the cancellation or modification of said policy except upon thirty (30) days prior written notice to the District.

C. Professional Liability.

I. State or any of its employees is required to be professionally licensed or certified by any agency of the State of California in order to perform any of the work or services identified in Attachment A (Scope of Work), State shall cover such professional liability with a self insurance program or shall procure and maintain in force throughout the duration of this Agreement, a professional liability insurance policy with a minimum coverage level of \$1,000,000.00. Evidence of the self insurance program or proof of such insurance shall be provided to District at least ten (10) days prior to the start of any work by State.

10. STATUS OF STATE:

All acts of State, its agents, officers, and employees, relating to the performance of this Agreement, shall be performed as independent contractors, and not as agents, officers, or employees of District. State, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of District. Except as expressly provided in Attachment A, State has no authority or responsibility to exercise any rights or power vested in the District. No agent, officer, or employee of the District is to be considered an employee of State. It is understood by both State and District that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship. As an independent contractor:

A. State shall determine the method, details, and means of performing the work and services to be provided by State under this Agreement.

B. State shall be responsible to District only for the requirements and results specified in this Agreement, and except as expressly provided in this Agreement, shall not be subjected to District's control with respect to the physical action or activities of State in fulfillment of this Agreement.

C. State, its agents, officers, and employees are, and at all times during the term of this Agreement shall, represent

and conduct themselves as independent contractors, and not as employees of District.

11. DEFENSE AND INDEMNIFICATION:

State shall defend, indemnify, and hold harmless District, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, resulting from, or in connection with, the performance of this Agreement by State, or State's agents, officers, or employees. State's obligation to defend, indemnify, and hold the District, its agents, officers, and employees harmless applies to any actual or alleged personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. State's obligation under this paragraph extends to any claim, damage, loss, liability, expense, or other costs which is caused in whole or in part by any act or omission of the State, its agents, employees, supplier, or any one directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable.

State's obligation to defend, indemnify, and hold the District, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to, or restricted by, any requirement in this Agreement for State to procure and maintain a self insurance program or a policy of insurance.

To the extent permitted by law, District shall defend, indemnify, and hold harmless State, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, or resulting from, the active negligence, or wrongful acts of District, its officers, or employees.

12. RECORDS AND AUDIT:

A. Records.

State shall prepare and maintain all records required by the various provisions of this Agreement, federal, state, and municipal law, ordinances, regulations, and directions. State shall maintain these records for a minimum of four (4) years from the termination or completion of this Agreement. State may fulfill its obligation to maintain records as required by this paragraph by substitute photographs, microphotographs, or other authentic reproduction of such records.

B. Inspections and Audits.

Any authorized representative of District shall have access to any books, documents, papers, records, including, but not limited to, financial records of State, which District determines to be pertinent to this Agreement, for the purposes of making audit, evaluation, examination, ~~excerpts, and~~

transcripts during the period such records are to be maintained by State. Further, District has the right, at all reasonable times, to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

**13. NONDISCRIMINATION:**

During the performance of this Agreement, State, its agents, officers, and employees shall not unlawfully discriminate in violation of any federal, state, or local law, against any employee, or applicant for employment, or person receiving services under this Agreement, because of race, religion, color, national origin, ancestry, physical handicap, medication condition, marital status, age, or sex. State and its agents, officers, and employees shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), and the applicable regulations promulgated thereunder in the California Code of Regulations. State shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said act.

**14. CANCELLATION:**

This Agreement may be canceled by District without cause, and at will, for any reason by giving to State thirty (30) days written notice of such intent to cancel. State may cancel this Agreement without cause, and at will, for any reason whatsoever by giving thirty (30) days written notice of such intent to cancel to District.

**15. ASSIGNMENT:**

State may subcontract this Agreement, or any part of it, with the express written consent of District. State shall not assign any monies due or to become due under this Agreement without the prior written consent of District.

**16. DEFAULT:**

If the State abandons the work, or fails to proceed with the work and services requested by District in a timely manner, or fails in any way as required to conduct the work and services as required by District, District may declare the State in default and terminate this Agreement upon five (5) days written notice to State. Upon such termination by default, District will pay to State all amounts owing to State for services and work satisfactorily performed to the date of termination.

**17. WAIVER OF DEFAULT:**

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be

construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided in paragraph twenty-four (24) below.

**18. CONFIDENTIALITY:**

State agrees to comply with the various provisions of the federal, state, and county laws, regulations, and ordinances providing that information and records kept, maintained, or accessible by State in the course of providing services and work under this Agreement, shall be privileged, restricted, or confidential. State agrees to keep confidential all such information and records. Disclosure of such confidential, privileged, or protected information shall be made by State only with the express written consent of the District.

**19. CONFLICTS:**

State agrees that it has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the work and services under this Agreement.

**20. SEVERABILITY:**

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction, or if it is found in contravention of any federal, state, or county statute, ordinance, or regulation, the remaining provisions of this Agreement, or the application thereof, shall not be invalidated thereby, and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

**21. FUNDING LIMITATION:**

A. The ability of District to enter this Agreement is based upon available funding from various sources. In the event that such funding fails, is reduced, or is modified, from one or more sources, District has the option to cancel, reduce, or modify this Agreement, or any of its terms within ten (10) days of its notifying State of the cancellation, reduction, or modification of available funding. Any reduction or modification of this Agreement made pursuant to this provision must comply with the requirements of paragraph twenty-three (23) (Amendment).

B. This agreement shall not be effective until it has been approved by the Department of General Services.

**22. ATTORNEY'S FEES:**

If either of the parties hereto brings an action or proceeding against the other, including, but not limited to, an action to enforce or declare the cancellation, termination, or revision of the Agreement, the prevailing party in such action or proceeding

shall be entitled to receive from the other party all reasonable attorney's fees and costs incurred in connection therewith.

23. AMENDMENT:

This Agreement may be modified, amended, changed, added to, or subtracted from, by the mutual consent of the parties hereto, if such amendment or change is in written form and executed with the same formalities as this Agreement, and attached to the original Agreement to maintain continuity.

24. NOTICE:

Any notice, communication, amendments, additions, or deletions to this Agreement, including change of address of either party during the terms of this Agreement, which State or District shall be required, or may desire, to make, shall be in writing and may be personally served, or sent by prepaid first class mail to, the respective parties as follows:

Great Basin Unified Air Pollution Control District  
157 Short Street, Suite 6  
Bishop, California 93514

State Lands Commission  
1807 13th Street  
Sacramento, California 95814

25. DESIGNATION OF AGREEMENT REPRESENTATIVE:

The Commission and District hereby name a representative who shall represent his or her agency regarding this Agreement. Each agency may change its representative by notifying the other agency as provided for in Paragraph 24.

COMMISSION'S REPRESENTATIVE SHALL BE:  
Steve Sekelsky

DISTRICT'S REPRESENTATIVE SHALL BE:  
Ted Schade

26. ENTIRE AGREEMENT:

This Agreement contains the entire agreement of the parties, and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein or incorporated herein by reference, shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated, unless the same be in writing executed by the parties hereto.

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AGREEMENT BETWEEN  
GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT  
AND STATE OF CALIFORNIA, STATE LANDS COMMISSION  
FOR THE PROVISION OF  
RESEARCH AND DEVELOPMENT SERVICES

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS  
AND SEALS THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 19 \_\_\_\_.

DISTRICT

State

By: \_\_\_\_\_

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO FORM AND  
LEGALITY:

\_\_\_\_\_  
District Counsel

APPROVED AS TO ACCOUNTING  
FORM:

\_\_\_\_\_  
County Auditor

51  
1963

ATTACHMENT A

AGREEMENT BETWEEN  
GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT  
AND STATE OF CALIFORNIA, STATE LANDS COMMISSION  
FOR THE PROVISION  
RESEARCH AND DEVELOPMENT SERVICES

TERM:

FROM: May 1, 1992 TO: April 30, 1995

SCOPE OF WORK:

PARTIAL MITIGATION OF PM-10 DUST EPISODES  
THROUGH CONTROL OF SALTING PARTICLES AND REDUCTION OF WIND  
SHEAR, 1992-1993

April 28, 1992

TASK 1 - SAND DUNE ARRAY FIELD TESTS

1. Construction

a. 1992 Small-Scale Array

In the summer of 1992, the State Lands Commission (SLC) shall cause to be designed and constructed a small-scale sand dune test array to test the effectiveness of sand dunes and sand fences in controlling sand migration and PM-10 emissions from Owens Lake. The small-scale test array shall be located on the southern portion of the lake near the 1981-82 WESTEC sites (see Map, Pg. 10) and shall contain at least 3900 feet of sand fence arranged in a staggered array covering an area at least 820 feet by 1300 feet (Diagram pg.9). All material purchased and labor contracted shall conform to standard State Lands Commission contracting and bid procedures. SLC or its subcontractor shall establish a construction and data collection field office in the south end of the Owens Valley. The final configuration and location of the small-scale test array and the fence design shall be presented to GBUAPCD for their review and comments prior to any construction.

b. 1993 Large-Scale Arrays

In the summer of 1993, the SLC or its contractor shall cause to be designed and constructed large-scale sand dune test arrays to test the effectiveness of sand dunes and sand fences in controlling sand migration and PM-10 emissions from Owens Lake. The specific design and location of the large-scale array shall be based on the results of the small-scale test. The array will be designed to reduce sand migration on the southern sand sheet from the Dirty Socks Well wash to the western stream courses. The large-scale test shall contain at least 12,000 feet of sand fence in staggered lines arranged in an array at least 1 mile long (see Map pg. 10). However, if the small-scale test shows that it is necessary, much larger amounts of fencing may be emplaced. There may also be smaller lines of fences consisting of roughly parallel lines of staggered fences approximately in the same area.

Four linear, staggered arrays will be constructed at locations upwind and downwind of the block array. The purpose of these arrays is to start to set the parameters for spacing arrays at Owens Lake to optimize sand capture per dollar. Each array will be approximately 4,000 feet long with adequate randomization in length and placement to present a quasi-natural dune field when filled. Spacing between arrays will be roughly 2,600 feet, depending on terrain and earlier tests. All material purchased and labor contracted shall conform to SLC contracting and bid procedures. The final configuration and exact location of the large-scale test arrays shall be presented for review and comment to the GBUAPCD prior to any construction.

2. Instrumentation

All test arrays shall contain the types and amounts of data collection devices necessary to determine the effectiveness of sand dune arrays at controlling PM-10 emissions. Data to be collected shall include, but shall not necessarily be limited to wind speed, wind direction, air temperature, relative humidity, precipitation, sand movement, air quality (PM-10 levels), surface crust conditions, groundwater levels, groundwater chemistry, soil chemistry, soil surface erosion/deposition, sand dune stratigraphy, sand dune growth rates, and sand dune stability. Instrumentation types, amounts, and locations shall be presented for review and comments to GBUAPCD prior to any equipment purchases.