

1 B. EPA's Project Coordinator will be an EPA employee and
2 shall have the authority vested in the On-Scene Coordinator by 40
3 C.F.R. § 300 et seq., including such authority as may be added by
4 amendments to 40 C.F.R. Part 300. EPA's Project Coordinator
5 shall have the authority, inter alia, to require cessation of the
6 performance of the Remedial Action Work or any other activity at
7 the Site that, in the opinion of EPA's Project Coordinator, may
8 present or contribute to an endangerment to public health, wel-
9 fare, or the environment or cause or threaten to cause the
10 release of hazardous substances from the Site. In the event that
11 the EPA Project Coordinator suspends the Remedial Action Work of
12 a Settling Work Defendant or any other activity at the Site, the
13 EPA shall extend the schedule for that Settling Work Defendant's
14 Remedial Action Work for the amount of time necessary to allow
15 completion of any of that Settling Work Defendant's Remedial Ac-
16 tion Work affected by such delay, provided that the original
17 reason for the suspension was not due primarily to the acts or
18 omissions of that Settling Work Defendant or its representatives.
19 If EPA suspends the Remedial Action Work of one Settling Work
20 Defendant and such suspension affects the Remedial Action Work of
21 the second Settling Work Defendant, EPA shall extend the schedule
22 for the second Settling Work Defendant's Remedial Action Work for
23 the amount of time necessary to allow completion of any of that
24 Settling Work Defendant's Remedial Action Work affected by such
25 delay, provided that the original reason for the suspension was
26 not due primarily to the acts or omissions of the second Settling
27 Work Defendant or its representatives.

1 C. If a Settling Work Defendant disagrees with EPA's deter-
2 mination regarding the appropriateness of or the amount of time
3 necessary for any extension authorized pursuant to Subpart B of
4 this Section, that Settling Work Defendant may invoke the dispute
5 resolution procedures of Section XX (Dispute Resolution).

6 D. The absence of EPA's Project Coordinator from the Site
7 shall not be cause for stoppage of the Work.

8 E. A Settling Work Defendant or EPA may change its Project
9 Coordinator by notifying the other Settling Parties in writing at
10 least seven days prior to the change.

11 F. Each Settling Work Defendant's Project Coordinator may
12 assign another representative, including a contractor, to serve
13 as a Site representative for oversight of that Settling Work
14 Defendant's daily operations during performance of the Work.

15 G. EPA's Project Coordinator may assign another representa-
16 tive, including another EPA employee or contractor, to serve as a
17 Site representative for oversight of daily operations during per-
18 formance of the Work. Such representative shall not have the
19 powers of the Project Coordinator to require a cessation of the
20 performance of the Remedial Action Work or any other activity at
21 the Site unless such representative is also an EPA employee with
22 the authority vested in the On-Scene Coordinator by 40 C.F.R. §
23 300 et seq. and amendments thereto.

24 X. SITE ACCESS

25 A. To the extent that Lockheed requires access to or ease-
26 ments over property (other than property it owns or controls or
27 to which it is provided access pursuant to this Decree) for the

1 proper and complete performance of the Work, Lockheed shall use
2 its best reasonable efforts to obtain access agreements from the
3 owners or those persons who have control of such property. For
4 purposes of this paragraph, "best reasonable efforts" shall in-
5 clude the payment of reasonable sums of money in consideration of
6 access. Lockheed shall obtain the required access agreements by
7 the following time periods:

8 1. For access needed by Lockheed prior to the start of
9 remedial construction, access agreements shall be obtained by a
10 date fifty (50) days prior to the date access is needed.

11 2. For access needed by Lockheed for remedial construction,
12 access agreements shall be obtained at least fifty (50) days
13 prior to the start of remedial construction.

14 3. If EPA identifies to Lockheed in writing additional ac-
15 cess (beyond that access previously secured) which is required
16 for the proper and complete performance by Lockheed of its re-
17 quirements under this Decree, access agreements shall be obtained
18 within fifty (50) days of EPA providing such identification in
19 writing.

20 B. To the extent that the City requires access to or ease-
21 ments over property (other than property it owns or controls or
22 to which it is provided access pursuant to this Decree) for the
23 proper and complete performance of the Work, the City shall use
24 its best reasonable efforts to obtain access agreements from the
25 owners or those persons who have control of such property. For
26 purposes of this paragraph, "best reasonable efforts" shall in-

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1 clude the payment of reasonable sums of money in consideration of
2 access. The City shall obtain the required access agreements by
3 the following time periods:

4 1. For access needed by the City prior to the start of
5 remedial construction, access agreements shall be obtained by a
6 date fifty (50) days prior to the date access is needed.

7 2. For access needed by the City for remedial construction,
8 access agreements shall be obtained at least fifty (50) days
9 prior to the start of remedial construction.

10 3. If EPA identifies to the City in writing additional ac-
11 cess (beyond that access previously secured) which is required
12 for the proper and complete performance by the City of its re-
13 quirements under this Decree, access agreements shall be obtained
14 within fifty (50) days of EPA providing such identification in
15 writing. In the event the City acquires property pursuant to
16 this Subpart, which acquisition is necessary for the purpose of
17 conducting remedial action, the City shall be entitled to the
18 protection granted by Section 104(j)(3) of CERCLA, 42 U.S.C. §
19 9604(j)(3).

20 C. In the event that a Settling Work Defendant is unable to
21 obtain an access agreement within the time periods specified in
22 Subpart A or B of this Section, the Settling Work Defendant re-
23 quired to obtain such an agreement shall notify EPA regarding the
24 lack of such agreements within five (5) days after the end of the
25 period specified for the attainment of such access agreements in
26 Subpart A or B of this Section and shall include in that
27 notification a summary of the steps which that Settling Work

1 Defendant has taken to attempt to obtain access. Inability to
2 obtain a required access agreement, if the Settling Work Defen-
3 dant used its best reasonable efforts to obtain such agreement
4 and has otherwise complied with the requirements of this Section,
5 shall constitute a force majeure event and shall be subject to
6 the provisions of Section XXI (Force Majeure). If the United
7 States must obtain access on behalf of Settling Work Defendants,
8 any costs incurred in obtaining such access (including but not
9 limited to attorneys' fees and other legal costs) shall be
10 treated as Future Response Costs to be reimbursed by Lockheed as
11 provided in Section XVI (Reimbursement of Future Response Costs).

12 D. All Site access agreements to be obtained pursuant to
13 this Section shall provide reasonable access to the Settling Work
14 Defendant obtaining access, the United States and any of its
15 agencies, the State of California, and the representatives of
16 each of the foregoing, including contractors.

17 E. During the effective period of this Decree, the United
18 States, the State, and their representatives, including contrac-
19 tors, shall have access, free of charge, to any property at the
20 Site and any property contiguous to the Site owned or controlled
21 by any Settling Defendant for any activity authorized by this
22 Consent Decree, including but not limited to:

- 23 1. Monitoring the progress of the Work activities;
- 24 2. Verifying any data or information submitted by
25 either Settling Work Defendant to EPA or the State;
- 26 3. Conducting investigations relating to contamina-
27 tion at or near the Site;

- 1 4. Obtaining samples at the Site;
- 2 5. Inspecting and copying records or other documents
- 3 available pursuant to Section XI (Submission of Documents, Sam-
- 4 pling and Analysis);
- 5 6. Performing the Work if EPA takes over any part of
- 6 the Work pursuant to Subpart AA of Section VII (Work To Be
- 7 Performed); and
- 8 7. Performing any of the tasks described in Subpart B of
- 9 Section VII (Work To Be Performed).

10 F.1. Lockheed and Weber shall also provide access free of
11 charge, consistent with any applicable government security re-
12 quirements that are uniformly applied to all persons on the
13 premises, to property either or both own(s) or control(s) to the
14 Settling Work Defendants and the representatives of the Settling
15 Work Defendants to the extent that such access is necessary for a
16 Settling Work Defendant to perform the Remedial Design Work or
17 Remedial Action Work. If either Settling Work Defendant seeks
18 access pursuant to this Subpart and such access is refused, that
19 Settling Work Defendant shall, within five days of such refusal,
20 inform EPA in writing of the reasons it desires the access, the
21 attempts it has made to obtain access and the impact a denial of
22 access would have upon its ability to perform its obligations un-
23 der this Decree, including any deadlines that might be affected.

24 2. The City shall provide, free of charge to any other Set-
25 tling Party, an area at the Valley Forebay Facility located at
26 2030 North Hollywood Way, for the groundwater Treatment Plant,
27 subject to area availability after excluding the area necessary

1 for the blending, booster and disinfection facilities. The total
2 available area for all such facilities is shown in Appendix F
3 ("Area F"). The City shall provide Area F free of all structures
4 or personal property other than existing utility structures. The
5 City shall also provide, free of charge to any other Settling
6 Party, access from the City's public right of way to Area F for
7 pipelines, utilities and related facilities (exclusive of the
8 groundwater Treatment Plant, blending, booster and disinfection
9 facilities, and monitoring or extraction wells). Lockheed shall
10 be solely responsible for obtaining permission from nonparties
11 that is needed to relocate any overhead or underground utility
12 structures above or under the surface of Area F necessary to con-
13 struct any facilities, including the groundwater Treatment Plant,
14 to be constructed by Lockheed. Lockheed shall be solely respon-
15 sible for relocating any such utility structures. The City
16 shall also require, at the request of Lockheed, that any holder
17 of an easement or franchise for a facility in Area F relocate
18 such facility, provided that such relocation can be accomplished,
19 pursuant to such easement or franchise, without cost to the City.

20 3. The City shall provide access free of charge to public
21 rights of way it owns or controls within the City (i.e., streets,
22 median strips, gutters, curbs, sidewalks) to Lockheed to the ex-
23 tent such access is necessary for Lockheed to perform its portion
24 of the Remedial Design Work or Remedial Action Work. If Lockheed
25 seeks access pursuant to this Subpart and such access is refused,
26 Lockheed shall, within five days of such refusal, inform EPA in
27 writing of the reasons it desires the access, the attempts it has

1 made to obtain access and the impact a denial of access would
2 have upon its ability to perform its obligations under this
3 Decree, including any deadlines that might be affected. The City
4 shall also require, at the request of Lockheed, that any holder
5 of an easement or franchise for a facility in the public right of
6 way relocate such facility, provided that such relocation can be
7 accomplished, pursuant to such easement or franchise, without
8 cost to the City. Nothing in this Subpart shall interfere with
9 the City's rights pursuant to Subpart E.2 of Section VI (Binding
10 Effect).

11 4. Settling Defendants shall also provide access, as
12 described in Subparts F.2 or F.3 of this Section, respectively,
13 free of charge to property they own or control to any other
14 potentially responsible party (including Lockheed) that is
15 responsible (pursuant to an EPA order or a consent decree with
16 EPA) for performing any of the tasks described in Subpart B of
17 Section VII (Work To Be Performed) of this Decree; provided,
18 however, that the Settling Defendants do not agree to provide
19 such access voluntarily without a signed agreement with such
20 other potentially responsible party (including Lockheed), con-
21 taining terms substantively similar to those to which the Set-
22 tling Defendants have agreed in Subparts G and H of this Section,
23 but covering the tasks described in Subpart B of Section VII
24 (Work To Be Performed). The access required to be provided pur-
25 suant to this Subpart shall be that access reasonably necessary
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1 to enable any such potentially responsible party and its repre-
2 sentatives to perform any of the tasks described in Subpart B of
3 Section VII (Work To Be Performed) of this Decree.

4 G. Lockheed, Weber and the City do hereby agree to relieve,
5 release, indemnify, defend, hold harmless and forever discharge
6 the others and the others' respective officers, agents,
7 employees, attorneys, administrators, affiliates, parents, sub-
8 sidiaries, assigns, representatives, servants, insurers, succes-
9 sors, heirs and each of them, of and from any and all claims,
10 rights, debts, liabilities, demands, obligations, liens,
11 promises, acts, agreements, costs and expenses (including, but
12 not limited to, attorneys' fees and costs), damages, actions and
13 causes of action, of whatever kind or nature, (including without
14 limitation, any statutory, civil or administrative claim),
15 whether known or unknown, suspected or unsuspected, fixed or con-
16 tingent, apparent or concealed, in any way based on, arising out
17 of or related to or connected with its acts or omissions or the
18 acts or omissions of its officers, agents, employees, attorneys,
19 administrators, affiliates, parents, subsidiaries, assigns, rep-
20 resentatives, servants, insurers, successors, heirs and each of
21 them, in connection with or related to the performance of any
22 Work.

23 H. Each Settling Defendant performing Work on the property
24 of another Settling Defendant shall carry liability insurance in
25 the amount of \$5,000,000.00 (Five Million Dollars) for the
26 benefit of the owner, and occupant (if any), of the property on
27 which the Work is being performed.

1 I. The access and information gathering abilities provided
2 pursuant to this Section are in addition to, and not in lieu of,
3 any rights of access and information gathering granted to EPA and
4 its employees, officers, and representatives by statute.

5 J. Any person obtaining access pursuant to this Section
6 shall comply with all applicable provisions of the Worker Health
7 and Safety Plan(s) described in the Statement of Work.

8 XI. SUBMISSION OF DOCUMENTS, SAMPLING AND ANALYTIC DATA

9 A. Each Settling Work Defendant shall submit to EPA the
10 results of all sampling, and/or tests or other analytic data gen-
11 erated by that Settling Work Defendant or on its behalf, with
12 respect to the implementation of this Consent Decree, in a sum-
13 mary form in the monthly progress reports described in Section
14 VII (Work To Be Performed).

15 B. Upon a written request to a Settling Work Defendant's
16 Project Coordinator by EPA's Project Coordinator at least four-
17 teen days prior to a sampling event, that Settling Work Defendant
18 shall provide EPA with a split or duplicate sample of any sample
19 taken for purposes of implementing this Decree by that Settling
20 Work Defendant or anyone acting on its behalf. The United States
21 shall, pursuant to CERCLA Section 104, 42 U.S.C. § 9604, have the
22 right to take any samples it deems necessary, including split
23 samples of samples taken by Settling Work Defendants or anyone
24 acting on Settling Work Defendants' behalf.

25 C. During the performance of the Work, each Settling Work
26 Defendant shall notify EPA's Project Coordinator of any planned
27 sampling to be conducted by that Settling Work Defendant or

1 anyone acting on its behalf with respect to implementation of the
2 Consent Decree in the monthly progress report submitted prior to
3 the sampling. Such notice shall provide at least fourteen (14)
4 days notice of planned sampling to EPA unless otherwise agreed
5 upon in writing. EPA shall be notified sixty (60) days prior to
6 the disposal of any sample taken as part of the performance of
7 the Work and shall have an opportunity to take possession of all
8 or a portion of any such sample; provided, however, that such op-
9 portunity to take possession and the requirement of notification
10 of disposal shall not apply to any continuous line monitoring or
11 to any monitoring for VOCs.

12 D. Upon request, each Settling Work Defendant shall
13 provide to EPA any analytical, technical or design data that are
14 generated by or on behalf of that Settling Work Defendant in the
15 course of performing the Work at the Site. Such information
16 shall be provided to EPA within fifteen (15) days of a request by
17 EPA if such information is in the possession of that Settling
18 Work Defendant. If such information is under that Settling Work
19 Defendant's control but not in its possession at the time of the
20 request, such technical and design data shall be provided to EPA
21 within thirty (30) days of the request and such analytical data
22 shall be provided to EPA within sixty (60) days of the request.
23 The Settling Parties recognize that the provisions of Section
24 104(e)(7)(F) of CERCLA apply to information generated by Settling
25 Defendants with respect to the hazardous substances at the Site.

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1 E. Upon written request by a Settling Work Defendant's
2 Project Coordinator to EPA at least fourteen (14) days prior to a
3 sampling event, EPA will provide to that Settling Work Defendant
4 a split or duplicate sample of any sample collected by EPA or on
5 its behalf for purposes of implementing this Consent Decree and
6 the analytical results obtained from the sample. If EPA collects
7 any samples pursuant to the Statement of Work or undertakes any
8 other Work pursuant to the Statement of Work, EPA will attempt to
9 notify the Settling Work Defendants' Project Coordinators at
10 least fourteen (14) days in advance and permit Settling Work
11 Defendants or their representatives to observe such Work;
12 provided, however, that any failure by EPA to notify Settling
13 Work Defendants pursuant to this Subpart shall not be deemed a
14 violation of this Decree.

15 F. Each Settling Work Defendant reserves the right to
16 assert that documents and other information that it submits to
17 EPA are entitled to confidential treatment pursuant to Section
18 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). For each such
19 claim, the Settling Work Defendant submitting the information
20 shall clearly mark each document as confidential and provide each
21 such document to EPA. Any such claims shall be subject to EPA's
22 confidentiality determination procedure pursuant to 40 C.F.R.
23 Part 2. If a Settling Work Defendant does not make a confiden-
24 tiality claim pursuant to CERCLA Section 104(e)(7), 42 U.S.C. §
25 9604(e)(7), at the time it submits information to EPA, such in-
26 formation may be made available to the public without any notice
27 to the Settling Work Defendant.