

1 mean the remedial design document prepared by the recipients of
2 UAO 92-12 and submitted pursuant to Attachment A to UAO 92-12.

3 "UAO Remedial Design Work" shall mean the activities to be
4 undertaken by the UAO Parties as defined in Section VII.T of UAO
5 92-12.

6 "UAO Remedial Design Work Plan" shall mean the work plan
7 prepared by the UAO Parties pursuant to the Work Schedule,
8 Appendix A to UAO 92-12, to describe the final plans and
9 specifications for the Blending Facility.

10 "Upstream Facilities" pertains to all facilities designed
11 and constructed by Lockheed Martin pursuant to the First Consent
12 Decree and modifications thereto, and to additional facilities
13 which may be constructed pursuant to this Consent Decree upstream
14 of the Blending Facility as originally constructed by the UAO
15 Parties pursuant to UAO 92-12. "Upstream" pertains to the flow
16 of extracted, treated groundwater beginning with its extraction
17 from the aquifer and generally concluding with the Point of
18 Delivery as "Point of Delivery" is defined in the First Consent
19 Decree.

20 "United States" shall mean the United States of America.

21 "Waste Material" shall mean (1) any "hazardous substance"
22 under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any
23 pollutant or contaminant under Section 101(33), 42 U.S.C.
24 § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA,
25 42 U.S.C. § 6903(27); and (4) any "hazardous material" under
26 California Health & Safety Code Section 25100 et seq.

27 "Working Day" shall mean a day other than a Saturday, Sunday
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1 or federal or State of California holiday.

2 V. GENERAL PROVISIONS

3 A. Purpose.

4 The purposes of this Consent Decree are to protect public
5 health, welfare or the environment at the Site by the
6 implementation of response actions at the Site, to reimburse part
7 of the Plaintiffs' response costs related to the Site, and to
8 resolve amicably the claims asserted against Settling Defendants
9 in the underlying complaints filed in this matter.

10 B. Commitments by Settling Defendants.

11 1. Lockheed Martin, the City of Burbank, the UAO
12 Parties and the other Settling Cash Defendants shall finance
13 and/or perform the O&M Activities and other obligations, if any,
14 described in Sections VI, (Performance of the Work), VII
15 (Additional Response Actions), VIII (EPA Periodic Review) and XIV
16 (Funding of Response Activities) herein in accordance with this
17 Consent Decree and all plans, standards, specifications, and
18 schedules set forth in or developed or approved by EPA pursuant
19 to this Consent Decree. Lockheed Martin shall also reimburse the
20 United States and the State for Past and Future Site-Specific and
21 Past Basin-wide Response Costs as provided in Section XVII of
22 this Consent Decree (Reimbursement of Response Costs).

23 2. The obligations of Lockheed Martin, the City of
24 Burbank, the UAO Parties and the other Settling Cash Defendants
25 to finance and/or to perform the O&M Activities, and other
26 obligations, if any, and to pay amounts owed to the United States
27 and the State under this Consent Decree are several, except with
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1 respect to the UAO Parties' obligation to fund response actions
2 pursuant to Section XIV (Funding of Response Activities),
3 Paragraph M, which is joint and several as among the UAO Parties,
4 and the Settling Cash Defendants' obligation to fund response
5 actions pursuant to Section XIV, Paragraph N, which is joint and
6 several among the Settling Cash Defendants.

7 3. Compliance With Applicable Law.

8 All response activities undertaken by any Settling
9 Defendants pursuant to this Consent Decree shall be performed in
10 accordance with the requirements of all applicable federal and
11 State of California laws and regulations. Settling Defendants
12 who perform response activities also shall comply with all
13 applicable or relevant and appropriate requirements of all
14 federal and State of California environmental laws as set forth
15 in the ROD, the Explanations of Significant Differences, the SOW,
16 the First Consent Decree, this Consent Decree, and any
17 deliverables developed or approved by EPA under the First Consent
18 Decree, UAO 92-12 or this Consent Decree. The activities
19 conducted in accordance with this Consent Decree shall be
20 considered to be consistent with the NCP.

21 C. Permits.

22 1. As provided in Section 121(e) of CERCLA, 42 U.S.C.
23 § 9621(e) and Section 300.5 of the NCP, no permit shall be
24 required for any portion of the O&M Activities conducted entirely
25 on-site. Where any portion of the O&M Activities requires a
26 federal or State of California permit or approval, Settling Work
27 Defendant shall submit timely and complete applications and take
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1 all other reasonable actions necessary to obtain all such permits
2 or approvals. Nothing in this Paragraph shall require the City
3 of Burbank to exercise condemnation, eminent domain, or similar
4 powers or authorities.

5 2. Settling Work Defendant may seek relief under the
6 provisions of Section XIX (Force Majeure) of this Consent Decree
7 for any delay in the performance of the O&M Activities resulting
8 from a failure to obtain, or a delay in obtaining, any permit
9 required for the O&M Activities.

10 3. This Consent Decree is not, and shall not be
11 construed to be, a permit issued pursuant to any federal or State
12 of California statute or regulation.

13 D. Notice of Obligations to Successors-in-Title.

14 1. The obligations of each Owner Settling Defendant
15 with respect to the properties it owns which are identified in
16 Appendix 2 to this Consent Decree, and the provision of access
17 under Section X (Access) shall be binding upon such Owner
18 Settling Defendant and any and all persons who subsequently
19 acquire by conveyance any fee ownership interest in such property
20 or portion thereof within the Site, hereinafter "Successors in
21 Title." Each Owner Settling Defendant warrants and represents
22 that to the best of its knowledge and belief, the properties it
23 owns which are identified in Appendix 2 to this Consent Decree
24 are the only properties it owns within the Site, and the United
25 States relies upon such representations with respect to the
26 mutual agreements in this Consent Decree concerning properties
27 within the Site which are owned by any Settling Defendant.
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1 2. In the event of any conveyance of such fee
2 ownership or portion thereof, each such Owner Settling
3 Defendant's obligations under this Consent Decree, including its
4 obligations to provide or secure access pursuant to Section X,
5 shall continue to be met by such Owner Settling Defendant. In no
6 event shall the conveyance of an interest in property that
7 includes, or is a portion of, the Site release or otherwise
8 affect the liability of such Owner Settling Defendant to comply
9 with this Consent Decree.

10 3. Any Owner Settling Defendant and any Successor-in-
11 Title shall, at least thirty (30) days prior to the conveyance of
12 any fee ownership interest in such property, give written notice
13 of this Consent Decree to the grantee. The City shall, at least
14 thirty (30) days prior to the conveyance of any such interest in
15 the real property it owns at 164 West Magnolia Boulevard in the
16 City of Burbank, as depicted in Appendix 8 to this Consent
17 Decree, give written notice of this Consent Decree to the
18 grantee. No later than thirty (30) days after the conveyance of
19 any such interest, such Owner Settling Defendant, Successor-in-
20 Title, or the City shall give written notice to EPA and the State
21 of the conveyance, including the name and address of the grantee,
22 and the date on which notice of the Consent Decree was given to
23 the grantee, and evidence such action by providing a copy of its
24 notice to the grantee.

25 E. The obligation to provide notice pursuant to this
26 Section shall terminate upon issuance of the Certification of
27 Completion pursuant to Section XV (Certification of Completion)
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1 of this Consent Decree.

2 F. In the event of any such conveyance by the City of the
3 property at 164 West Magnolia Boulevard in the City of Burbank,
4 the City's obligations under this Consent Decree shall continue
5 to be met by the City. In no event shall the conveyance of an
6 interest in the property release or otherwise affect the
7 liability of the City to comply with the Consent Decree. Any
8 Successor-in-Title to the real property at 164 West Magnolia
9 Boulevard shall be bound by the provisions of Paragraph D.1
10 through D.3 of this Section.

11 VI. PERFORMANCE OF THE WORK

12 A. Selection of Supervising Contractor.

13 1. All aspects of the O&M Activities to be performed
14 by Settling Work Defendant pursuant to Sections VI (Performance
15 of the Work), VII (Additional Response Actions), VIII (U.S. EPA
16 Periodic Review), and IX (Quality Assurance, Sampling and Data
17 Analysis) of this Consent Decree shall be under the direction and
18 supervision of the Supervising Contractor, the selection of which
19 shall be subject to disapproval by EPA after a reasonable
20 opportunity for review and comment by the State. Within one
21 hundred and eighty (180) days after the entry of this Consent
22 Decree, Settling Work Defendant shall notify EPA and the State in
23 writing of the name, title, and qualifications of any contractor
24 proposed to be the Supervising Contractor. Settling Work
25 Defendant may submit a list of contractors for pre-qualification
26 prior to engaging in any bidding process. Settling Work
27 Defendant may also propose to directly serve in the role of
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1 Supervising Contractor, subject to EPA's review and approval.
2 EPA will issue a notice of approval or disapproval of the
3 Supervising Contractor. Upon its approval of the Supervising
4 Contractor, EPA will issue an authorization to proceed. If at
5 any time thereafter, Settling Work Defendant proposes to change a
6 Supervising Contractor, Settling Work Defendant shall give such
7 notice to EPA and the State and must obtain an authorization to
8 proceed from EPA, after a reasonable opportunity for review and
9 comment by the State, before the new Supervising Contractor
10 performs, directs, supervises or implements any O&M Activities
11 under this Consent Decree. In addition, if the Supervising
12 Contractor proposes to subcontract any portion of the
13 supervision, direction or implementation of the O&M Activities
14 under this Consent Decree, Settling Work Defendant shall give
15 such notice to EPA and the State and must obtain an authorization
16 to proceed from EPA, after a reasonable opportunity for review
17 and comment by the State, before the subcontractor supervises,
18 directs, or implements any O&M Activities under this Consent
19 Decree.

20 2. If EPA disapproves a proposed Supervising
21 Contractor, EPA will notify Settling Work Defendant in writing.
22 Settling Work Defendant shall submit to EPA and the State a list
23 of contractors, including the qualifications of each contractor,
24 that would be acceptable to it within thirty (30) days of receipt
25 of EPA's disapproval of the contractor previously proposed. EPA
26 will provide written notice of the names of any contractor(s)
27 that it disapproves and an authorization to proceed with respect
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1 to any of the other contractors. Settling Work Defendant may
2 select any contractor from that list that is not disapproved and
3 shall notify EPA and the State of the name of the contractor
4 selected within twenty-one (21) days of EPA's authorization to
5 proceed.

6 3. If EPA fails to provide written notice of its
7 approval, authorization to proceed or disapproval as provided in
8 this Paragraph, and this failure prevents Settling Work Defendant
9 from meeting one or more deadlines pursuant to this Consent
10 Decree, Settling Work Defendant may seek relief under the
11 provisions of Section XIX (Force Majeure) hereof.

12 B. Selection of O&M Contractor.

13 1. The day-to-day conduct of the O&M Activities will
14 be performed by the O&M Contractor as defined in Section IV
15 (Definitions) of this Consent Decree. The selection of the O&M
16 Contractor shall be subject to disapproval by EPA after a
17 reasonable opportunity for review and comment by the State.
18 Within one hundred and eighty (180) days after the System
19 Operation Date for Phase Two of the Remedial Action Work as
20 specified in the First Consent Decree, Settling Work Defendant
21 shall notify EPA and the State in writing of the name, title and
22 qualifications of any contractor proposed to be the O&M
23 Contractor. EPA will issue a notice of approval or disapproval.
24 Upon issuance of a notice of approval, EPA shall issue an
25 authorization to proceed. If at any time thereafter, Settling
26 Work Defendant proposes to change the O&M Contractor, Settling
27 Work Defendant shall give such notice to EPA and the State and
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1 must obtain an authorization to proceed from EPA, after a
2 reasonable opportunity for review and comment by the State,
3 before the new O&M Contractor performs, directs, supervises or
4 implements any O&M Activities under this Consent Decree. In
5 addition, if the O&M Contractor proposes to subcontract any
6 portion of O&M Activities under this Consent Decree, Settling
7 Work Defendant shall give such notice to EPA and the State and
8 must obtain an authorization to proceed from EPA, after a
9 reasonable opportunity for review and comment by the State,
10 before the subcontractor supervises, directs, or implements any
11 O&M Activities under this Consent Decree.

12 2. EPA's approval or disapproval of Settling Work
13 Defendant's selection of an O&M Contractor shall be governed by
14 the procedures set forth in Section VI (Performance of the Work),
15 Paragraphs A.2 and A.3 of this Consent Decree.

16 C. Completion of the Response Action.

17 1. Under Section VII of the First Consent Decree,
18 Lockheed Martin, Weber and the City of Burbank submitted to EPA,
19 inter alia, a work plan for the Remedial Design ("Remedial Design
20 Work Plan"), a work plan for the Remedial Action at the Site
21 ("Remedial Action Work Plan") and a plan for the first two years
22 of the Operation & Maintenance ("O&M Work Plan") of the interim
23 remedy. The Remedial Design, Remedial Action and O&M Work Plans
24 provided for design and implementation of part of the interim
25 remedy set forth in the ROD in accordance with the SOW and, upon
26 approval by EPA, were incorporated into and became enforceable
27 under the First Consent Decree. Under Section VII, Paragraph H.1
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1 of the First Consent Decree, the City of Burbank agreed to accept
2 the treated, blended groundwater for distribution to the public
3 water supply.

4 2. Lockheed Martin, Weber and the City of Burbank are
5 performing their obligations under the First Consent Decree.
6 Unless otherwise stated in this Consent Decree, these parties'
7 obligations under the First Consent Decree are not altered in any
8 manner by this Consent Decree.

9 3. Under Section X of UAO 92-12, the UAO Parties were
10 required to submit, inter alia, a Remedial Design Work Plan and
11 Remedial Action Work Plan for the design, construction and
12 operation of the Blending Facility.

13 4. The UAO Parties are performing their obligations
14 under UAO 92-12. Unless otherwise stated in this Consent Decree,
15 these parties' obligations under UAO 92-12 are not altered in any
16 manner by this Consent Decree. The UAO Parties agree to perform
17 and complete their obligations under UAO 92-12.

18 5. Settling Work Defendant shall begin conducting the
19 Operation and Maintenance of the Plant Facilities, beginning on
20 the Date of Commencement and concluding upon EPA's issuance of a
21 Certification of Completion in accordance with Section XV
22 (Certification of Completion) of this Consent Decree.

23 Specifically, Settling Work Defendant shall operate and maintain
24 the Plant Facilities and monitor the effectiveness of such
25 facilities, for the duration of the time required by the ROD.

26 6. Lockheed Martin shall perform all work necessary to
27 dismantle and decommission the Plant Facilities upon EPA's
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1 determination pursuant to Paragraph A.1 of Section XV
2 (Certification of Completion) of this Consent Decree that
3 dismantling and/or decommissioning is required.

4 7. As provided in Section XIV (Funding of Response
5 Activities), Paragraphs D and M, Lockheed Martin shall fund the
6 O&M Activities for the Upstream Facilities and any response
7 activities required because of a Design Defect in the Upstream
8 Facilities. As is also provided in Section XIV (Funding of
9 Response Activities), Paragraph C, the Settling Cash Defendants
10 shall fund the Second Consent Decree Trust Account according to
11 their respective shares as set forth in Appendix 6 to this
12 Consent Decree, which is submitted under seal. As provided in
13 Section XIV, Paragraph M.2(c)(2), the UAO Parties also shall fund
14 any response activities required because of a Design Defect in
15 the Blending Facility. Lockheed Martin, the City of Burbank, and
16 the Settling Cash Defendants shall fund any response activities
17 required because of an earthquake or Uninsurable Force Majeure
18 Event, as defined in Section XIV, Paragraph N, as provided in
19 that Paragraph. The City of Burbank shall fund the Operation and
20 Maintenance of the Downstream Facilities except insofar as the
21 UAO Parties may be required to fund such activities because of a
22 Design Defect, or Lockheed Martin or the Settling Cash Defendants
23 may be required to fund such activities because of an earthquake
24 or Uninsurable Force Majeure Event.

25 8. Within one year after the Effective Date of this
26 Consent Decree, as defined in Section XXVIII (Effective Date),
27 Settling Work Defendant shall submit to EPA:
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1 a. A Staffing Plan indicating lines of
2 responsibility and communication for day-to-day operations, and
3 designating the person or persons responsible for oversight of
4 the O&M Activities on behalf of Settling Work Defendant. Such
5 person or persons may be a member or members of Settling Work
6 Defendant's staff or a member of Settling Work Defendant's
7 Supervising or O&M Contractors' staffs. Settling Work Defendant
8 shall also designate a single contact for communications with EPA
9 for the O&M Activities from the Effective Date of this Consent
10 Decree, as defined in Section XXVIII (Effective Date), through
11 completion of the Remedial Action.

12 b. A Time Line and Schedule describing the timing
13 of the O&M Activities which will be carried out during the period
14 of time covered by the First Consent Decree, including but not
15 limited to any transitions in operations responsibility to take
16 place between Lockheed Martin and the City of Burbank prior to or
17 at the Date of Commencement.

18 9. Within two (2) years after the Effective Date of
19 this Consent Decree, as defined in Section XXVIII (Effective
20 Date), the Settling Work Defendant shall submit to EPA a Second
21 Stage O&M Work Plan describing in detail the tasks to be
22 performed to operate and maintain the Plant Facilities.

23 D. Settling Defendants acknowledge and agree that nothing
24 in the First Consent Decree, this Consent Decree, the Second
25 Stage O&M Work Plan or in any plan approved pursuant to the First
26 Consent Decree or this Consent Decree constitutes a warranty or
27 representation of any kind by Plaintiffs that compliance with the
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1 work requirements set forth in the O&M Second Stage Work Plan and
2 completion of the O&M Activities will achieve the Performance
3 Standards. Settling Work Defendant's compliance with the
4 requirements of Section VI (Performance of the Work) shall not
5 foreclose Plaintiffs from seeking achievement of all requirements
6 of the ROD including, but not limited to, the applicable
7 Performance Standards.

8 E. Settling Work Defendant shall, prior to any off-site
9 shipment of Waste Material from the Site to an out-of-state waste
10 management facility, provide written notification to the
11 appropriate state environmental official in the receiving
12 facility's state and to the EPA Project Coordinator of such
13 shipment of Waste Material. However, this notification
14 requirement shall not apply to any off-site shipments when the
15 total volume of all such shipments will not exceed 10 cubic
16 yards.

17 1. The Settling Work Defendant shall include in the
18 written notification the following information, where available:
19 (1) the name and location of the facility to which the Waste
20 Material(s) are to be shipped; (2) the type and quantity of the
21 Waste Material to be shipped; (3) the expected schedule for the
22 shipment of the Waste Material; and (4) the method of
23 transportation. The Settling Work Defendant shall notify the
24 state in which the planned receiving facility is located of major
25 changes in the shipment plan, such as a decision to ship the
26 Waste Material to another facility within the same state, or to a
27 facility in another state.
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1 2. The Settling Work Defendant shall provide the
2 information required by this Section, Paragraph E.1 as soon as
3 practicable and before the Waste Material is actually shipped.

4 F. Miscellaneous Standards of Control.

5 1. Settling Work Defendant may discharge extracted
6 water to any offsite conveyance(s) leading to any Publicly Owned
7 Treatment Works ("POTW") or to any off-site conveyance(s) leading
8 to any water(s) of the United States for a period of up to five
9 (not necessarily consecutive) days during any month, if the water
10 is not accepted by the City and cannot be vended, provided that
11 the following requirements are met for such discharge:

12 a. All substantive and procedural requirements
13 applicable to such discharge at the time of such discharge shall
14 be met, including any limits on the quantity of water to be
15 discharged;

16 b. The total combined amount of any discharge(s)
17 of extracted water to any off-site conveyance(s) leading to any
18 POTW(s) at any time shall not exceed 6,000 gpm; and

19 c. The total combined amount of extracted water
20 discharged to any off-site conveyance(s) leading to any POTW(s)
21 and to any off-site conveyance(s) leading to any water(s) of the
22 United States at any time shall not exceed 9,000 gpm.

23 Nothing in this Paragraph shall excuse Settling Work Defendant
24 from stipulated penalties for failure to comply with any other
25 requirements of this Consent Decree.

26 2. Settling Work Defendant may discharge development
27 and purge water from wells to any off-site conveyance(s) leading
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1 to any POTW or to any offsite conveyance(s) leading to any
2 water(s) of the United States, provided that any such discharge
3 is in compliance with all substantive and procedural requirements
4 applicable to such discharge at the time of such discharge.
5 Water discharged pursuant to this Section, Paragraph F.2 shall
6 not be included in the limits on the amount of water allowed to
7 be discharged pursuant to this Section, Paragraph F.1.

8 3. Any water containing hazardous constituents and
9 stored onsite for more than ninety (90) days shall be handled as
10 a hazardous waste onsite. Such storage shall be accomplished in
11 compliance with the substantive requirements of 40 C.F.R. Part
12 264, Subparts I and J, and 22 California Code of Regulations,
13 Chapter 30, Article 24 ("Use and Management of Containers") and
14 Article 25 ("Tank Systems"). These requirements are applicable
15 or relevant and appropriate requirements for the O&M Activities.

16 4. With respect to requirements for the operation of
17 the groundwater treatment plant's VOC-stripper (i.e., air
18 stripper with vapor phase granulated activated carbon absorption
19 units), South Coast Air Quality Management District ("SCAQMD")
20 Rule 1167 was rescinded in December of 1988 and Settling Work
21 Defendant is not required to comply with this Rule despite any
22 other language in this Consent Decree. Furthermore, some of the
23 regulations cited in the ROD have been changed by the SCAQMD.
24 The only requirements of the SCAQMD that Settling Work Defendant
25 is required to comply with in performing Work onsite are the
26 substantive requirements of the following applicable or relevant
27 and appropriate requirements for the groundwater treatment plant
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