

1 shall not be deemed to have violated the Consent Decree for  
2 failure to perform the Work. Lockheed and the City shall also  
3 not be entitled to a Covenant Not To Sue for any Work performed  
4 prior to the date that EPA stopped performance of the Work pur-  
5 suant to this Section. Nothing in this Section shall preclude  
6 the United States from instituting proceedings in this action or  
7 a new action or issuing an order pursuant to Subpart D of Section  
8 XVIII (Covenant Not To Sue), seeking to compel the Settling  
9 Defendants to meet the new or changed requirement(s).

10 N. The City may, at its sole option, monitor the treated  
11 groundwater received at the Point of Delivery. In performing any  
12 such monitoring, the City shall comply with the requirements of  
13 Section VIII (Quality Assurance).

14 O. If EPA decides to operate and maintain the extraction,  
15 treatment and reinjection facilities constructed pursuant to Sub-  
16 part A of this Section after the Work required by this Decree is  
17 completed, or to have a person(s) other than Lockheed or EPA do  
18 so, Lockheed shall cooperate with EPA and/or the other person(s)  
19 with respect to the continuing operation of such facilities.  
20 Such cooperation shall include, but not be limited to: (1)  
21 training personnel in plant operation and maintenance; (2)  
22 providing necessary technical information; (3) reviewing and com-  
23 menting on operating plans and procedures; (4) providing access  
24 to the plant and any related facilities (including reinjection  
25 facilities); and (5) maintaining and providing copies of the  
26 groundwater Treatment Plant design specifications, daily log,  
27 repair log, operation manuals, and any other records or documents

1 prepared by Lockheed related to the facilities. Lockheed's  
2 obligations pursuant to this Subpart shall not include an obliga-  
3 tion to pay any  
4 Future Response Costs incurred by the United States during the  
5 period of cooperation.

6 P. All Remedial Design Work to be performed by Settling  
7 Work Defendants pursuant to this Consent Decree shall be under  
8 the direction and supervision of (a) qualified professional  
9 architect(s)/engineer(s). Settling Work Defendants may use one  
10 qualified professional architect/engineer, or each may select its  
11 own architect/engineer, to direct and supervise that portion of  
12 the Remedial Design Work to be performed by it. At least ten  
13 (10) days prior to the initiation of the Remedial Design Work,  
14 Settling Work Defendants shall notify EPA in writing of the name,  
15 title, and qualifications of the architect(s)/engineer(s)  
16 proposed to supervise and direct the Remedial Design Work to be  
17 performed by it pursuant to this Consent Decree. Selection of  
18 any such architect(s)/engineer(s) shall be subject to disapproval  
19 by EPA. If at any time after making their selection(s), (a) Set-  
20 tling Work Defendant(s)s propose(s) to change (a) professional  
21 architect(s)/engineer(s) directing and supervising Remedial  
22 Design Work, the Settling Work Defendant(s) shall give written  
23 notice to EPA. Any such change shall be subject to disapproval  
24 by EPA. If EPA disapproves of an architect/engineer proposed by  
25 (a) Settling Work Defendant(s) pursuant to this Subpart, EPA  
26 shall state in writing the reasons for such disapproval.

27

1           Q. All Remedial Action Work to be performed by Settling  
2 Work Defendants pursuant to this Consent Decree shall be under  
3 the direction and supervision of (a) qualified professional  
4 engineer(s). Settling Work Defendants may use one qualified  
5 professional engineer, or each may select its own engineer, to  
6 direct and supervise that portion of the Remedial Action Work to  
7 be performed by it pursuant to this Consent Decree. At least  
8 thirty (30) days prior to the initiation of Remedial Action Work  
9 at the Site, (a) Settling Work Defendant(s) shall notify EPA in  
10 writing of the name, title, and qualifications of the proposed  
11 engineer(s), and the names of the principal contractors and/or  
12 subcontractors (including laboratories) proposed to be used in  
13 carrying out the Remedial Action Work to be performed pursuant to  
14 this Consent Decree. Selection of any such engineer, contractor,  
15 or subcontractor shall be subject to disapproval by EPA. If at  
16 any time thereafter (a) Settling Work Defendant(s) propose(s) to  
17 change professional engineers directing and supervising Remedial  
18 Action Work, the Settling Work Defendant(s) shall give written  
19 notice to EPA. Any such change shall be subject to disapproval  
20 by EPA. If EPA disapproves of an engineer proposed by (a) Set-  
21 tling Work Defendant(s) pursuant to this Subpart, EPA shall state  
22 in writing the reasons for such disapproval.

23           R. The Statement of Work shall not be amended without the  
24 mutual written agreement of the Settling Work Defendant(s) af-  
25 fected by the modification and EPA, as provided for in Section  
26  
27

1 XXIV (Modification). This limitation on amending the Statement  
2 of Work shall not act to limit EPA's rights pursuant to Subpart B  
3 of Section XVII (Reservation and Waiver of Rights).

4 S. Documents to be submitted:

5 1. Deliverables: Each Settling Work Defendant shall  
6 prepare and submit those deliverables which that Settling Work  
7 Defendant is required to submit by the Statement of Work, as that  
8 document may be from time to time amended in accordance with Sec-  
9 tion XXIV (Modification).

10 2. Monthly Progress Reports: Each Settling Work  
11 Defendant shall provide written progress reports to EPA on a  
12 monthly basis. These progress reports shall describe the actions  
13 taken by that Settling Work Defendant to comply with this Consent  
14 Decree, including a general description of activities commenced  
15 or completed during the reporting period, Remedial Action Work  
16 activities projected to be commenced or completed during the next  
17 reporting period, any significant problems that have been encoun-  
18 tered or are anticipated by that Settling Work Defendant in per-  
19 forming the Work activities and that Settling Work Defendant's  
20 recommended solutions, and the results of any sampling, tests, or  
21 other data required by the Decree (including the Statement of  
22 Work). Analytical sampling results shall be reported within the  
23 time periods specified in Section XI (Submission of Documents,  
24 Sampling and Analytic Data). Each Settling Work Defendant shall  
25 include any data required by the Decree (including the Statement  
26 of Work) other than analytical sampling results in the Monthly  
27 Progress Report for the month immediately following the month in

1 which that Settling Work Defendant or its representatives genera-  
2 ted or acquired such data. These progress reports shall also in-  
3 clude any specific information which the Statement of Work re-  
4 quires be included in them. These progress reports shall be sub-  
5 mitted to EPA by the 10th day of each month for Work done the  
6 preceding month and planned for the current month.

7           3. Quarterly Quality Assurance Reports: The Settling  
8 Work Defendants shall each include a quality assurance report to  
9 EPA as part of its monthly reports for the months of January,  
10 April, July and October of each year. Such reports shall contain  
11 information that demonstrates that Settling Work Defendant's com-  
12 pliance with Section VIII (Quality Assurance), including but not  
13 limited to any specific information which the Statement of Work  
14 required be included in them.

15           T. Settling Work Defendants shall submit a draft and a  
16 final of each of the deliverables they are required to submit  
17 (except the monthly progress reports and the quarterly quality  
18 assurance reports). Any failure by Settling Work Defendants to  
19 submit a draft or final deliverable in compliance with the  
20 schedule set forth in the Statement of Work shall be deemed a  
21 violation of this Decree.

22           U. EPA shall review any deliverable Settling Work Defen-  
23 dants are required to submit for approval and shall: (1) ap-  
24 prove, in whole or in part, the deliverable; (2) disapprove, in  
25 whole or in part, the deliverable, notifying the submitting Set-  
26 tling Work Defendant of the deficiencies; (3) direct the Settling  
27 Work Defendant that submitted the deliverable to modify the

1 deliverable; (4) approve the deliverable with specified condi-  
2 tions; (5) modify the deliverable to cure the deficiencies; or  
3 (6) any combination of the above; provided, however, that EPA  
4 may not use this review and approval process to expand the Work  
5 beyond that which each Settling Work Defendant has agreed to per-  
6 form pursuant to this Decree.

7 V. In the event of approval, approval upon conditions, or  
8 modification by EPA, Settling Work Defendants shall proceed to  
9 take any action required by the deliverable, as approved or  
10 modified by EPA, subject only to Settling Work Defendants' right  
11 to invoke dispute resolution pursuant to Section XX (Dispute  
12 Resolution).

13 W. Upon receipt of a notice of disapproval or a notice re-  
14 quiring a modification, the Settling Work Defendant that sub-  
15 mitted the deliverable shall, within ten (10) working days or  
16 such other longer period of time as specified by EPA in such  
17 notice, correct the deficiencies and resubmit the deliverable for  
18 approval. Notwithstanding the notice of disapproval, the Set-  
19 tling Work Defendant shall proceed, at the direction of EPA, to  
20 take any action required by the non-deficient portion of the  
21 deliverable. Implementation of non-deficient portions of a  
22 deliverable shall not relieve a Settling Work Defendant of its  
23 liability pursuant to Section XIX (Stipulated Penalties) for  
24 stipulated penalties for submitting a deficient deliverable.

25 X. If, upon resubmission, a deliverable or portion thereof  
26 is still deficient, the Settling Work Defendant that submitted  
27 the deliverable shall be deemed to be in violation of this Con-

1 sent Decree. If a resubmitted deliverable is disapproved by EPA,  
2 EPA may again take any of the actions described in Subpart U of  
3 this Section.

4 Y. Settling Work Defendants acknowledge and agree that  
5 neither this Consent Decree nor any approvals or permits issued  
6 by EPA or any other government entity shall be deemed a warranty  
7 or representation, either express or implied, by the United  
8 States that the activities thereby approved will result in  
9 achievement of the performance standards which this Decree re-  
10 quires Settling Work Defendants to meet. EPA has exercised its  
11 best efforts to include in the Statement of Work all activities  
12 necessary to fulfill the requirements of the Remedial Design Work  
13 and the Remedial Action Work. However, the Settling Parties ac-  
14 knowledge and agree that nothing in this Consent Decree  
15 (including the Statement of Work) or any deliverables submitted  
16 pursuant thereto constitutes a warranty or representation, either  
17 express or implied, by the United States that compliance with the  
18 Statement of Work and/or any deliverables approved by EPA will  
19 result in achievement of the performance standards that this  
20 Decree requires the Settling Work Defendants to meet, and that  
21 such compliance shall not foreclose the United States from seek-  
22 ing compliance with all terms and conditions of this Decree in-  
23 cluding, but not limited to, the performance standards of this  
24 Section.

25 Z. EPA Performance of the Work: In the event that EPA  
26 determines that a Settling Work Defendant fails to perform, in an  
27 adequate or timely manner, the Work it is required to perform

1 pursuant to this Decree, EPA may elect to perform a portion or  
2 all of the Work which that Settling Work Defendant is required to  
3 perform pursuant to this Decree, as EPA determines necessary.  
4 Except as is necessary to address an imminent and substantial en-  
5 dangerment to human health or the environment, EPA shall provide  
6 Settling Work Defendants with ten (10) days written notice of its  
7 intent to perform a portion or all of the Work. In the notice,  
8 EPA shall also describe the alleged deficiency.

9 AA. If the Settling Work Defendant required to perform the  
10 Work which EPA is taking over disagrees with EPA's determination  
11 that that Settling Work Defendant has failed to perform, in an  
12 adequate and timely manner, the Work it is required to perform by  
13 this Decree and that Settling Work Defendant desires to dispute  
14 EPA's determination in this regard, that Settling Work Defendant  
15 shall invoke the dispute resolution provisions of Section XX  
16 (Dispute Resolution) within thirty (30) days of receiving written  
17 notice of EPA's intent. Invocation of dispute resolution shall  
18 not divest EPA of its right to perform the Work during the dis-  
19 pute. Upon receipt of notification that EPA intends to take over  
20 the performance of a portion or all of the Work, that Settling  
21 Work Defendant's obligation to perform such Work pursuant to this  
22 Decree shall terminate. If EPA elects to perform the Work which  
23 a Settling Work Defendant is required to perform pursuant to this  
24 Decree, that Settling Work Defendant shall pay a Work Assumption  
25 Penalty as provided in Subpart I of Section XIX (Stipulated  
26 Penalties) and all other obligations of that Settling Work Defen-  
27 dant to pay stipulated penalties for any portion of the Work

1 taken over by EPA shall be terminated upon receipt of EPA's  
2 notice, except that payment of the Work Assumption penalty shall  
3 be in addition to any stipulated penalties which accrued prior to  
4 that Settling Work Defendant's receipt of EPA's notice of intent  
5 to take over all or a portion of the Work. A takeover of Work by  
6 EPA shall not affect Lockheed's obligation to pay Future Response  
7 Costs pursuant to Section XVI (Reimbursement of Future Response  
8 Costs).

9 VIII. QUALITY ASSURANCE

10 A. Each Settling Work Defendant shall submit to EPA for ap-  
11 proval, in accordance with the schedule contained in the State-  
12 ment of Work, comprehensive Quality Assurance ("QA") Project  
13 Plan(s) for all Work to be performed by that Settling Work Defen-  
14 dant pursuant to this Decree. The QA Project Plan(s) shall,  
15 where applicable, be prepared in accordance with U.S. EPA Interim  
16 Guidelines & Specifications for Preparing QA Project Plans -  
17 QAMS 055/80 (U.S. EPA December 1980) and U.S. EPA Region IX  
18 Guidance for Preparing QA Project Plans for Superfund Remedial  
19 Projects, Doc. 90A-03-89 (September, 1989), and any superseding  
20 or amended version of these documents provided by EPA to the Set-  
21 tling Work Defendants. Upon receipt of EPA's approval of each  
22 Final QA Project Plan, the Settling Work Defendant that submitted  
23 the plan shall immediately implement the QA Project Plan.

24 B. Settling Work Defendants shall use QA procedures and  
25 protocols in accordance with the QA Project Plan(s) approved pur-  
26 suant to Subpart A of this Section, and shall utilize standard  
27 EPA sample chain of custody procedures, as documented in the Na-

1 tional Enforcement Investigations Center Policies and Procedures  
2 Manual as revised in May 1986 and any amended or superseding ver-  
3 sion of this document provided by EPA to the Settling Work Defen-  
4 dants, and the National Enforcement Investigations Center Manual  
5 for the Evidence Audit, published in September 1981 and any  
6 amended or superseding version of this document provided by EPA  
7 to the Settling Work Defendants, for all sample collection and  
8 analysis activities conducted pursuant to this Decree.

9 C. In order to provide quality assurance and maintain  
10 quality control regarding all samples collected pursuant to this  
11 Decree, each Settling Work Defendant shall:

12 1. Ensure that all contracts with laboratories utilized by  
13 that Settling Work Defendant for analysis of samples taken pur-  
14 suant to this Consent Decree provide for access of EPA personnel  
15 and EPA-authorized representatives to assure the accuracy of  
16 laboratory results obtained pursuant to this Decree.

17 2. Ensure that all laboratories utilized by that Settling  
18 Work Defendant for analysis of samples taken pursuant to this  
19 Consent Decree perform all analyses according to the approved QA  
20 Project Plan(s).

21 3. Ensure that all laboratories utilized by that Settling  
22 Work Defendant for analysis of samples taken pursuant to this  
23 Decree participate in an EPA or EPA-equivalent Laboratory Water  
24 Supply Performance Evaluation Study. As part of the QA program  
25 and upon request by EPA, such laboratories shall perform, at that  
26 Settling Work Defendant's expense, analyses of samples provided  
27

1 by EPA to demonstrate the quality of each laboratory's data. EPA  
2 may provide to each laboratory a maximum of ten (10) samples per  
3 year per analytical combination.

4 4. Ensure that all laboratories utilized by that Settling  
5 Work Defendant for analysis of samples taken pursuant to this  
6 Decree follow EPA procedures in order for data validation to be  
7 accomplished as outlined in U.S. EPA Region IX, Laboratory  
8 Documentation Requirements for Data Validation (January, 1990),  
9 the Laboratory Data Validation Functional Guidelines for Evaluat-  
10 ing Inorganic Analysis, Draft (July, 1988), the Laboratory Data  
11 Validation Functional Guidelines for Evaluating Organic Analysis,  
12 Draft (February, 1988) and any amended or superseding version of  
13 these documents provided by EPA to that Settling Work Defendant.

14 5. Agree not to contest EPA's authority to conduct field  
15 audits to verify compliance by that Settling Work Defendant with  
16 the requirements of this Section.

17 D. Each Settling Work Defendant shall require by contract  
18 and use its best reasonable efforts to ensure that samples taken  
19 on that Settling Work Defendant's behalf for purposes of im-  
20 plementing this Decree are retained and disposed of by analytical  
21 laboratories in accordance with EPA's customary contract proce-  
22 dures for sample retention, as outlined in the Contract  
23 Laboratory Project Statement of Work for Organics (October,  
24 1986), Contract Laboratory Project Statement of Work for Inor-  
25 ganics (July 1987) and any amendments to or superseding versions  
26 of these documents provided by EPA to that Settling Work Defen-  
27 dant. If a laboratory fails to retain and dispose of samples as

1 required by its contract with a Settling Work Defendant, EPA and  
2 that Settling Work Defendant shall confer to determine whether  
3 the laboratory should continue to perform analytical work re-  
4 quired by this Consent Decree. At EPA's written request stating  
5 the reasons therefor, the Settling Work Defendant shall discon-  
6 tinue use of the laboratory.

7 E. Notwithstanding the other Subparts of this Section, the  
8 City may substitute other quality assurance procedures for some  
9 or all of the procedures required by this Section if EPA issues a  
10 written determination to both Settling Work Defendants that such  
11 other procedures and the supporting documentation generated by  
12 the City are sufficiently similar to the requirements of this  
13 Section and any related reporting requirements for which such  
14 procedures and reporting requirements would be substituted that  
15 EPA is satisfied with such procedures as a substitute for some or  
16 all of the requirements of this Section and related reporting re-  
17 quirements. If at any time after issuing such a determination  
18 EPA decides that the City should again comply with all of the  
19 procedures of this Section, the City shall do so within thirty  
20 (30) days of receipt of EPA's written determination to this ef-  
21 fect, containing the reasons for EPA's decision.

## 22 IX. PROJECT COORDINATORS

23 A. Within fifteen days of the effective date of this  
24 Decree, EPA, Lockheed and the City shall each designate a Project  
25 Coordinator to monitor the progress of the Work and to coordinate  
26 communication among the Settling Parties.

27