

1 or in part, to a Design Defect; the nature, extent and scope of
2 any repairs or other work required to cause the facility to
3 perform as originally designed; the reasonableness and necessity
4 of the costs incurred or to be incurred for such work; the
5 reasonableness, necessity and timeliness of steps taken to
6 address or mitigate damage claims; the comparative fault of
7 Settling Work Defendant, Lockheed Martin and/or the UAO Parties;
8 and an allocation of financial responsibility among Settling Work
9 Defendant, Lockheed Martin and/or the UAO Parties. EPA shall
10 provide written notice of its decision to the parties.

11 c. According to the allocation of financial
12 responsibility in the EPA Further Determination:

13 (1) If EPA determines that the failure was
14 caused, in whole or in part, by a Design Defect in any of the
15 Upstream Facilities, Lockheed Martin shall, within twenty-five
16 (25) days of receipt of the EPA Further Determination, or within
17 twenty-five (25) days of receipt of an itemized statement by the
18 Settling Work Defendant of all repairs or other work performed or
19 to be undertaken as a result of the alleged Design Defect,
20 whichever is later, 1) remit to the Settling Work Defendant the
21 cost of all such work which Lockheed Martin is required to
22 finance by the Further Determination, less any portion of such
23 amounts previously remitted to the Settling Work Defendant
24 pursuant to the Preliminary Finding, and 2) reimburse other
25 Settling Defendant(s) if required by the Further Determination.

26 (2) If EPA determines that the failure was
27 caused, in whole or in part, by a Design Defect in the Blending
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1 Facility, the UAO Parties shall, within twenty-five (25) days of
2 receipt of the EPA Further Determination, or within twenty-five
3 (25) days of receipt of an itemized statement by the Settling
4 Work Defendant of all repairs or other work performed or to be
5 undertaken as a result of the alleged Design Defect, whichever is
6 later, 1) remit to the Settling Work Defendant the cost of all
7 such work which the UAO Parties are required to finance pursuant
8 to the Further Determination, less any portion of such amounts
9 previously remitted to the Settling Work Defendant pursuant to
10 the Preliminary Finding, and 2) reimburse other Settling
11 Defendant(s) if required by the Further Determination. Among the
12 UAO Parties, the obligations of this Paragraph shall be joint and
13 several.

14 (3) If EPA determines that the failure of
15 the affected facility was not caused, in whole or in part, by a
16 Design Defect, the Settling Work Defendant and Lockheed Martin
17 shall finance such work as these parties are required to finance
18 pursuant to this Section, Paragraphs A-L. If required by the
19 Further Determination, Settling Work Defendant shall reimburse
20 Lockheed Martin or the UAO Parties for amounts advanced pursuant
21 to the Preliminary Finding.

22 (4) The Settling Work Defendant shall use
23 such funds as are remitted by Lockheed Martin or the UAO Parties
24 pursuant to the Further Determination to pay for work necessary
25 to cause the facility with the alleged Design Defect to perform
26 as originally designed and for no other purpose.

27 (5) The Further Determination may require a
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1 party whose facility has been determined to have a Design Defect
2 to provide for advance or ongoing funding of any work necessary
3 to cause the affected facility to perform as originally designed.

4 (6) The Further Determination shall require
5 the Settling Work Defendant to account for expenditures of funds
6 remitted to it under this Paragraph M, and to reimburse any
7 party who has remitted such funds if the amount remitted exceeds
8 the expenditures necessary to perform the work necessary to cause
9 the affected facility to perform as originally designed. The
10 Further Determination also shall require that the Settling Work
11 Defendant make any such reimbursement within a reasonable,
12 specified period of time.

13 (7) EPA shall have continuing jurisdiction
14 over the Further Determination.

15 4. If a dispute exists among Settling Work Defendant,
16 Lockheed Martin and/or the UAO Parties as to the EPA Further
17 Determination, the Parties' participation in or satisfaction of
18 the terms or conditions set forth in the EPA Preliminary Finding
19 or Further Determination shall not act as a waiver of any claims
20 or defenses by any party, and the Settling Work Defendant,
21 Lockheed Martin and/or the UAO Parties may proceed to seek
22 judicial review of such a dispute as follows:

23 a. The Settling Work Defendant, Lockheed Martin
24 or the UAO Parties may seek a final resolution of the dispute
25 between or among them concerning the EPA Further Determination by
26 filing suit against one another in a court of competent
27 jurisdiction. Nothing in this Section shall be construed to
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1 provide any party with a claim or cause of action against the
2 United States or the State.

3 b. The court shall determine all issues regarding
4 the dispute among the Settling Work Defendant, Lockheed Martin,
5 and/or the UAO Parties concerning the EPA Further Determination
6 de novo. Discovery and evidence as to such dispute(s) shall not
7 be limited to the Administrative Record, except that nothing in
8 this Paragraph shall be construed to affect the restrictions on
9 judicial review set forth in CERCLA section 113 (j) and (k), 42
10 U.S.C. § 9613(j)-(k) or California Health & Safety Code section
11 25356.1(g), Cal. Health & Safety Code § 25356.1(g).

12 c. Upon the entry of a final judgment by the
13 court or upon final resolution of the dispute as agreed upon by
14 the parties, if the court's determination and allocation or the
15 parties' final resolution differs from that set forth in the
16 EPA's Further Determination, then each party shall be reimbursed
17 or the responsible party shall pay another party's previous
18 allocation so that each party's final share of total costs shall
19 correspond to the court's judgment or the parties' final
20 resolution. Any such reimbursement may include pre-judgment
21 interest pursuant to California Civil Code section 3287, Cal.
22 Civ. Code § 3287, unless otherwise agreed by the parties. The
23 court's final judgment or the parties' final resolution shall
24 supersede EPA's Further Determination. Should additional costs
25 be incurred relating to the Design Defect(s) at issue after the
26 court's final judgment or the parties' final resolution, the
27 court's final judgment or the parties' final resolution shall be
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1 followed by the parties and EPA.

2 N. Funding of Repairs Required by Earthquakes or Other
3 Force Majeure Events

4 1. Definition of "Major Damage" As used in this
5 Paragraph, "Major Damage" shall mean physical damage which EPA
6 has determined was caused by a force majeure event pursuant to
7 Section XIX (Force Majeure) of this Consent Decree and will cost
8 more than the following amounts to repair or rebuild with respect
9 to the affected Plant Facilities:

10 a. more than one million dollars (\$ 1,000,000)
11 with respect to the Upstream Facilities; or

12 b. more than one hundred and fifty thousand
13 dollars (\$ 150,000) with respect to the Blending Facility.

14 2. Definition of "Uninsurable Force Majeure Event"

15 "Uninsurable Force Majeure Event" shall mean a force majeure
16 event as defined in Section XIX (Force Majeure) of this Consent
17 Decree, other than an earthquake or damage resulting from an
18 earthquake, that causes physical damage to any of the Plant
19 Facilities which is not covered by any insurance maintained by
20 the Settling Work Defendant, the O&M Contractor or its
21 subcontractors, including but not limited to insurance maintained
22 pursuant to this Consent Decree or Exhibit 3 hereto, and which
23 EPA has determined such persons could not have insured at a
24 commercially reasonable cost.

25 3. Earthquake

26 In the event of an earthquake which causes damage to any of
27 the Plant Facilities, including but not limited to Major Damage
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1 to the Upstream Facilities and/or the Blending Facility, and EPA
2 determines that the damage should be repaired:

3 a. Lockheed Martin shall fund the repair and/or
4 rebuilding of the affected Upstream Facilities up to the first
5 one million dollars (\$ 1,000,000) of necessary expenditure,
6 and/or the repair and/or rebuilding of the Blending Facility up
7 to the first one hundred and fifty thousand dollars (\$ 150,000)
8 of necessary expenditure; and

9 b. The City of Burbank shall fund the repair
10 and/or rebuilding of the other affected Downstream Facilities.

11 4. Uninsurable Force Majeure Event

12 In the event of an Uninsurable Force Majeure Event that
13 causes damage, including but not limited to Major Damage to the
14 Upstream Facilities and/or the Blending Facility, and EPA
15 determines that the damage should be repaired:

16 a. Lockheed Martin shall fund the repair and/or
17 rebuilding of the affected Upstream Facilities;

18 b. The Settling Cash Defendants shall fund the
19 repair and/or rebuilding of the Blending Facility up to the first
20 one hundred and fifty thousand dollars (\$ 150,000) of necessary
21 expenditure. The obligations of this Paragraph shall be joint
22 and several among the Settling Cash Defendants; and

23 c. The City of Burbank shall fund the repair
24 and/or rebuilding of the other affected Downstream Facilities.

25 5. Force Majeure Events Other Than Earthquake or
26 Uninsurable Force Majeure Events

27 In the event of a force majeure event (as is defined in
28 Section XIX (Force Majeure)), other than an earthquake or

1 Uninsurable Force Majeure Event, which causes damage, including
2 but not limited to Major Damage to the Upstream Facilities and/or
3 the Blending Facility, Lockheed Martin and/or the City of Burbank
4 shall fund the repair and/or rebuilding of the affected Plant
5 Facilities pursuant to their respective funding obligations as
6 described in this Section (Funding of Response Activities), and
7 otherwise in accordance with this Consent Decree, including but
8 not limited to Sections VI (Performance of the Work), VII
9 (Additional Work), and XIX (Force Majeure).

10 6. In the event of Major Damage to the Upstream
11 Facilities and/or the Blending Facility as the result of an
12 earthquake or to the Blending Facility as the result of an
13 Uninsurable Force Majeure Event, and except as to those Settling
14 Defendants described in Appendix 3 to this Consent Decree, EPA
15 reserves all of its rights against Settling Defendants pursuant
16 to Section XXII (Covenants Not to Sue by Plaintiffs), including
17 but not limited to the right to issue an administrative order to
18 require the complete repair and/or rebuilding of the affected
19 Plant Facilities.

20 7. If EPA exercises its rights pursuant to Paragraph
21 N.6 of this Section, the Settling Defendants agree between and
22 among themselves that:

23 a. In the event of an earthquake, Lockheed
24 Martin and the Settling Cash Defendants shall not seek funding,
25 contribution or reimbursement from the City of Burbank for
26 funding any repairs and/or rebuilding that EPA determines should
27 be made to the Upstream Facilities and/or the Blending Facility;
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1 and the City shall not seek funding, contribution or
2 reimbursement from Lockheed Martin or the Settling Cash
3 Defendants for funding any repairs and/or rebuilding that EPA
4 determines should be made to the Downstream Facilities; and

5 b. In the event of an Uninsurable Force Majeure
6 Event, the Settling Cash Defendants shall not seek funding,
7 contribution or reimbursement from the City of Burbank or
8 Lockheed Martin for funding any repairs and/or rebuilding that
9 EPA determines should be made to the Blending Facility; the City
10 shall not seek funding, contribution or reimbursement from
11 Lockheed Martin or the Settling Cash Defendants for any repairs
12 and/or rebuilding that EPA determines should be made to the
13 Downstream Facilities; and Lockheed Martin shall not seek
14 funding, contribution or reimbursement from the Settling Work
15 Defendant or the Settling Cash Defendants for any repair and/or
16 rebuilding that EPA determines should be made to the Upstream
17 Facilities.

18 8. Lockheed Martin's, the City of Burbank's, and/or
19 the Settling Cash Defendants' obligations to make repairs or to
20 rebuild pursuant to this Paragraph shall cease if EPA notifies
21 the affected party that EPA does not intend to require the repair
22 and/or rebuilding of the affected Plant Facilities.

23 9. Any repairs that EPA determines should be made to
24 the Plant Facilities pursuant to this Paragraph shall be
25 performed by the City of Burbank and funded as provided in this
26 Paragraph.

27 10. Any disputes between EPA and any of the Parties,
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1 or between or among any of the Settling Defendants concerning the
2 cause, cost or necessity for any repairs and/or rebuilding of the
3 affected Plant Facilities pursuant to this Paragraph shall be
4 subject to dispute resolution pursuant to Section XX of this
5 Consent Decree (Dispute Resolution). Notwithstanding the
6 foregoing:

7 a. If the City of Burbank claims that an
8 earthquake or Uninsurable Force Majeure Event necessitates the
9 repair and/or rebuilding of the Plant Facilities, and EPA
10 determines that the repair and/or rebuilding should be made, EPA
11 shall make an initial determination whether such work is required
12 as the result of an earthquake or Uninsurable Force Majeure
13 Event. As appropriate, EPA may also make an initial
14 determination as to the means and manner of funding to be
15 provided by the designated Party or Parties responsible for
16 funding such work pursuant to this Paragraph.

17 b. The Parties shall fund and/or perform such
18 repairs as EPA determines are necessary according to EPA's
19 initial determination, and otherwise in accordance with their
20 respective obligations under this Section (Funding Of Response
21 Activities). If a Party prevails in dispute resolution on the
22 contention that it should not have been required to fund repairs
23 pursuant to this Paragraph, such Party shall be promptly
24 reimbursed by the appropriate Party or Parties determined to be
25 responsible for funding such repairs in accordance with the final
26 decision in the Dispute Resolution.

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1 XV. CERTIFICATION OF COMPLETION

2 Defendants' obligations for performance of the work pursuant
3 to Section VI of this Consent Decree and Funding of Response
4 Activities pursuant to Section XIV of this Consent Decree shall
5 be deemed satisfied upon issuance of the Certification of
6 Completion. It is anticipated by the Parties that the
7 certification process set forth below will occur eighteen (18)
8 years after the Date of Commencement.

9 A. Completion of the O&M Activities.

10 1. At least ninety (90) days prior to the date that
11 Settling Work Defendant anticipates that the work will have been
12 fully performed, Settling Work Defendant shall submit a written
13 report requesting certification to EPA for approval, with a copy
14 to the State, pursuant to Section XII (Submissions Requiring
15 Agency Approval). During the 90-day period, EPA shall determine
16 whether dismantling and/or decommissioning of any facilities
17 constructed pursuant to the First Consent Decree or UAO 92-12 is
18 required pursuant to Section VI (Work to be Performed), Paragraph
19 C.6 of this Consent Decree.

20 2. In the Settling Work Defendant's report seeking
21 Certification of Completion, a registered professional engineer
22 and the Settling Work Defendant's Project Coordinator shall state
23 that the O&M Activities, except for dismantling and/or
24 decommissioning activities, will be complete in full satisfaction
25 of the requirements of this Consent Decree. The written report
26 shall include all appropriate and necessary information to a
27 determination of completion, including the date upon which
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1 completion is anticipated, and if appropriate, drawings signed
2 and stamped by a professional engineer. The report shall contain
3 the following statement, signed by the Settling Work Defendant's
4 authorized Project Coordinator:

5 "To the best of my knowledge, after thorough
6 investigation, I certify that the information contained
7 in or accompanying this submission is true, accurate
8 and complete. I am aware that there are significant
penalties for submitting false information, including
the possibility of fine and imprisonment for knowing
violations."

9 3. If EPA deems necessary, EPA may conduct a pre-
10 certification inspection concerning completion of the O&M
11 Activities. If, after review of the written report and
12 conducting a pre-certification inspection, if EPA deems such an
13 inspection necessary, and after reasonable opportunity to review
14 and comment by the State, EPA determines that the O&M Activities
15 or any portion thereof except dismantling and/or decommissioning
16 activities will not be completed in accordance with this Consent
17 Decree on the date anticipated by Settling Work Defendant, EPA
18 will notify the Settling Work Defendant in writing of the
19 activities that must be undertaken to complete the O&M Activities
20 except dismantling and/or decommissioning activities.

21 4. EPA will set forth in the notice to the Settling
22 Work Defendant a schedule for performance of such activities
23 consistent with this Consent Decree and the Second Stage O&M Work
24 Plan or require the Settling Work Defendant to submit a schedule
25 to EPA for approval pursuant to Section XII (Submissions
26 Requiring Agency Approval). Settling Work Defendant shall
27 perform all activities described in the notice in accordance with
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1 the specifications and schedules established pursuant to this
2 Paragraph, subject to its right to invoke the dispute resolution
3 procedures set forth in Section XX (Dispute Resolution).

4 5. If EPA concludes, based on the initial or any
5 subsequent report(s) requesting Certification of Completion and
6 after a reasonable opportunity for review and comment by the
7 State, that the O&M Activities, except for dismantling or
8 decommissioning activities, have been fully performed in
9 accordance with this Consent Decree, EPA will so certify in
10 writing to all Settling Defendants. This certification shall
11 constitute the Certification of Completion of the O&M Activities
12 for purposes of this Consent Decree, including, but not limited
13 to, Section XXII (Covenants Not to Sue by Plaintiffs).

14 Certification of Completion of the O&M Activities shall not
15 affect Settling Work Defendant's or any other Settling
16 Defendant's other obligations under this Consent Decree,
17 including, but not limited to, Lockheed Martin's obligation to
18 dismantle or decommission the treatment and blending facilities,
19 if such dismantling and/or decommissioning activities are not
20 complete at the time the Certification of Completion issues.

21 6. As to Lockheed Martin, the Certification of
22 Completion shall not apply until Lockheed Martin has completed
23 any dismantling and/or decommissioning activities EPA may require
24 pursuant to this Section.

25 B. Dismantling and/or Decommissioning of Facilities.

26 1. If, during the 90-day period referenced in
27 Paragraph A.1 of this Section, EPA determines that dismantling
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