

1 and/or decommissioning of the treatment and/or blending  
2 facilities is required, Lockheed Martin shall, if requested by  
3 EPA, submit a work plan for such activities to EPA, with a copy  
4 to the State, in accordance with Section XII of this Consent  
5 Decree (Submissions Requiring Agency Approval). At least ninety  
6 (90) days prior to the date Lockheed Martin anticipates that  
7 dismantling and/or decommissioning activities will have been  
8 fully completed, Lockheed Martin shall submit a written report to  
9 EPA requesting approval of such work, and confirmation that such  
10 work is complete, with a copy to the State, pursuant to Section  
11 XIII (Submissions Requiring Agency Approval).

12           2. The report and EPA's response to the report,  
13 including but not limited to an inspection of the work and/or a  
14 notice concerning additional work to be performed, shall conform  
15 to the applicable requirements, as determined by EPA, of  
16 Paragraph A.2-5 of this Section.

17           3. If EPA has determined that dismantling and/or  
18 decommissioning is required and confirms that such work is  
19 complete, EPA shall promptly issue a Certificate of Completion to  
20 Lockheed Martin, with a copy to the State. If EPA has determined  
21 that dismantling and/or decommissioning is not required, it shall  
22 issue a Certificate of Completion to Lockheed Martin promptly  
23 upon making that determination.

1 XVI. EMERGENCY RESPONSE

2 In the event of any action or occurrence during the  
3 performance of the O&M Activities which causes or threatens a  
4 release of Waste Material from the Site that constitutes an  
5 emergency situation or may present an immediate threat to public  
6 health or welfare or the environment, Settling Work Defendant  
7 shall, subject to this Section, immediately take all appropriate  
8 action to prevent, abate, or minimize such release or threat of  
9 release. Settling Work Defendant shall report such a situation  
10 to the appropriate regulatory authorities as required by law. As  
11 soon as possible and reasonable under the circumstances, but in  
12 no event more than one Working Day after making the report  
13 required by law, Settling Work Defendant shall notify EPA's  
14 Project Coordinator, or if the Project Coordinator is  
15 unavailable, EPA's Alternate Project Coordinator. If neither of  
16 these individuals is available, Settling Work Defendant shall  
17 notify the Emergency Response Unit, EPA, Region IX. Settling  
18 Work Defendant shall take such actions in consultation with EPA's  
19 Project Coordinator or other available authorized EPA officer and  
20 in accordance with all applicable provisions of the Health and  
21 Safety Plans, the Contingency Plans, and any other applicable  
22 plans or documents developed pursuant to the Second Stage SOW or  
23 the Second Stage O&M Work Plan. In the event that Settling Work  
24 Defendant fails to take appropriate response action as required  
25 by this Section, and EPA or, as appropriate, the State takes such  
26 action instead, Settling Work Defendant shall reimburse EPA and  
27 the State all costs of the response action not inconsistent with  
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1 the NCP pursuant to Section XVII (Reimbursement of Response  
2 Costs).

3 Nothing in the preceding Paragraph or in this Consent  
4 Decree shall be deemed to limit any authority of the United  
5 States, or the State, to take, direct, or order all appropriate  
6 action or to seek an order from the Court to protect human health  
7 and the environment or to prevent, abate, respond to, or minimize  
8 an actual or threatened release of Waste Material on, at, or from  
9 the Site.

10 XVII. REIMBURSEMENT OF RESPONSE COSTS

11 A. Within sixty (60) days of the Effective Date of this  
12 Consent Decree as defined in Section XXVIII (Effective Date),  
13 Lockheed Martin shall:

14 1. Pay to the United States \$ 11,827,869 in the form  
15 of an EFT to the U.S. Department of Justice Lockbox referencing  
16 the San Fernando Valley Superfund Site/Burbank Operable Unit, and  
17 referencing CERCLA Number SSID #59, DOJ Case Number 90-11-2-442  
18 and USAO File No. 91-03-463 in reimbursement of Past Basin-wide  
19 Response Costs.

20 2. Provide written verification to EPA regarding EFT  
21 transfers pursuant to this Section as specified in Section XXVII  
22 (Notices and Submissions).

23 3. Pay to the State \$ 22,348.60 in reimbursement of  
24 Past Basin-wide Response Costs incurred by the State and  
25 \$ 25,264.14 in reimbursement of Past Site-Specific Response Costs  
26 incurred by the State in the form of a certified check or checks  
27 made payable to the State of California, Department of Toxic  
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1 Substances Control, Project No. 300173. Lockheed Martin shall  
2 send the certified check(s) to: Department of Toxic Substances  
3 Control, Accounting Office, 400 P Street, 4th floor, Sacramento,  
4 California, 95814.

5 B. Lockheed Martin shall reimburse the United States and  
6 the State for all Future Site-Specific Response Costs not  
7 inconsistent with the National Contingency Plan incurred by the  
8 United States and the State. The United States and the State  
9 will send Lockheed Martin bills for Future Site-Specific Response  
10 Costs incurred by EPA, DOJ, the State and their contractors no  
11 more frequently than annually; provided, however, that failure to  
12 include all such costs in the submittal during any calendar year  
13 will not preclude EPA or the State from submitting such costs in  
14 any subsequent year. EPA's Agency Financial Management System  
15 Summary Data (SCORES) Report or equivalent shall constitute  
16 documentation of EPA's costs. Lockheed Martin shall make payment  
17 within sixty (60) days of the date of each bill requiring  
18 payment, except as otherwise provided in this Section, Paragraphs  
19 C and D. Lockheed Martin shall make all payments required by  
20 this Paragraph in the following manner: Lockheed Martin shall  
21 transmit such amounts in the form of a EFT to the U.S. Department  
22 of Justice Lockbox referencing the San Fernando Valley Superfund  
23 Site/Burbank Operable Unit, and referencing CERCLA Number SSID #  
24 L6, DOJ Case Number 90-11-2-442 and USAO File No. 91-03-463.

25 C. Lockheed Martin may contest a bill for Future Site-  
26 Specific Response Costs under this Section and Paragraph if it  
27 determines that the United States or the State has made an  
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1 accounting error or if it alleges that a cost item that is  
2 included represents costs that are inconsistent with the NCP.  
3 Such objection shall be made in writing within sixty (60) days of  
4 receipt of the bill and must be sent to the United States (if the  
5 United States' accounting is being disputed) or the State (if the  
6 State's accounting is being disputed) pursuant to Section XXVII  
7 (Notices and Submissions). Any such objection shall specifically  
8 identify the contested Future Site-Specific Response Costs and  
9 the basis for objection. In the event of such an objection,  
10 Lockheed Martin shall within the sixty (60) day period pay all  
11 uncontested Future Site-Specific Response Costs to the United  
12 States or the State in the manner described in this Section,  
13 Paragraph B. Simultaneously, Lockheed Martin shall establish an  
14 interest-bearing escrow account in a federally-insured bank duly  
15 chartered in the State of California and remit to that escrow  
16 account funds equivalent to the amount of the contested Future  
17 Site-Specific Response Costs. Lockheed Martin shall send to the  
18 United States, as provided in Section XXVII (Notices and  
19 Submissions), and the State a copy of the transmittal letter and  
20 check paying the uncontested Future Site-Specific Response Costs,  
21 and a copy of the correspondence that establishes and funds the  
22 escrow account, including, but not limited to, information  
23 containing the identity of the bank and bank account under which  
24 the escrow account is established as well as a bank statement  
25 showing the initial balance of the escrow account.  
26 Simultaneously with establishment of the escrow account, within  
27 the sixty (60) day period, Lockheed Martin shall initiate the  
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1 | dispute resolution procedures in Section XX (Dispute Resolution).  
2 | If the United States or the State prevails in the dispute or  
3 | concerning any aspect of the contested costs in dispute, within  
4 | five (5) days of the resolution of the dispute, Lockheed Martin  
5 | shall pay the sums due (with accrued Interest) to the United  
6 | States in the manner described in this Section, Paragraph B, or  
7 | the State, if State costs are disputed, in the manner described  
8 | in this Section, Paragraph A.3. If Lockheed Martin prevails  
9 | concerning any aspect of the contested costs, Lockheed Martin  
10 | shall pay that portion of the costs (plus associated accrued  
11 | Interest) as to which it did not prevail to the United States or  
12 | the State, if State costs are disputed in the manner described in  
13 | this Section, Paragraph A.3 or B, as applicable; Lockheed Martin  
14 | shall be disbursed any balance of the escrow account. The  
15 | dispute resolution procedures set forth in this Paragraph in  
16 | conjunction with the procedures set forth in Section XX (Dispute  
17 | Resolution) shall be the exclusive mechanisms for resolving  
18 | disputes regarding Lockheed Martin's obligation to reimburse the  
19 | United States and the State for their Future Site-Specific  
20 | Response Costs, including without limitation allegations of  
21 | accounting errors or allegations that costs billed are  
22 | inconsistent with the NCP.

23 |         D. In the event that any payment required by this Section,  
24 | Paragraph A.1 is not made within sixty (60) days of the Effective  
25 | Date of this Consent Decree (as defined by Section XXVIII),  
26 | Lockheed Martin shall pay Interest on the unpaid balance. The  
27 | Interest to be paid shall begin to accrue sixty (60) days after  
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1 the Effective Date of this Consent Decree. Interest shall accrue  
2 at the rate specified through the date of Lockheed Martin's  
3 payment. Payments of Interest made under this Paragraph shall be  
4 in addition to such other remedies or sanctions available to  
5 Plaintiffs by virtue of a failure to make timely payments under  
6 this Section.

7 XVIII. INDEMNIFICATION AND INSURANCE

8 The United States and the State do not assume any liability  
9 by entering into this Consent Decree or by virtue of any  
10 designation of Settling Work Defendant or any other defendant who  
11 performs work pursuant to this Consent Decree as EPA's authorized  
12 representative under Section 104(e) of CERCLA, 42 U.S.C.  
13 § 9604(e). Settling Work Defendant, with respect to response  
14 activities performed by Settling Work Defendant, and other  
15 Settling Defendants with respect to response activities performed  
16 by them, if any, shall indemnify, save and hold harmless the  
17 United States, the State and their officials, agents, employees,  
18 contractors, subcontractors, or representatives for or from any  
19 and all claims or causes of action arising from, or on account  
20 of, acts or omissions of such Settling Defendant, its officers,  
21 employees, agents, contractors, subcontractors, and any persons  
22 acting on its behalf or under its control, in carrying out  
23 activities pursuant to this Consent Decree, including, but not  
24 limited to, any claims arising from the designation of Settling  
25 Work Defendant or any other Settling Defendant as EPA's  
26 authorized representative under Section 104(e) of CERCLA, 42  
27 U.S.C. § 9604(e). Further, such Settling Defendant agrees to pay  
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1 the United States and the State all costs they incur including,  
2 but not limited to, attorneys fees and other expenses of  
3 litigation and settlement arising from, or on account of, claims  
4 made against the United States or the State based on acts or  
5 omissions of such Settling Defendant, its officers, employees,  
6 agents, contractors, subcontractors, and any persons acting on  
7 its behalf or under its control, in carrying out activities  
8 pursuant to this Consent Decree. Neither the United States nor  
9 the State shall be held out as a party to any contract entered  
10 into by or on behalf of such Settling Defendant in carrying out  
11 activities pursuant to this Consent Decree. Neither such  
12 Settling Defendant nor any such contractor shall be considered an  
13 agent of the United States or the State.

14 A. Settling Defendants waive all claims against the United  
15 States and the State for damages or reimbursement or for set-off  
16 of any payments made or to be made to the United States or the  
17 State arising from or on account of any contract, agreement, or  
18 arrangement between such Settling Defendants and any person for  
19 performance of O&M Activities on or relating to the Site,  
20 including, but not limited to, claims on account of construction  
21 delays. In addition, such Settling Defendant shall indemnify and  
22 hold harmless the United States and the State with respect to any  
23 and all such claims for damages or reimbursement arising from or  
24 on account of any contract, agreement, or arrangement between any  
25 one or more of Settling Defendants and any person for performance  
26 of O&M Activities on or relating to the Site, including, but not  
27 limited to, claims on account of construction delays.  
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1 B. No later than thirty (30) days prior to the Date of  
2 Commencement, Settling Work Defendant shall secure, and shall  
3 maintain until the first anniversary of EPA's Certification of  
4 Completion pursuant to Section XV (Certification of Completion),  
5 comprehensive general liability insurance with limits of not less  
6 than \$ 20 million dollars (\$ 20,000,000) combined single limit  
7 each occurrence, and in the annual aggregate, ten million  
8 (\$ 10,000,000) of which is dedicated to the Interim Remedial  
9 Action, naming as additional insureds the United States and the  
10 State. In addition, for the duration of this Consent Decree,  
11 Settling Work Defendant shall satisfy, or shall ensure that its  
12 contractors or subcontractors satisfy, all applicable laws and  
13 regulations regarding the provision of worker's compensation  
14 insurance for all persons performing the O&M Activities on behalf  
15 of Settling Work Defendant in furtherance of this Consent Decree.  
16 Prior to commencement of the O&M Activities under this Consent  
17 Decree, Settling Work Defendant shall provide to EPA and the  
18 State certificates of such insurance and a copy of each insurance  
19 policy. Settling Work Defendant shall resubmit such certificates  
20 and copies of policies each year on the anniversary of the Date  
21 of Commencement. If Settling Work Defendant demonstrates by  
22 evidence satisfactory to EPA and the State that its contractor or  
23 subcontractor maintains insurance equivalent to that described  
24 above, or insurance covering the same risks but in a lesser  
25 amount, then, with respect to that contractor or subcontractor,  
26 Settling Work Defendant need provide only that portion of the  
27 insurance described above which is not maintained by the  
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1 contractor or subcontractor. If Settling Work Defendant fails to  
2 submit proof of insurance as described in this Paragraph, and no  
3 other Settling Defendant submits such proof, EPA shall have the  
4 right to take over all of the work required by this Consent  
5 Decree with respect to the Upstream Facilities, and the City of  
6 Burbank shall continue to fund and perform all of the work  
7 required by this Consent Decree with respect to the Downstream  
8 Facilities. If EPA takes over the work required by this Consent  
9 Decree with respect to the Upstream Facilities pursuant to this  
10 Section and Paragraph, Lockheed Martin shall fund EPA's  
11 performance of such work pursuant to Section XIV (Funding of  
12 Response Activities), Paragraph H.2.b-c of this Consent Decree.  
13 If EPA takes over such work pursuant to this Section and  
14 Paragraph, the City of Burbank shall not be required to reimburse  
15 Lockheed Martin for any portion of the costs incurred by EPA to  
16 take over and/or to perform such work.

17 C. If Settling Work Defendant obtains insurance as  
18 described in this paragraph, and such insurance is subsequently  
19 cancelled, Settling Work Defendant shall so notify EPA within ten  
20 (10) days of Settling Work Defendant's receipt of notice that  
21 such insurance had been cancelled. Furthermore, in the event of  
22 such cancellation, equivalent insurance for the O&M Activities  
23 shall be obtained as soon as reasonably practicable, and proof of  
24 such insurance shall be submitted by Settling Work Defendant to  
25 EPA within ten (10) days of such insurance being obtained.  
26 Delays in the O&M Activities or EPA's decision to take over the  
27 work due to the failure to obtain or submit proof of insurance  
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1 shall not constitute a force majeure event under this Consent  
2 Decree.

3 D. In its bid documents, Settling Work Defendant shall  
4 require that all contractors submitting bids to become O&M  
5 Contractor agree to provide comprehensive general liability  
6 insurance in the amount specified in Paragraph B of this Section.  
7 Settling Work Defendant shall condition awarding the bid for O&M  
8 Contractor upon a contractor's ability to provide the  
9 comprehensive general liability insurance specified in Paragraph  
10 B of this Section. The contract entered into between the  
11 Settling Work Defendant and the O&M Contractor shall require the  
12 O&M Contractor to provide worker's compensation insurance in  
13 compliance with all applicable laws and regulations and  
14 comprehensive general liability insurance as specified in  
15 Paragraph B of this Section. Settling Work Defendant's  
16 compliance with this Paragraph shall constitute compliance with  
17 its obligation in Paragraph B of this Section to secure and  
18 retain insurance, provided the O&M Contractor complies with its  
19 obligations to provide the comprehensive general liability  
20 insurance specified in Paragraph B of this Section.

21 E. In addition to the insurance required by this Section,  
22 Lockheed Martin, the Settling Work Defendant, and the UAO Parties  
23 hereby agree among themselves that the Upstream Facilities and  
24 Blending Facility shall be insured by additional coverages as set  
25 forth in Exhibit 3 to this Consent Decree, and Lockheed Martin  
26 agrees to fund such coverages through the O&M Trust Fund.

27 1. The Settling Work Defendant will promptly and  
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1 diligently make and pursue claims against any available insurance  
2 for reimbursement of costs and expenses of any repairs or other  
3 work required as a result of an alleged Design Defect as  
4 described in Section XIV, Paragraph M, will not receive  
5 reimbursement under Section XIV, Paragraph M for any such costs  
6 and expenses that are recovered from insurance, and will refund  
7 to Lockheed Martin and/or the UAO Parties any monies paid by  
8 Lockheed Martin and/or the UAO Parties for costs and expenses  
9 which are subsequently paid by insurance.

10           2. The obligations set forth in Paragraph E.1 of this  
11 Section shall not be the subject of stipulated penalties or  
12 enforceable by Plaintiffs.

13           3. EPA agrees that disputes arising with regard to  
14 Exhibit 3 to this Consent Decree may be submitted to dispute  
15 resolution under Section XX (Dispute Resolution), Paragraph G of  
16 this Consent Decree.

17           4. Nothing in this Paragraph shall affect the  
18 obligations of Lockheed Martin, Settling Work Defendant or the  
19 UAO Parties pursuant to Section XIV of this Consent Decree  
20 (Funding of Response Activities).

21 XIX. FORCE MAJEURE

22           A. "Force majeure," for purposes of this Consent Decree, is  
23 defined as any event arising from causes beyond the control of a  
24 Settling Defendant or of any entity controlled by such Settling  
25 Defendant, including, but not limited to, its contractors and  
26 subcontractors, that delays or prevents the performance of any  
27 obligation under this Consent Decree despite such Settling  
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