FEDERAL FACILITY AGREEMENT

FOR THE

LABORATORY FOR ENERGY-RELATED

HEALTH RESEARCH

TABLE OF CONTENTS

1. Purpose
2. Parties
3. Jurisdiction
4. Definitions
5. Stipulated Determinations
6. Work to Be Performed
7. Consultation
8. Deadlines
9. Extensions
10. Force Majeure
11. Emergencies and Removals
12. Dispute Resolution
13. Enforceability
14. Stipulated Penalties
15. Funding
16. Exemptions
17. Statutory Compliance/RCRA-CERCLA Integration
18. Remedial Project Manager
19. Permits
20. Quality Assurance
21. Notification
22. Data and Document Availability
23. Release of Records
24. Preservation of Records
25. Access to the Federal Facility
26. Public Participation, Community Relations, and Administrative Record
27. Amendment Or Modification of Agreement
28. Termination of The Agreement
29. Covenant Not to Sue and Reservation of Rights
30. Other Claims
31. Recovery of EPA Expenses
32. Reimbursement of DTSC, DHS and RWQCB Expenses
33. DTSC, DHS and RWQCB Participation Contingency
34. Effective Date and Public Comment
35. Closeout of DOE Activities at the Federal Facility
36. Appendices and Attachments
37. Withdrawal from the Agreement

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (EPA)
REGION 9
AND
CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)
AND
CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD (RWQCB)
AND
CALIFORNIA DEPARTMENT OF HEALTH SERVICES
AND
UNITED STATES DEPARTMENT OF ENERGY (DOE)

IN THE MATTER OF: The U.S. Department of Energy Laboratory for Energy Related Health Research (LEHR)	)	Federal Facility Agreement Under CERCLA Section 120 Administrative Docket Number:

Based on the information available to the Parties on the effective date of this Federal Facility Agreement (Agreement), and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

1. PURPOSE

1.1 The general purposes of this Agreement are to:

a. Ensure that the environmental impacts associated with past activities at the Federal Facility located within the National Priorities List site known as LEHR/Old Campus Landfill are thoroughly investigated, and appropriate response actions taken as necessary to protect human health, welfare or the environment;

b. Establish a procedural framework and schedule for

developing, implementing and monitoring appropriate response actions at the Federal Facility in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) the National Contingency Plan (NCP), Superfund guidance and policy, the Resource Conservation and Recovery Act (RCRA), RCRA guidance and policy, and applicable State law;

c. Facilitate cooperation, exchange of information and participation of the Parties in such action; and

d. Ensure the adequate assessment of potential injury to natural resources, the prompt notification, cooperation, and coordination with the Federal and State Natural Resources Trustees.

1.2 Specifically, the purposes of this Agreement are to:

a. Identify the nature, objective, and schedule of response actions to be taken at the Federal Facility. Response actions at the Federal Facility shall attain that degree of cleanup of hazardous substances, pollutants, or contaminants mandated by CERCLA and applicable State law;

b. Implement response actions in accordance with the terms of this agreement, CERCLA and applicable State law;

c. Assure compliance, through this Agreement, with RCRA and other applicable Federal and State laws and regulations for matters covered herein;

d. Expedite the cleanup process to the extent consistent with protection of human health and the environment; and

e. Provide for DHS, DTSC and RWQCB involvement in the initiation, development, selection and enforcement of response actions to be undertaken at the Federal Facility, including the review of all applicable data as they become available in accordance with Section 22 (Data and Document Availability) and the development of studies, reports, and action plans; and to identify and integrate Applicable or Relevant and Appropriate Requirements (ARARs) into the response action process.

2. PARTIES

2.1 The Parties to this Agreement are EPA, DOE, DHS, DTSC and the RWQCB. The terms of the Agreement shall apply to and be binding upon EPA, DHS, DTSC and the RWQCB, and DOE.

2.2 This Agreement shall be enforceable against all of the Parties to this Agreement. This Section shall not be construed as an agreement to indemnify any person. DOE shall notify its agents, members, employees and its contractors for the Federal Facility, and all subsequent, operators and lessees of the Federal Facility, of the existence of this Agreement.

2.3 Each Party shall be responsible for ensuring that its contractors comply with the terms and conditions of this Agreement. Failure of a Party to provide proper direction to its contractors and any resultant noncompliance with this Agreement by a contractor shall not be considered a Force Majeure event or other good cause for extensions under Section 9 (Extensions), unless the Parties so agree or unless established by the dispute resolution process contained in Section 12 (Dispute Resolution). DOE will notify EPA, DHS, DTSC and the RWQCB of the identity and the assigned tasks of each of its contractors performing work under this Agreement upon their selection.

3. JURISDICTION

3.1 Each Party is entering into this Agreement pursuant to the following authorities:

a. The U.S. Environmental Protection Agency (EPA) enters into those portions of this Agreement pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law 99-499 (hereinafter jointly referred to as CERCLA), and the Resource Conservation and Recovery Act (RCRA) Sections 6001, 3004(u) and (v), 3008(h), 7003, and 9003(h), 42 U.S.C. §§ 6961, 6924(u) and (v), 6928(h), 6973, and 6991b (h), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA), and Executive Order 12580;

b. The Department of Energy (DOE) enters into those portions of this Agreement to the extent of the LEHR Federal Facility that relate to the RI/FS pursuant to CERCLA Section 120(e)(1), 42 U.S.C. § 9620(e)(1), RCRA Sections 6001, 3008(h), 3004(u) & (v), and 9007(a), 42 U.S.C. §§ 6961, 6928(h), 6924(u) & (v), and 6991f(a), Executive Order 12580, and the National Environmental Policy Act, 42 U.S.C. § 4321, and the Atomic Energy Act of 1954 (AEA), as amended, 42 U.S.C. § 2011 , et seq.;

c. The California Department of Health Services (DHS), California Department of Toxic Substances Control (DTSC) and the Central Valley Regional Water Quality Control Board (RWQCB) enter into this Agreement pursuant to CERCLA Sections 120(f) and 121, 42 U.S.C. §§ 9620(f) and 9621, the Resource Conservation and Recovery Act ("RCRA") sections 3006 and 6001 (42 U.S.C. sections 6926 and 6961), chapters 5,6.5, 6.8, 8, and 8.6, of division 20 and chapters 5 and 8, part 9, of division 104 of the California Health and Safety Code, Division 7 of the California Water Code, and the Clean Water Act, 33 U.S.C. § 1251 et seq.

4. DEFINITIONS

Except as provided in this agreement, the definitions provided in CERCLA, CERCLA case law, and the NCP shall control the meaning of terms used in this Agreement.

a. "Agreement" shall refer to this document and shall include all Appendices to this document to the extent they are consistent with the original Agreement as executed or modified. All such Appendices shall be attached to and made an integral and enforceable part of this document. Copies of Appendices shall be available as part of the Administrative Record, as provided in Subsection 26.3.

b. "ARARs" ("Applicable or Relevant and Appropriate Requirements") shall mean Federal and State applicable or relevant and appropriate requirements, standards, criteria, or limitations, identified pursuant to Section 121 of CERCLA. ARARs shall apply in the same manner and to the same extent that such are applied to any non-governmental entity, facility, unit, or site, as defined in CERCLA and the NCP. See CERCLA Section 120(a)(1), 42 U.S.C. § 9620(a)(1).

c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, Public Law 96-510, 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, and any subsequent amendments.

d. "Days" shall mean calendar days, unless business days are specified. Any submittal that under the terms of this Agreement would be due on Saturday, Sunday, or a Federal or State holiday shall be due on the following business day.

e. "Department of Energy" or "DOE" shall mean the U.S. Department of Energy, its employees, members, agents, and

authorized representatives, to the extent necessary to effectuate the terms of this Agreement, including, but not limited to, providing appropriations and Congressional reporting requirements.

f. "DTSC" shall mean the California Department of Toxic Substances Control (formerly part of Department of Health Services), its successors and assigns, and its duly authorized representatives.

g. "DHS" shall mean the California Department of Health Services , its successors and assigns, and its duly authorized representatives.

h. "Ecological Assessment" shall mean a qualitative and/or quantitative appraisal of the actual or potential effects of a hazardous waste site on plants and animals other than people and domesticated species, as described in EPA's Risk Assessment Guidance for Superfund -- Environmental Evaluation Manual (December 1989, Interim Final).

i. "EE/CA" shall mean an Engineering Evaluation/Cost Analysis prepared in support of a removal action and conducted pursuant to CERCLA Section 104, 42 U.S.C. Section 9604 and the NCP, 40 CFR Section 300.415.

j. "Effective Date" shall mean the date of the signature by the last party to sign the Agreement.

k. "EPA" shall mean the United States Environmental Protection Agency, its employees and authorized representatives.

l. "Feasibility Study" or "FS" shall mean a study conducted pursuant to CERCLA Section 121, 42 U.S.C. Section 9621 and the NCP which fully develops, screens and evaluates in detail remedial action alternatives to prevent, mitigate, or abate the migration or the release of hazardous substances, pollutants, or contaminants at and from the Federal Facility.

m. "LEHR Federal Facility" or "Federal Facility" shall mean the following areas at the Laboratory for Energy-Related Health Research (LEHR): Maintenance Shop (H-212); Main Building (H-213); location of the former Imhoff Building (H-214); Reproductive Biology Laboratory (H-215); Specimen Storage (H-216); Inter-regional Project No. 4 (H-217); Animal Hospital No. 2 (H-218); Animal Hospital No. 1 (H-219); Co-60 Building (H-229); Occupational and Environmental Medicine Building (H-289); Co-60 Annex (H-290); Geriatrics Building No. 1 (H-292); Geriatrics

Building No. 2 (H-293); Cellular Biology Laboratory (H-294); Small Animal Housing (H-296); Toxic Pollutant Health Research Laboratory (H-299); Storage Space (H-300) ; cobalt-60 irradiation field; southwest trenches; the strontium-90 and radium-226 leach fields and the radium-226 waste tanks; the former dog pen areas and associated soils and gravels; the seven septic tanks; the Imhoff storage tanks; the DOE disposal box; and areas where contamination originating from the areas listed above have come to be located, excluding areas assigned to the University of California ("UC") by operation of a Memorandum of Agreement on June 23, 1997 between UC and DOE (Appendix A). The LEHR Federal Facility is part of an NPL site as defined by the NCP and subject to all provisions pertaining to Sites.

n. "Laboratory for Energy-Related Health Research" or "LEHR" shall mean the land and improvements located within the fence line depicted in Appendix A.

o. "Meeting," in regard to Remedial Project Managers, shall mean an in-person discussion at a single location or a conference telephone call of all Remedial Project Managers. With the concurrence of the Remedial Project Managers, a conference call will suffice for an in-person meeting.

p. "National Contingency Plan" or "NCP" shall mean the regulations contained in 40 CFR Part 300 et seq., and any subsequent amendments thereof.

q. "Natural Resources Trustee(s)" or "Federal or State Natural Resources Trustees" shall have the same meaning and authority as provided in CERCLA and the NCP.

r. "On-Scene Coordinator" or "OSC" shall have the same meaning and authority as provided in the NCP.

s. "Operable Unit" or "OU" shall have the same meaning as provided in the NCP, 40 CFR 300.5.

t. "Operation and maintenance" shall mean measures required to maintain the effectiveness of response actions.

u. "RCRA" or "RCRA/HSWA" shall mean the Resource Conservation and Recovery Act of 1976, Public Law 94-580, 42 U.S.C. § 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, and any subsequent amendments.

v. "Remedial Design" or "RD" shall have the same meaning as provided in the NCP, 40 CFR 300.5.

w. "Remedial Investigation" or "RI" shall mean that investigation conducted pursuant to CERCLA and the NCP. The RI serves as a mechanism for collecting data to characterize the contaminants at or migrating from the Federal Facility and conducting treatability studies as necessary to evaluate performance and cost of the treatment technologies. The data gathered during the RI will also be used to conduct a baseline risk assessment, perform a feasibility study, and support design of a selected remedy.

x. "Remedial Project Manager" or "RPM" shall have the same meaning and authority as provided in the NCP, 40 CFR § 300.5.

y. "Remedy" or "Remedial Action" or "RA" shall have the same meaning as provided in Section 101(24) of CERCLA, 42 U.S.C.§ 9601(24), and the NCP, 40 CFR § 300.5, and may consist of Operable Units.

z. "Remove" or "Removal" shall have the same meaning as provided in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), and the NCP, 40 CFR § 300.5.

aa. "RWQCB" shall mean the Regional Water Quality Control Board, Central Valley Region, its successors and assigns, and its duly authorized representatives.

bb. "Response Action" shall have the same meaning as that provided in Section 101(25) of CERCLA, 42 U.S.C. § 9601(23), and the definition of "respond or response" in the NCP, 40 CFR § 300.5.

cc. "Site" or "LEHR Site" shall mean the area referred by the National Priorities List known as "LEHR/Old Campus Landfill," including the Federal Facility.

5. STIPULATED DETERMINATIONS

For the purpose of this Agreement only, the following constitutes a summary of the determinations upon which this Agreement is based. None of the determinations related herein are, or shall be construed as, admissions by any Party.

5.1 The LEHR Federal Facility, Solano County, California, is part of the LEHR site that was placed on the National Priorities List by the Environmental Protection Agency on May 31, 1994, 59 Federal Register 27,989.

5.2 The LEHR Federal Facility is currently under the jurisdiction, custody, or control of DOE within the meaning of Executive Order 12580, 52 Federal Register 2,923 (Jan. 29, 1987).

5.3 DOE and UC have entered into a Memorandum of Agreement ("MOA") under which DOE has accepted responsibility for the cleanup of the LEHR Federal Facility, as defined in Subsection 4.m, and UC has accepted responsibility for UC landfill cells beneath the LEHR Facility; Landfills 1, 2 (exclusive of dog pens), and 3; the 49 waste holes; groundwater; and the UC Davis disposal trenches (south and east of Landfill 2) as depicted in Appendix A. This Agreement is intended to be consistent with, and to facilitate the implementation of, the division of responsibility prescribed in the MOA. The MOA and this Agreement shall not transfer DOE's liability for cost or expenditures otherwise recoverable by USEPA, DHS, DTSC and RWQCB. Nothing in this agreement shall affect the mutually enforcable obligations between UC and DOE set out in the MOA.

5.4 DOE is the authorized delegate of the President under E.O. 12580 for receipt of notification by the State of its ARARs as required by CERCLA Section 121(d)(2)(A)(ii), 42 U.S.C. § 9621(d)(2)(A)(ii).

5.5 The authority of DOE to exercise the delegated removal authority of the President pursuant to CERCLA Section 104, 42 U.S.C. § 9604 is not altered, except as provided by this Agreement.

5.6 The actions to be taken pursuant to this Agreement shall be reasonable and necessary to protect human health, welfare, or the environment.

5.7 There are areas within the boundaries of the LEHR Federal Facility where hazardous substances have been deposited, stored, placed, or otherwise come to be located in accordance with CERCLA Sections 101(9) and (14), 42 U.S.C. §§ 9601(9)&(14).

5.8 There have been releases of hazardous substances, pollutants or contaminants at or from the Federal Facility into the environment within the meaning of CERCLA Sections 101(22), 104, 106, and 107, 42 U.S.C. §§ 9601(22), 9604, 9606, and 9607.

5.9 With respect to these releases DOE is an operator and/or generator subject to the provisions of CERCLA Section 107, 42 U.S.C. § 9607 and within the meaning of California Health and

Safety Code Section 25323.5(a).

5.10 Included as part of Appendix A to this Agreement is a map showing sources of known or suspected contamination based on information available at the time of the signing of this Agreement.

5.11 In accordance with Section 300.600(b)(3) of the National Contingency Plan, and CERCLA Section 107(f), 42 U.S.C. § 9607(f), the Secretary of Energy is the trustee for natural resources, managed and controlled by the United States, located on, over, or under the Federal Facility, to the extent such natural resources are not specifically entrusted to the Secretary of Commerce or the Secretary of the Interior.

6. WORK TO BE PERFORMED

6.1 The Parties agree to perform the tasks, obligations and responsibilities described in this Section in accordance with CERCLA and applicable CERCLA guidance and policy; the NCP; pertinent provisions of RCRA and applicable RCRA guidance and policy; Executive Order 12580; applicable State laws and regulations; and all terms and conditions of this Agreement including documents prepared and incorporated in accordance with Section 7 (Consultation).

6.2 DOE agrees to undertake, seek adequate funding for, fully implement and report on the following tasks, in accordance with the requirements of this Agreement:

a. All necessary and appropriate response actions for the Federal Facility, including ecological assessments;

b. Federal and State Natural Resources Trustee notification and coordination for the Federal Facility; and

c. Community Relations (Public Participation) activities related to the work performed under this Agreement.

6.3 The Parties agree to:

a. Make their best efforts to expedite the initiation of response actions for the Federal Facility and the LEHR site, and

b. Carry out all activities under this Agreement so as to protect human health, welfare, and the environment.

6.4 Upon request, EPA, DHS, DTSC and the RWQCB agree to provide any Party with guidance or reasonable assistance in obtaining guidance relevant to the implementation of this Agreement.

6.5 All primary documents prepared pursuant to this Agreement shall be under the direction and supervision of a Registered Professional Engineer, a Certified Engineering Geologist, Certified Hydrogeologist, or a Registered Geologist. All such persons shall have expertise in hazardous waste site cleanup and shall be licensed in the State of California. The name and address of the project engineer, engineering geologist, or geologist chosen by DOE shall be submitted to the other Parties within fifteen (15) calendar days of the effective date of this Agreement. All draft final primary documents must be signed by a California Registered Professional Engineer Certified Engineering Geologist, Certified Hydogeologist or Registered Geologist, as appropriate to the nature of the document.

6.6 Beginning with the month following the effective date of this Agreement, and approximately monthly thereafter, DOE shall submit Remedial Project Managers (RPM) monthly meeting minutes. The monthly meeting minutes will serve as monthly progress reports (letter reports) on activities conducted pursuant to this Agreement. The reports shall be submitted within thirty (30) calendar days after each RPM meeting and shall describe: (1) specific actions taken by or on behalf of DOE during the previous calendar month; (2) actions expected to be undertaken during the current calendar month; (3) any requirements under this Agreement that were not completed and any problems or anticipated problems in complying with this Agreement; (4) topics and actions discussed during the RPM meetings.

6.7 Unless all Parties have agreed to specific deviations, all risk assessments prepared pursuant to this Agreement shall follow all applicable EPA and State regulations, policies, and guidance, including but not limited to the following: Risk Assessment Guidance for Superfund: Human Health Evaluation Manual, Part A, (September 1989, US EPA 9285.701A); Risk Assessment Guidance for Superfund: Human Health Risk Assessment: US EPA Region IX Recommendations (December 15, 1989, Interim Final); Preliminary Endangerment Assessment Guidance Manual (January 1994, California Environmental Protection Agency, Department of Toxic Substances Control).

6.8 DOE shall evaluate the environmental impacts of

contamination at the Federal Facility and proposed response actions. Unless all Parties have agreed to specific deviations, such evaluation(s) shall follow all applicable EPA and State regulations, policies and guidance, including but not limited to the following: Risk Assessment Guidance for Superfund -- Environmental Evaluation Manual (December 1989, Interim Final), and the Draft Risk Assessment Guidance for Superfund: Ecological Assessments/Region IX. DOE shall inform the other Parties of the documents in which the ecological assessments shall be addressed.

6.9 DOE shall notify all State and Federal natural resource trustees of potentially affected resources managed and controlled by the United States and ensure that coordination is carried out pursuant to the requirements of 40 CFR 300.615.

7. CONSULTATION: REVIEW AND COMMENT PROCESS FOR DRAFT AND FINAL DOCUMENTS

7.1 Applicability: The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate technical support, notice, review, comment, and response to comments regarding documents specified herein as either primary or secondary documents. In accordance with CERCLA Section 120, 42 U.S.C.§ 9620, DOE will be responsible for issuing primary and secondary documents to EPA, DHS, DTSC and the RWQCB. As of the effective date of this Agreement, all draft, draft final and final documents for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with Subsections 7.2 through 7.10 below. The designation of a document as "draft" or "final" is solely for purposes of consultation with EPA, DHS, DTSC and the RWQCB in accordance with this Section. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final" to the public for review and comment as appropriate and as required by law.

7.2 General Process for documents:

a. Primary documents include those documents that are major, discrete portions of activities under this Agreement. Primary documents are initially issued by DOE in draft subject to review and comment by the EPA, DHS, DTSC and the RWQCB. Following receipt of comments on a particular draft primary document, DOE will respond to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary document will become the final primary document either thirty (30) days after the receipt of a draft

final document by EPA, DHS, DTSC and the RWQCB, if dispute resolution is not invoked, or as modified by decision of the dispute resolution process.

b. Secondary documents include those documents that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by DOE in draft subject to review and comment by the EPA, DHS, DTSC and the RWQCB. Although DOE will respond to comments received, the draft secondary documents may be finalized in the context of the corresponding primary documents. A secondary document may be disputed at the time the corresponding draft final primary document is issued.

7.3 Primary Documents:

a. DOE shall complete and transmit to EPA, DHS, DTSC and the RWQCB all primary documents listed in Attachment 1 for review and comment in accordance with the provisions of this Section, Section 21 (Notification), and Section 8 (Deadlines).

b. Draft final primary documents shall be subject to dispute resolution. DOE shall complete and transmit draft primary documents set forth in Attachment 1 in accordance with the timetable and deadlines established according to the procedures set forth in Section 8 (Deadlines) of this Agreement.

c. Primary documents may include target dates for subtasks as provided for in Subsection 7.4(a) and 18.3. The purpose of target dates is to assist DOE in meeting deadlines. With the exception of Waste Shipment Reports, target dates do not become enforceable by their inclusion in the primary documents and are not subject to Section 8 (Deadlines), Section 9 (Extensions), or Section 13 (Enforceability).

d. Removal Action Work Plans shall include an enforcable deadline for Waste Shipment Reports.

7.4 Secondary Documents:

a. DOE shall complete and transmit to EPA, DHS, DTSC and the RWQCB all secondary documents listed in Attachment 1 for review and comment in accordance with the provisions of this Section, Section 21 (Notification), and Section 8 (Deadlines).

b. Although EPA, DHS, DTSC and the RWQCB will comment, in accordance with Subsection 7.7(b) on the drafts of the secondary

documents, such documents shall not be subject to dispute resolution except as provided by Subsection 7.2 hereof. Target dates for the completion and transmission of draft secondary documents may be established by the RPMs. The RPMs also may agree upon additional secondary documents.

7.5. Meetings of the RPMs (see also Subsection 18.3.): The RPMs shall meet approximately monthly, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the LEHR Federal Facility, including progress on the primary and secondary documents. Prior to preparing any draft document specified in Subsections 7.3 and 7.4 above, the RPMs shall meet in an effort to reach a common understanding with respect to the contents of the draft document.

7.6 Identification and Determination of Potential ARARs:

a. For those primary or secondary documents for which ARAR determinations are appropriate, prior to the issuance of a draft document, the RPMs shall meet to identify and propose all potential ARARs pertinent to the document being addressed. At that time, DTSC,RWQCB and DHS, shall identify their respective potential State ARARs as required by CERCLA Section 121(d)(2)(A)(ii), 42 U.S.C. § 9621(d)(2)(A)(ii), which are pertinent to those activities for which they are responsible and to the document being addressed. DOE shall prepare a draft ARAR determination in accordance with CERCLA Section 121(d)(2), 42 U.S.C. § 9621(d)(2), the NCP and pertinent guidance issued by EPA.

b. DTSC, with the assistance of the RWQCB and DHS will contact those State and local governmental agencies which are a potential source of ARARs. DOE will contact those agencies that failed to respond and again solicit these potential ARARs.

c. In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances, pollutants and contaminants at the LEHR Federal Facility and the LEHR site, the particular actions associated with a proposed remedy and the characteristics of the LEHR Federal Facility and the LEHR site. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be identified and discussed among the Parties as early as possible, and must be re-examined throughout the process until a ROD is issued.

7.7 Review and Comment on Draft Documents:

a. DOE shall complete and transmit each draft primary document to EPA, DHS, DTSC and the RWQCB on or before the corresponding deadline set forth in Attachment 1 for the transmittal of the document. DOE shall complete and transmit the draft secondary documents in accordance with the target dates or deadlines set forth in Attachment 1 .

b. Unless the Parties mutually agree to another time period, all draft documents shall be subject to a sixty (60) day period for review and comment. Review of any document by the EPA, DHS, DTSC and the RWQCB may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, applicable California law, and any pertinent guidance or policy issued by the EPA or the State. At the request of any Party, and to expedite the review process, DOE shall make an oral presentation on the document to the Parties within fourteen (14) days following the request. Comments by the EPA, DHS, DTSC and the RWQCB shall be provided with adequate specificity so that DOE may respond to the comment and, if appropriate, make changes to the draft document. Upon written request by DOE, EPA, DHS, DTSC or the RWQCB shall provide a copy of authorities or references cited or relied upon in their respective comments. EPA, DHS, DTSC or the RWQCB may extend the sixty (60) day comment period for an additional fifteen (15) days by written notice to DOE prior to the end of the sixty (60) day period. On or before the close of the comment period, EPA, DHS, DTSC and the RWQCB shall transmit their written comments to DOE. In appropriate circumstances, this time period may be further extended in accordance with Section 9 (Extensions).

c. Representatives of DOE shall make themselves readily available to EPA, DHS, DTSC and the RWQCB during the comment period for purposes of informally responding to questions and comments on draft documents. Oral comments made during such discussions need not be the subject of a written response by DOE on the close of the comment period.

d. In commenting on a draft document which contains a proposed ARAR determination, the EPA, DHS, DTSC or the RWQCB shall include a reasoned statement of whether it objects to any portion of the proposed ARAR determination. To the extent that EPA, DHS, DTSC or the RWQCB does object, it shall explain the basis for its objection in detail and shall identify any ARARs

which it believes were not properly addressed in the proposed ARAR determination.

e. Following the close of the comment period for a draft document, DOE shall give full consideration to all written comments. Upon the request of any Party, the Parties shall hold a meeting to discuss all comments received within fifteen (15) days of the request. On a draft secondary document DOE shall, within thirty (30) days of the close of the comment period, transmit to the EPA, DHS, DTSC and the RWQCB its written response to the comments received. On a draft primary document DOE shall, within forty-five (45) days of the close of the comment period, transmit to EPA, DHS, DTSC and the RWQCB a draft final primary document, which shall include DOE's response to all written comments received within the comment period. Timetables for the response to comments may be less than the above number of days if all parties concur. While the resulting draft final document shall be the responsibility of DOE, it shall be the product of consensus to the maximum extent possible.

f. DOE may extend the forty-five (45) day period, or other mutually agreed upon time frame for either responding to comments on a draft document or for issuing the draft final primary document, for an additional fifteen (15) days by providing written notice to the EPA, DHS, DTSC and the RWQCB. In appropriate circumstances, this time period may be further extended in accordance with Section 9 (Extensions).

7.8 Availability of Dispute Resolution for Draft Final Primary Documents:

a. Dispute resolution shall be available to the Parties for draft final primary documents as set forth in Section 12 (Dispute Resolution).

b. When dispute resolution is invoked on a draft final primary document, work may be stopped in accordance with the procedures set forth in Subsection 12.9 regarding dispute resolution.

7.9 Finalization of Documents: The draft final primary document shall serve as the final primary document if no Party invokes dispute resolution regarding the document in accordance with paragraph 7.2(a) and Section 12 (Dispute Resolution), or, if invoked, at completion of the dispute resolution process should DOE position be sustained. If DOE's determination is not sustained in the dispute resolution process, DOE shall prepare, within sixty (60) days, a revision of the draft final document

which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section 9 (Extensions).

7.10 Subsequent Modification of Final Documents: Following finalization of any primary document pursuant to Subsection 7.9 above, any Party may seek to modify the document including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in subparagraphs (a) and (b) below.

a. Any Party may seek to modify a document after finalization if it determines, based on new information (i.e., information that becomes available, or conditions that become known, after the document was finalized) that the requested modification is necessary. Any party may seek such a modification by submitting a concise written request to the Remedial Project Managers of the other Parties. The request shall specify the nature of the requested modification and how the request is based on new information.

b. In the event that a consensus is not reached by the Parties on the need for a modification, any Party may invoke dispute resolution to determine if such modification shall be conducted. Modification of a document shall be required only upon a showing that:

(1) The requested modification is based on significant new information; and

(2) The requested modification could be of significant assistance in evaluating impacts on human health, welfare, or the environment, in evaluating the selection of remedial alternatives, or in protecting human health, welfare, or the environment.

c. Nothing in this Section shall alter the ability of EPA, DHS, DTSC or the RWQCB to request the performance of additional work which was not contemplated by this Agreement. DOE's obligation to perform such work under this Agreement must be established by either a modification of document or by amendments to this Agreement. In the event that the Parties do not reach consensus as to the request for the performance of such additional work, any Party may invoke dispute resolution to determine if such modification or amendment shall be effected.

8. DEADLINES

8.1.

Deadlines for the submittal of primary documents by DOE are set forth in Attachment 1.

8.2 The deadlines referenced in this Section may be extended pursuant to Section 9 (Extensions). The Parties recognize that one possible basis for extension of the deadlines is the identification of significant new conditions at the Federal Facility during the performance of response actions.

9. EXTENSIONS

9.1 Timetables, deadlines and schedules shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by a Party shall be submitted to the other Parties in writing and shall specify:

a. The timetable, deadline or schedule that is sought to be extended;

b. The length of the extension sought;

c. The good cause(s) for the extension; and

d. The extent to which any related timetable and deadline or schedule would be affected if the extension were granted.

9.2 Good cause exists for an extension when sought in regard to:

a. An event of Force Majeure;

b. A delay caused by another Party's failure to meet any requirement of this Agreement;

c. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;

d. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule;

e. A delay caused by public comment periods or hearings

required under State law in connection with the performance of this Agreement by DTSC or the RWQCB or by receipt of unusually extensive public comments under CERCLA;

f. Any work stoppage within the scope of Section 11 (Emergencies and Removals); or

g. Any other event or series of events mutually agreed to by the Parties as constituting good cause.

9.3 Absent agreement of the Parties with respect to the existence of good cause, a Party may seek and obtain a determination through the dispute resolution process that good cause exists.

9.4 Within seven days of receipt of a request for an extension of a timetable, deadline or schedule, each receiving Party shall advise the requesting Party in writing of the receiving Party's position on the request. Any failure by a receiving Party to respond within the 7-day period shall be deemed to constitute concurrence with the request for extension. If a receiving Party does not concur in the requested extension, it shall include in its statement of non-concurrence an explanation of the basis for its position.

9.5 If there is consensus among the Parties that the requested extension is warranted, DOE shall extend the affected timetable and deadline or schedule accordingly. If there is no consensus among the Parties as to whether all or part of the requested extension is warranted, the timetable and deadline or schedule shall not be extended except in accordance with a determination resulting from the dispute resolution process.

9.6 The requesting Party may invoke dispute resolution only within seven days of receipt of a statement of non-concurrence with the requested extension.

9.7 A timely and good faith request by DOE for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected timetable and deadline or schedule until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and the requested extension is denied, stipulated penalties may be assessed and may accrue from the date of the original timetable, deadline or schedule. Following the grant of an extension, an assessment of stipulated penalties or an application for judicial

enforcement may be sought only to compel compliance with the timetable and deadline or schedule as most recently extended.

10. FORCE MAJEURE

10.1 A Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or prevents the performance of any obligation under this Agreement, including, but not limited to, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority other than DOE; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriated funds which have been diligently sought. In order for Force Majeure based on insufficient funding to apply to DOE, DOE shall have made timely request for such funds as part of the budgetary process as set forth in Section 15 (Funding). A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

11. EMERGENCIES AND REMOVALS

11.1 Discovery and Notification: If any Party discovers or becomes aware of an emergency or other situation that may present an endangerment to human health, welfare or the environment at or near the Federal Facility or LEHR site, which is related to or may affect the work performed under this Agreement, that Party shall immediately orally notify all other Parties. If the emergency arises from activities conducted pursuant to this Agreement, DOE shall then take immediate action to notify the appropriate Federal, State, and local agencies and affected members of the public.

11.2 Work Stoppage: If any Party determines that activities conducted pursuant to this Agreement will cause or otherwise be

threatened by a situation described in Subsection 11.1, the Party may propose the termination of such activities. If the Parties mutually agree, the activities shall be stopped for such period of time as required to abate the danger. In the absence of mutual agreement, the activities shall be stopped in accordance with the proposal, and the matter shall be immediately referred to the EPA Hazardous Waste Management Division Director for a work stoppage determination in accordance with Subsection 12.9.

11.3 Removal Actions:

a. The provisions of this Section shall apply to all removal actions as defined in CERCLA Section 101(23), 42 U.S.C. § 9601(23) and Health and Safety Code Section 25323, including all modifications to, or extensions of, the ongoing removal actions, and all new removal actions proposed or commenced following the effective date of this Agreement.

b. Any removal actions conducted at the Federal Facility shall be conducted in a manner consistent with this Agreement, CERCLA, the NCP and Executive Order 12580.

c. If a Party determines that there may be an endangerment to human health, welfare or the environment because of an actual or threatened release of a hazardous substance, pollutant or contaminant at or from the Federal Facility, the Party may request that DOE take such response actions as may be necessary to abate such danger or threat and to protect human health, welfare or the environment. In the event that the Parties do not reach consensus as to the request for the performance of such response action, any Party as provided in Paragraph 12 may invoke dispute resolution to determine if such response action shall be effected.

11.4 Notice and Opportunity to Comment.

a. DOE shall provide the other Parties with timely notice and opportunity to review and comment upon any proposed emergency and time critical removal action for the Federal Facility. DOE agrees to provide the information described below pursuant to such obligation.

b. For emergency and time critical response actions, DOE shall provide EPA, DHS, DTSC and the RWQCB with notice in accordance with Subsection 11.1. Except in the case of extreme emergencies, such oral notification shall include adequate information concerning the characteristics and history of the

Federal Facility, threat to human health, welfare or the environment (including the need for response), proposed actions and costs (including a comparison of possible alternatives, means of transportation of any hazardous substances off the Federal Facility, and proposed manner of disposal), expected change in the situation should no action be taken or should action be delayed (including associated environmental impacts), any important policy issues, and the DOE On-Scene Coordinator recommendations. Within forty-five (45) days of completion of the emergency action, the DOE will furnish EPA, DHS, DTSC and the RWQCB with an Action Memorandum addressing the information provided in the oral notification, and any other information required pursuant to CERCLA and the NCP, and in accordance with pertinent EPA guidance, for such actions.

c. For non-time critical removal actions not already contemplated and scheduled in Attachment 1, DOE will propose to EPA, DHS, DTSC and the RWQCB a schedule to provide any information required by CERCLA, the NCP, and in accordance with pertinent EPA guidance, such as the Action Memorandum, the Engineering Evaluation/Cost Analysis , the Removal Action Work Plan, the Removal Action Completion Report and, to the extent it is not otherwise included, all information required to be provided in accordance with paragraph (b) of this Subsection. Upon agreement by EPA, DHS, DTSC and the RWQCB, the proposed schedule will be incorporated into the list of documents to be submitted set forth in Attachment 1 and will become part of this agreement. If the parties can not agree upon the proposed schedule, the dispute resolution provisions of this agreement can be invoked by any party.

d. All activities related to ongoing removal actions shall be reported by DOE in the progress reports as described in Section 18 (Remedial Project Managers).

11.5 Any dispute among the Parties as to whether a proposed response action is properly considered a removal action, as defined by CERCLA Section 101(23), 42 U.S.C. § 9601(23), or as to the consistency of a removal action with the NCP or the final remedial action, or whether DOE will take a removal action requested by any Party under Subsection 11.3(c), including any additional response action requested as part of a planned removal action, shall be resolved pursuant to Section 12 (Dispute Resolution). Such dispute may be brought directly to the Dispute Resolution Committee (DRC) or the Senior Executive Committee (SEC) at any Party's request.

12. DISPUTE RESOLUTION

12.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section shall apply. Any Party, except DHS, may invoke this dispute resolution procedure. All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the RPM or immediate supervisor level. If resolution can not be achieved informally, the procedures of this Section shall be implemented to resolve a dispute.

12.2 Within thirty (30) days after: (a) the issuance of a draft final primary document pursuant to Section 7 (Consultation), or (b) any action which leads to or generates a dispute, the disputing Party shall submit to the DRC a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position, and an explanation of all steps taken to resolve a dispute.

12.3 Prior to any Party's issuance of a written statement of a dispute, the disputing Party shall engage the other Party in informal dispute resolution among the RPMs and/or their immediate supervisors. During this informal dispute resolution period the Parties shall meet as many times as necessary to discuss and attempt resolution of the dispute.

12.4 The DRC will serve as a forum for resolution of dispute for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level Senior Executive Service (SES) or equivalent or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on the DRC is the Director of the Federal Facility Cleanup Office, Region 9. DOE's designated member is the Assistant Manager for Environmental and National Programs. The DTSC representative is the Chief of the Site Mitigation Branch, Central California Cleanup Operations. The RWQCB representative is the Chief of Site Cleanup Section. The DHS representative is the Chief of the Radiologic Health Branch. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section 21 (Notification).

12.5 Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period, the written statement together with the positions of each Party's DRC representative of dispute shall be forwarded to the SEC for resolution within seven (7) days after the close of the twenty-one (21) day resolution period. The twenty-one (21) day period may be extended by written agreement of the DRC members.

12.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA representative on the SEC is the Regional Administrator, EPA Region 9. DOE's representative on the SEC is the Manager of the Oakland Operations Office. The DTSC representative on the SEC is the Deputy Director for Site Mitigation. The RWQCB representative on the SEC is the Executive Officer for the Central Valley Region. The DHS representative on the SEC is the Chief of the Food, Drug and Radiation Safety Division. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, the EPA's Regional Administrator shall issue a written position on the dispute. DOE, DTSC or the RWQCB may, within fourteen (14) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator for resolution in accordance with all applicable laws and procedures. In the event DOE, DTSC or the RWQCB elects not to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, DOE, DTSC and the RWQCB shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

12.7 Upon elevation of a dispute to the Administrator of EPA pursuant to Subsection 12.6 above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Assistant Secretary of DOE, DTSC Director, DHS Director and the RWQCB's Executive Officer to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide DOE, DTSC, DHS and the RWQCB with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Section shall not be delegated.

12.8 The pendency of any dispute under this Section shall not affect any Party's responsibility for timely performance of the work required by this Agreement, except that the time period for completion of work affected by such dispute shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this Agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable timetable and deadline or schedule.

12.9 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Hazardous Waste Management Division Director for EPA Region 9 requests, in writing, that work related to the dispute be stopped because, in EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. DTSC or the RWQCB may request the EPA Director of the Federal Facility Cleanup Office to order work stopped for the reasons set out above. To the extent possible, the Party seeking a work stoppage shall consult with the other Parties prior to initiating a work stoppage request. After work stoppage, if a Party believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the other Parties to discuss the work stoppage. Following this meeting and further consideration of this issue, EPA Hazardous Waste Management Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the EPA Hazardous Waste Management Division Director may immediately be subject to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC; at the discretion of the Party requesting dispute resolution.

12.10 Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Section, DOE shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

12.11 Except as set forth in Section 29.2 and 30.2, resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution of any dispute arising under this Agreement. All Parties shall abide by all terms and conditions

of any final resolution of dispute obtained pursuant to this Section of this Agreement.

12.12 Whenever the dispute resolution process provided for in this Section is invoked, the State shall make a good faith effort to present a single State position, regardless of the fact that the State may have more than one representative at the particular stage of dispute resolution.

13. ENFORCEABILITY

13.1 The Parties agree that:

a. Upon the effective date of this Agreement, any standard, regulation, condition, requirement or order which has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person pursuant to CERCLA Section 310, 42 U.S.C. § 9659, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under CERCLA Sections 310(c) and 109, 42 U.S.C. §§ 9659(c) and 9658;

b. All deadlines, as defined in Section 8 (Deadlines), associated with interim or final response actions shall be enforceable by any person pursuant to CERCLA Section 310, and any violation of such deadlines will be subject to civil penalties under CERCLA Sections 310(c) and 109;

c. Any final resolution of a dispute pursuant to Section 12 (Dispute Resolution) of this Agreement that is associated with an interim or final response action and which establishes a term, condition, or deadline, as defined in Section 8 (Deadlines), shall be enforceable by any person pursuant to CERCLA Section 310(c), 42 U.S.C. § 9659(c) and any violation of such terms, condition, or deadline will be subject to civil penalties under CERCLA Sections 310(c) and 109, 42 U.S.C. §§ 9659(c) and 9658.

13.2 Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any action or work where review is barred by any provision of CERCLA including CERCLA Section 113(h), 42 U.S.C. § 9613(h).

13.3 Nothing in this Agreement shall be construed as a restriction or waiver of any rights the EPA, DHS, DTSC or the RWQCB may have under CERCLA, including but not limited to any rights under CERCLA Sections 113 and 310, 42 U.S.C. §§ 9613 and 9659. DOE does not waive any rights it may have under CERCLA

Section 120, 42 U.S.C. § 9620, SARA Section 211 and Executive Order 12580.

13.4 The Parties agree to exhaust their rights under Section 12 (Dispute Resolution) prior to exercising any rights to judicial review that they may have.

13.5 The Parties agree that all Parties shall have the right to enforce the terms of this Agreement.

14. STIPULATED PENALTIES

14.1 In the event that DOE fails to submit a primary document listed in Attachment 1 (Deadlines) to EPA, DTSC, DHS and the RWQCB pursuant to the appropriate deadline in accordance with the requirements of this Agreement or fails to comply with a term or condition of this Agreement which relates to a response action EPA may assess a stipulated penalty against DOE. DTSC or the RWQCB may also recommend to EPA that a stipulated penalty be assessed. A stipulated penalty may be assessed in an amount not to exceed $5,000 for the first week (or part thereof), and $10,000 for each additional week (or part thereof) for which a failure set forth in this Subsection occurs.

14.2 Upon determining that DOE has failed in a manner set forth in Subsection 14.1, EPA shall so notify DOE in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, DOE shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. DOE shall not be liable for the stipulated penalty assessed by EPA and the State if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

14.3 The annual reports required by CERCLA Section 120(e)(5), 42 U.S.C. § 9620(e)(5), shall include, with respect to each final assessment of a stipulated penalty against DOE under this Agreement, each of the following:

a. The Federal Facility responsible for the failure;

b. A statement of the facts and circumstances giving rise to the failure;

c. A statement of any administrative or other corrective action taken at the relevant Federal Facility, or a statement of why such measures were determined to be inappropriate;

d. A statement of any additional action taken by or at the Federal Facility to prevent recurrence of the same type of failure; and

e. The total dollar amount of the stipulated penalty assessed for the particular failure.

14.4 Stipulated penalties assessed pursuant to this Section shall be payable to the Hazardous Substances Response Trust Fund from funds authorized and appropriated for that specific purpose. EPA, DTSC and the RWQCB agree, to the extent allowed by law, to divide equally any stipulated penalties paid by DOE related to the Federal Facility, with 50% allocated to EPA, 25% allocated to DTSC, and 25% allocated to the RWQCB.

14.5 In no event shall this Section give rise to a stipulated penalty in excess of the amount set forth in CERCLA Section 109, 42 U.S.C. § 9609.

14.6 This Section shall not affect DOE's ability to obtain an extension of a timetable, deadline or schedule pursuant to Section 9 (Extensions).

14.7 Nothing in this Agreement shall be construed to render any officer or employee of DOE's personally liable for payment of any stipulated penalty assessed pursuant to this Section.

15. FUNDING

15.1 It is the expectation of the Parties to this agreement that all obligations of DOE arising under this Agreement will be fully funded through Congressional appropriations. Consistent with Congressional limitations on future funding, DOE shall take all necessary steps and use its best efforts to obtain timely funding to meet its obligation under this Agreement, including, but not limited to, the submission of timely budget requests.

15.2 The purpose of this Paragraph is to assure that the Parties adequately communicate and exchange information about funding concerns that affect the implementation of the Agreement.

a. EPA, DOE, DHS, DTSC and RWQCB RPMs shall meet

periodically throughout each Fiscal Year ("FY") to discuss projects being funded in the current FY, the status of the current year projects, and events causing or expected to cause significant changes to any activity necessary to meet target dates, deadlines, and any other requirements under this Agreement. DOE shall provide information for these meetings that shows, to the extent possible, projected and actual costs of accomplishing such activities.

b. EPA, DHS, DTSC, and the RWQCB may comment annually on DOE Oakland Operations Office(OAK) cost estimates for the corresponding activities established under this Agreement for each budget year. OAK will consider any comments received and include those comments along with these cost estimates in submittals sent from OAK to DOE-HQ for the relevant budget year.

c. In or about June of each year, DOE shall provide EPA, DHS, DTSC, and the RWQCB with current Project Baseline Summary (PBS) cost estimates based upon any revisions to DOE's Paths to Closure document . These estimates will be based on the PBS level. This submission shall include a correlation of relevant PBS with activities required under the Agreement.

d. DOE will provide to EPA, DHS, DTSC, and the RWQCB a copy of the President's Budget Request to Congress and sections of the DOE Congressional Budget Request pertaining to the Environmental Restoration and Waste Management Program. After the President has submitted the budget to Congress, DOE shall notify EPA, DHS, DTSC, and the RWQCB in a timely manner of any differences between the estimates submitted in accordance with Paragraph 15.2(b) above and the actual dollars that were included in the President's budget submission to Congress.

e. Whenever DOE proposes a reprogramming, requests a supplemental appropriation, or intends to transfer funds in a manner that is likely to or will affect the ability of DOE to conduct activities under this Agreement, DOE shall notify EPA, DHS, DTSC, and the RWQCB of its plans sixty (60) days in advance of such a transfer of funds or the submittal of the reprogramming or supplemental appropriation request to Congress and shall consult with the team about the effect that such an action is likely to or will have on the activities required under the Agreement.

15.3 In accordance with CERCLA Section 120(e)(5)(B), 42 U.S.C. § 9620(e)(5)(B), the Department of Energy shall include, in its annual report to Congress, the specific cost estimates and

budgetary proposals associated with the implementation of this Agreement.

15.4 No provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted. EPA and DOE agree that any requirement for the payment or obligation of funds by DOE established by the terms of this Agreement shall be subject to the availability of appropriated funds.

15.5 After appropriations have been received from Congress, DOE, EPA, DHS, DTSC, and RWQCB RPMs will review the level of available appropriated funds and the most recent estimated cost of conducting activities required under the Agreement. If funding is requested as described in this Section, and if appropriated funds are not available to fulfill DOE's obligations under this Agreement, the Parties shall attempt to agree upon appropriate adjustments to the work or deadlines set forth in Attachment 1 that require the payment or obligation of such funds. However, before any work or deadlines are postponed, DOE must consider any cost savings measures that would enable it to meet the existing deadlines. If DOE still cannot meet the existing deadlines because of insufficient appropriated funds, DOE, EPA, DTSC, DHS, and RWQCB shall consult to determine the priority for spending the available appropriated funds. The parties shall attempt to reach agreement on the priorities for spending the available appropriated funds, and on whether any adjustments to the deadlines are appropriate, within thirty (30) days. The length of the negotiation may be extended by agreement of the parties. Any party who disagrees with the establishment of priorities for spending the available appropriated funds may invoke the Dispute Resolution procedures of Paragraph 12, but any resolution of such a dispute shall not result in any adjustments to deadlines unless all parties agree. Subject to the terms of this Agreement, if no agreement on appropriate adjustments can be reached, DOE, EPA, DHS, DTSC and the RWQCB reserve the right to initiate any other action, or to take any response action, which would be appropriate absent this Agreement. Initiation of any such actions shall not release the Parties from their other obligations under this Agreement. Acceptance of this paragraph, however, does not constitute a waiver by DOE that its obligations under this Agreement are subject to the provisions of the Anti--Deficiency Act, 31 U.S.C. § 1341. In any action by EPA, DHS, DTSC, or the RWQCB to enforce any provision of this Agreement,

DOE may raise as a defense that its failure or delay was caused by the unavailability of appropriated funds.

15.6 If appropriated funds are available to DOE's Office of Environmental Management (or other relevant DOE office to the extent they are responsible for implementing this Agreement) to fulfill DOE's obligations under this Agreement, DOE shall obligate the funds in amounts sufficient to support the requirements specified in the Agreement unless otherwise directed by Congress or the President, or unless those requirements are modified in accordance with provisions of this Agreement.

15.7 The participation by EPA, DHS, DTSC, and the RWQCB under this Section is limited solely to the aforementioned and is in no way to be construed to allow EPA, DHS, DTSC, or the RWQCB to become involved with the internal DOE budget process except to the extent specifically provided in Paragraph 15, nor to become involved in the Federal budget process as it proceeds from DOE to the office of Management and Budget and ultimately to Congress through the President's submittal. Nothing herein shall affect DOE's authority over its budgets and funding level submissions.

16. EXEMPTIONS

16.1 The obligation of DOE to comply with the provisions of this Agreement may be relieved by:

a. A Presidential order of exemption issued pursuant to the provisions of CERCLA Section 120(j)(1), 42 U.S.C. § 9620(j)(1), or RCRA Section 6001, 42 U.S.C. § 6961; or

b. An order of an appropriate court.

16.2 DHS, DTSC and the RWQCB reserve any statutory right they may have to challenge any Presidential Order relieving DOE of its obligations to comply with this Agreement.

17. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

17.1 The Parties intend to integrate DOE's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C.§ 9601 et seq.; satisfy the corrective action requirements of RCRA Section 3004(u)&(v), 42 U.S.C. § 6924 (u)&(v), for a RCRA permit, and RCRA Section 3008(h), 42 U.S.C. §

6928(h), for interim status facilities; and meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations, to the extent required by CERCLA Section 121, 42 U.S.C. § 9621.

17.2 Based upon the foregoing, the Parties intend that any remedial action selected under this Agreement will be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA (i.e., no further corrective action shall be required). The Parties agree that with respect to releases of hazardous waste covered by this Agreement, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to CERCLA Section 121, 42 U.S.C. § 9621.

17.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties recognize that other activities at the Federal Facility and the LEHR site may require the issuance of permits under Federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to the DOE for hazardous waste management activities at the Federal Facility, the issuing party shall reference and incorporate in a permit condition any appropriate provision, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. The Parties intend that any judicial review of any permit condition which references this Agreement shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

18. REMEDIAL PROJECT MANAGERS

18.1 On or before the effective date of this Agreement, EPA, DOE, DHS, DTSC and the RWQCB shall each designate a Remedial Project Manager and an alternate (each hereinafter referred to as Remedial Project Manager or RPM), for the purpose of overseeing the implementation of this Agreement. The RPMs shall be responsible for assuring proper implementation of the terms of the Agreement. In addition to the formal notice provisions set forth in Section 21 (Notification), to the maximum extent possible, communications among, EPA, DTSC, DHS and the RWQCB on all documents, including reports, comments, and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the RPMs.

18.2 DOE, EPA, DHS, DTSC and the RWQCB may change their respective RPMs. The other Parties shall be notified in writing within five (5) days of the change.

18.3 The RPMs shall meet to discuss progress as described in Subsection 7.5. Although DOE has ultimate responsibility for meeting its respective deadlines or schedule, the RPMs shall assist in this effort by consolidating the review of primary and secondary documents whenever possible, and by scheduling progress meetings to review documents, evaluate the performance of environmental monitoring at the Federal Facility, review progress, discuss target dates for elements of the work to be conducted in the following one hundred and eighty (180) days, resolve disputes, and adjust deadlines or schedules. At least one week prior to each scheduled progress meeting, DOE will provide to the other Parties a draft agenda and summary of the status of the work subject to this Agreement. DOE shall take notes during the meeting and provide them to the other Parties. Unless the RPMs agree otherwise, the notes of each progress meeting, with the meeting agenda and all documents discussed during the meeting (which were not previously provided) as attachments, shall constitute draft meeting notes, will be sent to all RPMs within thirty (30) days after the meeting ends. The other Parties shall have thirty (30) working days to submit comments on the draft notes to DOE. If no comments are received within the thirty (30) days, the draft notes shall become final. Other meetings shall be held more frequently upon request by any RPM. Technical advisors to any Party, including persons working under contract for the Party, may participate in such meetings.

18.4 The authority of the RPMs shall include, but is not limited to:

a. Taking samples and ensuring that sampling and other field work is performed in accordance with the terms of any final work plan and QAPP;

b. Observing, and obtaining photographs and making such other reports on the progress of the work as the RPMs deem appropriate, subject to the limitations set forth in Section 25 (Access to Federal Facility) hereof;

c. Reviewing records, files and documents relevant to the work performed;

d. Determining the form and specific content of the RPM meetings and of progress reports based on such meetings; and

e. Recommending and requesting minor field modifications to the work to be performed pursuant to a final work plan, or in techniques, procedures, or designs used in carrying out such work plan.

18.5 The authority vested by the National Contingency Plan, Section 300.120(b)(1), in the DOE RPM as the On-Scene Coordinator and Remedial Project Manager shall be exercised in consultation with the EPA, DHS, DTSC and RWQCB RPMs and in accordance with the procedures specified in this Agreement.

18.6 Additional work or modification of work shall be handled as follows:

a. Except as provided in Section 7.10 for subsequent modification of final documents, the EPA, DHS, DTSC or RWQCB RPMs may at any time request additional work or modification of work, including minor field modifications, which they believe is necessary to accomplish the purposes of this Agreement.

b. Minor field modifications may be requested and approved orally.

c. Other requests must be provided in writing to the DOE RPM with copies to all other RPMs. DOE agrees to give full consideration to all such requests. DOE may either accept or reject any such requests received, and must do so in writing, with a statement of reasons, within fifteen (15) days of receipt or as otherwise agreed to by the RPMs.

d. If there is no consensus concerning whether or not the work should be conducted, dispute resolution may be invoked in accordance with the procedures set forth in Sections 7 (Consultation) and 12 (Dispute Resolution).

e. Any additional work or modification to work agreed to pursuant to Subsection 18.6(a) shall be completed in accordance with the standards, specifications, and schedule determined or approved by the Parties under the terms of this Agreement.

18.7 The RPMs for the DOE, or a designee acting as the DOE RPM, shall be responsible for day-to-day field activities at the Federal Facility. The DOE RPM or his/her designee shall be present at the Federal Facility or reasonably available to supervise work during all hours work is performed at the Federal Facility pursuant to this Agreement. For all times that such

work is being performed, the DOE RPM shall inform the appropriate officials at the Federal Facility of the name and telephone number of the designated employee responsible for supervising the work.

18.8 The RPMs shall be reasonably available to consult on work performed pursuant to this Agreement and shall make themselves available to each other for the pendency of this Agreement. The absence of EPA, DHS, DTSC, the RWQCB, or DOE RPM from the Facility shall not be cause for work stoppage of activities taken under this Agreement.

19. PERMITS

19.1 To the extent consistent with Sections 121(d) and 121(e)(1) of CERCLA, 42 U.S.C.§§ 9621(d) and 9621(e)(1), and the NCP, response actions called for by this Agreement and conducted entirely on the LEHR Site are exempted from the procedural requirement to obtain a Federal, State, or local permit but must satisfy all the applicable or relevant and appropriate Federal and State standards, requirements, criteria, or limitations which would have been included in any such permit.

19.2 This Section is not intended to relieve DOE from any applicable regulatory requirements, including obtaining a permit, whenever it proposes a response action involving either the movement of hazardous substances, pollutants, or contaminants off the LEHR Site, or the conduct of a response action off the LEHR Federal Facility.

19.3 DOE shall notify EPA, DHS, DTSC and the RWQCB in writing of any permit required for activities off the LEHR Federal Facility as soon as it becomes aware of the requirement. DOE agrees to obtain any permits necessary for the performance of DOE's work under this Agreement. Upon request, DOE shall provide EPA, DHS, DTSC and the RWQCB copies of all such permit applications and other documents related to the permit process. Copies of permits obtained in implementing this Agreement shall be appended to the appropriate submittal or progress report. Upon request by the DOE RPM, the RPMs of EPA, DHS, DTSC and the RWQCB will assist DOE to the extent feasible in obtaining any required permit.

20. QUALITY ASSURANCE

20.1 DOE shall prepare and implement a Quality Assurance Program Plan (QAPP) in accordance with the requirements of the

NCP and applicable EPA guidance. The QAPP shall include designation of a Quality Assurance Officer with the responsibilities set forth in the NCP and applicable EPA guidance. The QAPP and any subsequent revisions, shall be presented in draft to EPA, DTSC, RWQCB, and DHS. Agency review and DOE response to comments on the draft shall be consistent with the terms of Paragraph 7.7 Review and Comment on Draft Documents, as they pertain to secondary documents. The final QAPP must be approved and signed by EPA.

20.2 DOE agrees to use the methods and procedures used in the EPA Contract Laboratory Program and the DTSC Certified Laboratory Program..

20.3 To ensure compliance with the QAPPs, DOE shall authorize access, upon request by EPA, DHS, DTSC or the RWQCB, to all laboratories performing analysis on behalf of DOE pursuant to this Agreement. The Party requesting access to a laboratory shall notify DOE at least 24 hours prior to the time access is required, unless the requesting Party has reason for conducting an unannounced inspection. Within twenty-four (24) hours after conducting an unannounced inspection, the inspecting Party shall provide DOE with written notice of the fact that an unannounced inspection was conducted. Such notice will set out the reasons justifying the fact that the inspection was unannounced.

21.NOTIFICATION

21.1 All Parties shall transmit primary and secondary documents, and comments thereon, and all notices required herein by next day mail, hand delivery, or facsimile. Time limitations shall commence upon receipt.

21.2 Notice to the individual Parties pursuant to this Agreement shall be sent to the addresses specified by the Parties. Initially these shall be as follows:

Kathy Setian
Remedial Project Manager
Mail Stop: SFD 8-1
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105-3901

Duncan Austin
Remedial Project Manager
California Department of Toxic Substances Control

10151 Croydon Way, Suite 3
Sacramento, CA 95827-2106

Susan Timm
Remedial Project Manager
Central Valley Regional Water Quality Control Board
3443 Routier Road, Suite A
Sacramento, CA 95827-3098

Pete Patel
Remedial Project Manager
California Department of Health Services RHB
P.O. Box 942732 MS 178
Sacramento, California 94234-7320

For next day mail please send to:

Pete Patel
Remedail Project Manager
California Department of Health Services RHB
601 N. 7th Street
Sacramento, CA. 95814

and,

Susan Fields
Remedial Project Manager
U. S. Department of Energy
Oakland Operations Office
1301 Clay Street #700N
Oakland, CA 94612-5208

21.3 All routine correspondence may be sent via first class mail to the above addressees.

22. DATA AND DOCUMENT AVAILABILITY

22.1 Each Party shall make all sampling results, test results or other data or documents generated through the implementation of this Agreement available to the other Parties upon request. All requested quality assured data shall be supplied within ninety (90) days of its collection. If the quality assurance procedure is not completed within ninety (90) days, data or results without quality assurance shall be submitted within ninety (90) days and the requested quality assured data or results shall be submitted as soon as they become available, but no later than one hundred and twenty (120) days. Within one hundred and twenty (120) days after the last sampling

event of a group of samples, DOE shall, at a minimum, provide a quality assured data summary report citing all results which initially measured above detection. DOE shall provide all quality assured data after the last sampling event of a group of samples within one hundred and twenty (120) days. For the purpose of this paragraph, a "group of samples" is intended to mean: (1) an established round of quarterly or monthly samples collected from a specified network of locations; or (2) a discrete sampling episode. Where at all possible it is the intent of the Parties that the data provided shall have been verified through the sampling Party's quality assurance validation program prior to release. Where a Party to this Agreement requests data that has not been so validated, the sampling Party shall provide the requesting Party with the raw data within ninety (90) days of receipt of the request, unless otherwise agreed upon by the requesting and providing Parties. Such raw data shall be appropriately marked to clarify that the results have not been validated.

22.2 Within ten (10) days of receiving a request for a sampling schedule from another Party, DOE shall provide the requesting Party a current schedule for sampling to be conducted by DOE or its contractors at the Federal Facility. The schedule shall show the proposed locations, approximate dates, and types of sampling. Whenever EPA, DHS, DTSC or the RWQCB plan to conduct sampling activities, the sampling Party's RPM shall notify the other Parties' RPMs not less than 10 days in advance of any sample collection. If it is not possible to provide 10 days prior notification, the sampling Party's RPM shall notify the other RPMs as soon as possible after becoming aware that samples will be collected. Each Party shall allow, to the extent practicable, split or duplicate samples to be taken by the other Parties or their authorized representatives.

23. RELEASE OF RECORDS

23.1 The Parties may request of one another access to or a copy of any record or document relating to this Agreement or the Environmental Restoration Program. If the Party that is the subject of the request (the originating Party) has the record or document, that Party shall provide access to or a copy of the record or document; provided, however, that no access to or copies of records or documents need be provided if they are subject to claims of attorney-client privilege, attorney work product, deliberative process, enforcement confidentiality, properly classified for national security under law or executive order, or if their release is otherwise prohibited under Federal Law.

23.2 Records or documents identified by the originating Party as confidential pursuant to non-disclosure provisions of the Freedom of Information Act, 5 U.S.C.§ 552, or the California Public Records Act, § 6250 et seq. of the California Government Code, other than those specified in Section 23.1, shall be released to the requesting Party, provided the requesting Party states in writing that it will not release the record or document to the public without prior approval of the originating Party after opportunity to consult and, if necessary, contest any preliminary decision to release a document in accordance with applicable statutes and regulations. Records or documents which are provided to the requesting Party and which are not identified as confidential may be made available to the public without further notice to the originating Party.

23.3 No Party will assert one of the above exemptions, including any available under the Freedom of Information Act or California Public Records Act, even if available, if no governmental interest would be jeopardized by access or release as determined solely by the originating Party.

23.4 Subject to CERCLA Section 120(j)(2), 42 U.S.C. § 9620(j)(2), any documents required to be provided by Section 7 (Consultation), and analytical data available under Section 22 (Data and Document Availability) will always be releasable and no exemption shall be asserted by any Party.

23.5 This Section does not change any requirement regarding press releases in Section 26 (Public Participation, Community Relations, and Administrative Record).

23.6 A determination not to release a document for one of the reasons specified above shall not be subject to Section 12 (Dispute Resolution). Any Party objecting to another Party's determination may pursue the objection through the determining Party's appeal procedures.

24. PRESERVATION OF RECORDS

Despite any document retention policy to the contrary, DOE shall preserve, during the pendency of this Agreement and for a minimum of ten (10), years after its termination, all records and documents contained in the Administrative Record and any additional records and documents retained in the ordinary course of business which relate to the actions carried out pursuant to this Agreement. After this ten (10) year period, each Party shall notify the other Parties at least forty-five (45) days

prior to destruction of any such documents. Upon request by any Party, the requested Party shall make available such records or copies of any such records unless withholding is authorized and determined appropriate by law.

25. ACCESS TO THE FEDERAL FACILITY

25.1 Without limitations on any authority conferred on EPA, DHS, DTSC or the RWQCB by statute or regulation, EPA, DHS, DTSC, the RWQCB, or their authorized representatives, shall be allowed to enter the LEHR Federal Facility for purposes consistent with the provisions of the Agreement for as long as, and to the extent that, DOE continues to exercise control over the LEHR Federal Facility. Such access shall include, but not be limited to, reviewing the progress of DOE in carrying out the terms of this Agreement; ascertaining that the work performed pursuant to this Agreement is in accordance with approved work plans, sampling plans and QAPPs; and conducting such tests as EPA, DHS, DTSC, the RWQCB, or the RPMs deem necessary.

25.2 When possible, EPA, DHS, DTSC and the RWQCB shall provide reasonable notice to DOE RPM prior to visits to the Federal Facility. If EPA, DHS, DTSC or the RWQCB request access in order to observe a sampling event or other work being conducted pursuant to this Agreement, and access is denied or limited, DOE agrees to reschedule or postpone such sampling or work if EPA, DHS, DTSC or the RWQCB so requests, until such mutually agreeable time when the requested access is allowed. All Parties with access to the Federal Facility pursuant to this Section shall comply with all applicable health and safety plans.

25.3 DOE shall use its best efforts, including its authority under CERCLA Section 104, 42 U.S.C. § 9604, to obtain access agreements from the University of California at Davis (owner of the land on which the LEHR Federal Facility is located) and if necessary, the owners of the other properties adjacent to the LEHR Federal Facility that provide reasonable access for DOE, the EPA, DHS, DTSC, the RWQCB and their representatives. DOE may request the assistance of EPA, DHS, DTSC or the RWQCB in obtaining such access, and upon such request, EPA, DHS, DTSC or the RWQCB will use its (their) best efforts to obtain the required access. In the event that DOE is unable to obtain such access agreements, DOE shall promptly notify EPA, DHS, DTSC and the RWQCB.

25.4 DOE shall use its best efforts to ensure that any access agreements provide for the continued right of entry for

all Parties for the performance of the remedial activities both on and off the LEHR Federal Facility.

25.5 Nothing in this Section shall be construed to limit EPA's, DHS, DTSC's or the RWQCB's right of access as provided in CERCLA Section 104(e), 42 U.S.C. § 9604(e), and California Health and Safety Code Section 25185, except as that right may be limited by 42 U.S.C. § 9620(j)(2), Executive Order 12580, or other applicable national security regulations or Federal law.

26. PUBLIC PARTICIPATION, COMMUNITY RELATIONS, AND ADMINISTRATIVE RECORD

26.1 The Parties agree that any proposed removal actions, remedial action alternatives and plan(s) for remedial action at the Federal Facility arising out of this Agreement shall comply with the administrative record and public participation requirements of CERCLA Sections 113(k) and 117, 42 U.S.C. §§ 9313(k) and 9617, relevant community relations provisions in the NCP, and EPA guidance including the administrative record requirements in 40 CFR § 300.800 and the "Final Guidance on Administrative Records for Selecting CERCLA Response Actions," OSWER Directive 9833.3A-1, 12/3/90 (or current version). Additionally, State statutes and regulations, including California Health and Safety Code 25356.1 and 25358.7 shall be followed. The provisions of this Section shall be carried out in a manner consistent with, and shall fulfill the intent of, Section 17 (Statutory Compliance RCRA/CERCLA Integration).

26.2 DOE shall implement the community relations plan (CRP) addressing the environmental and public participation activities. The CRP shall fully describe how DOE will meet the requirements of CERCLA Sections 113 (k) and 117, as well as other applicable State and Federal guidelines and requirements.

26.3 DOE shall establish and maintain at a place, at or near the Federal Facility, an administrative record which is freely accessible to the public. In addition, DOE shall maintain an information repository in Davis, which shall contain at a minimum a copy of the index to the administrative record, a copy of each primary document, and other documents of general interest related to the activities conducted under this Agreement. The administrative record shall provide the documentation supporting the selection of each response action. A copy of each document placed in the administrative record will be provided by DOE to other parties upon request. The administrative record shall be established and maintained in accordance with relevant provisions

in CERCLA, the NCP, and official EPA guidance. The index for the administrative record developed by DOE shall be updated and provided to the other Parties on at least an annual basis.

26.4 Except in case of an emergency, any Party issuing a press release with reference to any of the work required by this Agreement shall advise the other Parties of such press release and the contents thereof, at least 48 hours prior to issuance.

27. AMENDMENT OR MODIFICATION OF AGREEMENT

27.1 This Agreement can be amended or modified solely by a formal written amendment or modification signed by all the Parties. Such amendments or modifications may be proposed by any Party and shall be effective the third business day following the day the last Party to sign the amendment or modification sends its notification of signing to the other Parties. The Parties may agree to a different effective date.

28. TERMINATION OF THE AGREEMENT

28.1 The provisions of this Agreement shall be deemed satisfied and terminated upon receipt by DOE of written notice from EPA, with concurrence of DHS, DTSC and the RWQCB, that DOE has demonstrated that all the terms of this Agreement have been completed. If EPA denies or otherwise fails to grant a termination notice within ninety (90) days of receiving a written DOE request for such notice, EPA shall provide a written statement of the basis for its denial and describe DOE actions which, in the view of EPA, would be a satisfactory basis for granting a notice of completion. Such denial shall be subject to dispute resolution.

28.2 This provision shall not affect the requirements of Section 24 (Preservation of Records).

29. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

29.1 In consideration for DOE's compliance with this Agreement, and based on the facts and circumstances known to EPA, DHS, DTSC and the RWQCB as of the effective date of this Agreement, EPA, DHS, DTSC and the RWQCB hereby agree not to initiate any administrative or judicial enforcement action to compel the work specifically required hereunder for so long as this Agreement remains effective and for so long as DOE is in compliance with the requirements of this Agreement. However, in the event that DOE is delayed in fulfilling its obligations as set forth in this Agreement as a result of insufficient

availability of funding, and the Parties are unable to agree to an extension of schedules, as provided for in Section 9 (Extensions), the covenant set forth above shall terminate. These provisions notwithstanding, nothing in this Agreement shall preclude EPA, DHS, DTSC or the RWQCB from exercising any administrative, legal, or equitable remedies available to them to require additional response actions by DOE in the event that: (1)(a) conditions previously unknown or undetected by EPA, DHS, DTSC or the RWQCB arise or are discovered at the LEHR Federal Facility or (b) EPA, DHS, DTSC or the RWQCB receive additional information not previously available concerning the premises which they employed in reaching this Agreement; or (2) the implementation of the requirements of this Agreement are no longer protective of human health, welfare, or the environment. To the extent deemed appropriate by EPA, DHS, DTSC or the RWQCB after consultation with DOE, such additional response actions may be implemented through the amendment process described in Section 27 of this Agreement, or in accordance with Section 7 of this Agreement addressing modification of final documents. If the parties cannot agree to an amendment, the Dispute Resolution provisions of Paragraph 12 can be invoked by any party.

29.2 Notwithstanding this Section, or any other Section of this Agreement, DHS, DTSC and the RWQCB shall retain any statutory right they may have to obtain judicial review of any final decision of the EPA on selection of remedial action pursuant to any authority DHS, DTSC and the RWQCB may have under CERCLA, including Sections 121(e)(2), 121(f), 310, and 113, 42 U.S.C. §§ 9621(e)(2), 9621, 9659, and 9613.

29.3 Nothing in this Agreement should be construed to be a release of liability DOE may have under CERCLA for the LEHR Site as listed on the National Priorities List and referenced in Paragraph 5.1, beyond work performed pursuant to this agreement.

29.4 In the event of any administrative or judicial action other than an action to enforce this Agreement by EPA, DHS, DTSC, or RWQCB, all parties reserve all rights, claims and defenses available under law.

30. OTHER CLAIMS

30.1 Except as set forth in Section 29 (Covenant Not To Sue And Reservation Of Rights), nothing in this Agreement shall constitute or be construed as a bar or release from any claim, cause of action or demand in law or equity by or against any person, firm, partnership or corporation not a signatory to this

Agreement for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous waste, pollutants, or contaminants found at, taken to, or taken from the LEHR Federal Facility or the LEHR site. Unless specifically agreed to in writing by the Parties, EPA, DHS, DTSC and the RWQCB shall not be held as a party to any contract entered into by DOE to implement the requirements of this Agreement.

30.2 This Agreement shall not restrict EPA, DHS, DTSC or the RWQCB from taking any legal or response action for any matters not part of the subject matter of this Agreement.

31. EPA EXPENSES

EPA shall take all necessary steps and make efforts to obtain timely funding to meet its obligations under this Agreement. Notwithstanding any other provision of this Agreement, in the event that EPA, in consultation with DOE, DHS, TSC and the RWQCB, determines that sufficient funds have not been appropriated to meet any commitments after Fiscal Year 1999 established by this Agreement, EPA may terminate this Agreement by written notice to DOE, DHS, DTSC and the RWQCB.

32. REIMBURSEMENT OF DTSC, DHS AND RWQCB EXPENSES

32.1 DOE agrees to request funding and reimburse DHS, DTSC and the RWQCB, subject to the conditions and limitations set forth in this Section, and subject to Section 15 (Funding), for reasonable costs they incur, not inconsistent with the NCP, in providing services in direct support of DOE's environmental restoration activities pursuant to this Agreement at the Federal Facility, beginning October 1, 1999.

32.2 Reimbursable costs shall consist only of actual expenditures required to be made and actually made by DHS, DTSC and the RWQCB in providing the following assistance involving the Federal Facility:

(a) Timely technical review and substantive comment on reports or studies which DOE prepares in support of its response actions and submits to DHS, DTSC and the RWQCB, or any other technical review in support of this Agreement.

(b) Identification and explanation of unique State requirements applicable to federal facilities in performing re-

sponse actions, especially State applicable or relevant and appropriate requirements (ARARs).

(c) Field visits to ensure investigations and cleanup activities are implemented in accordance with appropriate DHS, DTSC or RWQCB, requirements, or in accordance with agreed-upon conditions between DHS, DTSC the RWQCB and DOE that are established in the framework of this Agreement.

(d) Support and assistance to DOE in the conduct of public participation activities in accordance with Federal and State requirements for public involvement.

(e) Preparation for and participation in technical meetings.

(f) Other services specified in this Agreement.

32.3 Within one hundred twenty (120) days after the end of each quarter of the Federal fiscal year, DHS, DTSC and the RWQCB shall submit to DOE an accounting of all State costs actually incurred during that quarter in providing direct support services under this Section. Such accounting shall be accompanied by cost summaries and be supported by documentation which meets Federal auditing requirements. The summaries will set forth employee-hours and other expenses by major type of support service. All costs submitted must be for work directly related to implementation of this Agreement and, not inconsistent with either the NCP or the requirements as described in OMB Circulars A-87 (Cost Principles for State and Local Governments) and A-128 (Audits for State and Local Cooperative Agreements with State and Local Governments) and Standard Forms 424 and 270. The Department of Energy has the right to audit cost reports used by DHS, DTSC and the RWQCB to develop the cost summaries. Before the beginning of each fiscal year, DHS, DTSC and the RWQCB shall supply a budget estimate of what they plan to do in the next year in the same level of detail as the billing documents.

32.4 Except as allowed pursuant to Subsection 32.5 below, within ninety (90) days of receipt of the accounting provided pursuant to Subsection 32.3 above, DOE shall reimburse DHS, DTSC and the RWQCB in the amount set forth in the accounting.

(a) DOE shall reimburse the RWQCB for costs specified in this Section in the form of a check made payable to the State Water Resources Control Board/Cleanup and Abatement Acct. Each check shall reference DOE/Federal Facility at the LEHR/Old Davis

Landfill Site. DOE shall send each check to:

State Water Resources Control Board
Division of Administrative Services
Accounting Office
P.O. Box 100
Sacramento, CA 95812

(b) DOE shall reimburse DTSC for costs specified in this Section in the form of a check made payable to the Department of Toxic Substances Control. Each check shall reference DOE/Federal Facility at the LEHR/Old Davis Landfill Site. DOE shall send each check to:

Department of Toxic Substances Control
400 P Street
P.O. Box 806
Sacramento, CA 95812-0806
ATTN: Toxics Cost Recovery

(c) DOE shall reimburse DHS for costs specified in this Section in the form of a check made payable to the Department of Health Services. Each check shall reference DOE/Federal Facility at the LEHR/Old Davis Landfill Site. DOE shall send each check to:

Department of Health Services
714 P Street
P.O. Box 942732
Sacramento, CA 94234
ATTN: Accounting

32.5 In the event DOE contends that any of the costs set forth in the accounting provided pursuant to Subsection 32.3 above are not properly payable, the matter shall be resolved through a bilateral dispute resolution process set forth at Subsection 32.10 below.

32.6 The amount of reimbursable costs payable under this Agreement shall be as follows. Any invoiced amounts exceeding the yearly cap at the end of the first year's cap shall roll over to the second year. Any invoiced amounts exceeding the yearly cap at the end of the second year shall roll over and be included in the negotiation of reimbursable costs for subsequent years pursuant to Subsection 32.7.

(a) The amount of reimbursable costs payable to the RWQCB

for work under this Agreement shall not exceed $100,000.00 annually.

(b) The amount of reimbursable costs payable to DTSC for work under this Agreement shall not exceed $100,000.00 annually.

(c) The amount of reimbursable costs payable to DHS for work under this Agreement shall not exceed $100,000.00 annually.

32.7 Prior to the end of Fiscal Year 1999, the amount of reimbursable costs for the subsequent years shall be renegotiated in accordance with any then existing Agreement on the subject between DOE, DHS, DTSC and the RWQCB.

32.8 If no such Agreement has been reached, DOE, DHS, DTSC and the RWQCB agree to negotiate in good faith a cap for future reimbursable costs. If DOE, DHS, DTSC and the RWQCB are unable to reach agreement after such negotiations, they shall refer any unresolved issues to dispute resolution in accordance with Subsection 32.10.

32.9 DHS, DTSC and the RWQCB agree to seek reimbursement for their expenses under this Agreement solely through the mechanics established in this Section, and reimbursement provided under this Section shall be in settlement of any claims for DHS, DTSC or RWQCB response costs relative to DOE's environmental restoration activities at the LEHR site, except that DHS, DTSC and RWQCB reserve from this limitation their claims for legal costs incurred in the review and negotiation of this Agreement. DHS, DTSC and RWQCB retain all of their legal and equitable remedies to recover these legal costs to the extent that these costs are not reimbursed by DOE through funding mechanisms in place prior to this agreement.

32.10 Notwithstanding Section 12 of this Agreement, this subsection shall govern any dispute between DOE, DHS, DTSC and the RWQCB regarding the application of this Section or any matter controlled by this Section including, but not limited to, allowable expenses and limits on reimbursement.

(a) The Department of Energy, the DHS, RWQCB or DTSC Remedial Project Managers shall be the primary point of contact to coordinate resolution of disputes relevant to their own reimbursement under this Subsection.

(b) If DOE, DHS, RWQCB and DTSC Remedial Project Managers are unable to resolve a dispute within fifteen (15) business

days, the matter shall be referred to the DRC representatives for DOE, DHS, DTSC and the RWQCB (identified in Subsection 12.4), as soon as practicable, but in any event within ten (10) business days after the dispute is elevated by the RPMs.

(c) Should the representatives designated in this Subsection be unable to resolve the dispute within ten (10) days, the matter shall be elevated to the SEC representatives for DOE, DHS, DTSC, and the RWQCB (identified in Subsection 12.6), who will render a written report on the results of their efforts to resolve the dispute in ten (10) business days.

(d) It is the intention of DOE, DHS, DTSC and the RWQCB that all disputes shall be resolved strictly in accordance with this subsection; however, the use of informal dispute resolution, including use of mediation and arbitration techniques, is encouraged. In the event the representatives designated in this subsection are unable to resolve the dispute, DHS, DTSC and the RWQCB retains all of its legal and equitable remedies to recover its costs.

32.11 Nothing in this Agreement shall be construed to constitute a waiver of any claims by DHS, DTSC and the RWQCB for any expenses incurred prior to the effective date of this Agreement.

32.12 No funds are obligated by this Agreement. Actual obligation of federal funds and payment of reimbursable costs will be made pursuant to separate grants between DOE and the SWRCB on behalf of the RWQCB, and DOE and DTSC, and DOE and DHS, respectively. Subject to the availability of funds, such grants will be awarded upon execution of this Agreement by DHS, RWQCB and DTSC. The grants will contain all the agreements between the parties with respect to reimbursement as set forth in this Section 32 and will be in conformance with federal rules and regulations governing financial assistance activities. No provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

33. DTSC, DHS and RWQCB PARTICIPATION CONTINGENCY

33.1 If DHS, DTSC or the RWQCB fail to sign this Agreement within thirty (30) days of notification of the signature by both EPA and DOE, this Agreement will be interpreted as if that State agency were not a Party and any reference to that State agency in this Agreement will have no effect.

33.2 In the event that DHS, DTSC and the RWQCB do not sign this Agreement:

a. DOE agrees to transmit all primary and secondary documents to appropriate State and local agencies at the same time such documents are transmitted to EPA; and,

b. EPA intends to consult with the appropriate State and local agencies with respect to the above documents and during implementation of this Agreement.

34. EFFECTIVE DATE AND PUBLIC COMMENT

34.1 The provisions of this Section shall be carried out in a manner consistent with, and shall fulfill the intent of Section 17 (Statutory Compliance/RCRA-CERCLA Integration).

34.2 Within fifteen (15) days after both DOE and EPA execute this Agreement, DOE shall announce the availability of this Agreement to the public for a forty-five (45) day period of review and comment, including publication in at least two major local newspapers of general circulation. Comments received shall be transmitted to the other Parties within seven (7) days of the end of the comment period. The Parties shall have fourteen (14) days after receipt to review such comments and shall meet within seven (7) days after the 14-day review period to either:

a. Determine that this Agreement should be made effective in its present form, in which case EPA shall promptly notify all Parties in writing that the Agreement remains in effect without revision; or

b. If the determination in Subsection 34.2(a) is not made, the Parties shall meet to discuss and agree upon any proposed changes within thirty (30) days of the close of the public comment period. The Parties will seek to modify the Agreement pursuant to Section 27(Amendment or Modification of Agreement). Upon resolution of any proposed changes, the modified Agreement, shall become effective on the date that it is last signed by EPA. Until the modified Agreement becomes effective, the Agreement currently in effect shall remain in effect.

c. In the event the Parties cannot agree to modify this Agreement to reflect public comments pursuant to 34.2(b), the Parties shall submit their written notices of position, concerning those provisions in dispute, directly to the Dispute

Resolution Committee. Upon resolution of any proposed changes, the Agreement, as modified, shall be re-executed by the Parties, and become effective on the date that it is last signed by EPA. If the Dispute Resolution Committee is unable to resolve the dispute within twenty-one (21) days, the dispute shall be elevated to the Senior Executive Committee for resolution, who shall have twenty-one (21) days to resolve the dispute. Until the modified Agreement becomes effective, the Agreement currently in effect shall remain in effect.

d. In the event the Parties cannot agree to modify this Agreement to reflect public comments pursuant to either 34.2(b) or 34.2(c) and the contemplated modification will impose substantial additional obligations on a Party, the Party so obligated may withdraw from this Agreement. Withdrawal by DOE shall not alter the obligation of DOE to comply with CERCLA Section 120, 42 U.S.C. § 9620, or limit the enforcement powers available to EPA, DHS, DTSC or the RWQCB.

34.3 Any response action under way upon the effective date of this Agreement shall be subject to oversight by the Parties.

35. CLOSEOUT OF DOE ACTIVITIES AT THE LEHR FEDERAL FACILITY

35.1 DOE is in the process of closing-out the contract under which research work had been conducted at LEHR Federal Facility and no longer uses the structures and improvements that constitute the Federal Facilities for DOE research. However, DOE continues to use some of the structures and improvements comprising the Federal Facility in connection with DOE's cleanup activities. Pursuant to the contractual arrangement under which DOE research was conducted at the LEHR Federal Facility, DOE has in the past, and may from time to time in the future pursuant with applicable requirements including CERCLA section 120, 42 U.S.C. 9620, release structures and improvements comprising the LEHR Federal Facility to the University. Except as otherwise provided by law, release of the structures and improvements of the LEHR Federal Facility will not affect DOE's obligation to comply with terms of this Agreement and to specifically provide for the following:

a. Continuing rights of access for EPA, DHS, DTSC and the RWQCB to the Federal Facility, in accordance with the terms and conditions of Section 25 (Access to the Federal Facility), to the extent that DOE can reasonably provide such rights;

b. Availability of a Remedial Project Manager to fulfill the terms and conditions of the Agreement;

c. Designation of alternate DRC members as appropriate for the purposes of implementing Section 12 (Dispute Resolution); and

d. Adequate resolution of any other problems identified by the Remedial Project Managers regarding the effect of facility closure on the implementation of this Agreement.

35.2 Closeout of contract activities shall not constitute a Force Majeure under Section 10 (Force Majeure), nor will it constitute good cause for extensions under Section 9 (Extensions), unless mutually agreed by the Parties.

35.3 With respect to future decommissioning activities, the responsibilities of DOE and EPA shall be consistent with the joint EPA and DOE "Policy on Decommissioning Department of Energy Facilities Under CERCLA". Specifically, DOE is responsible for making a determination as to whether hazardous substances within a building may pose a substantial threat of release to the environment. EPA must agree on this determination. This determination is subject to dispute resolution by either party. If a positive determination (of a threat) is made, DOE shall conduct decommissioning activities as a non-time critical removal action. In this case, both the EE\CA and the Removal Work Plan would be considered as primary documents, and the Action Memo and the Completion Report would be secondary documents.

36. APPENDICES AND ATTACHMENTS

36.1 Attachments shall be integral and enforceable parts of this Agreement. They shall include the most current versions of:

a. Deadlines for Completion of work perfomed under this Agreement and the Records of Decision;

b. Final Primary and Secondary Documents.

36.2 Appendices shall be for information only and shall not be enforceable parts of this Agreement. The information in these Appendices is provided to support the initial review and comment upon this Agreement, and is only intended to reflect the, conditions known at the signing of this Agreement. None of the facts related therein shall be considered admissions by, nor are they legally binding upon any Party with respect to any claims unrelated to, or persons not a Party to, this Agreement. They shall include:

a. Memorandum of Agreement Between DOE and UC including a

map of the LEHR Site (see also Subsection 5.10)

37. WITHDRAWAL FROM THE AGREEMENT

DHS, DTSC or the RWQCB may withdraw as a Party to this Agreement by providing 60 days written notice of its withdrawal to each of the remaining parties. Such withdrawal by DHS, DTSC or the RWQCB shall terminate all of the rights and obligations the withdrawing Party may have under this Agreement; provided, however, that any actions taken under or pursuant to this Agreement by the withdrawing Party prior to its withdrawal shall continue to have full force and effect as if the withdrawing Party were still a Party to this Agreement.

Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

IT IS SO AGREED:

_____	_____
Date	James Turner, Manager Oakland Operations Office U.S. Department of Energy

Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

IT IS SO AGREED:

_____	_____
Date	Regional Administrator United States Environmental Protection Agency, Region 9

Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

IT IS SO AGREED:

_____ _____

Date

Dorothy Rice
Deputy Director
Site Mitigation Program
California Department of
Toxic Substances Control

Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

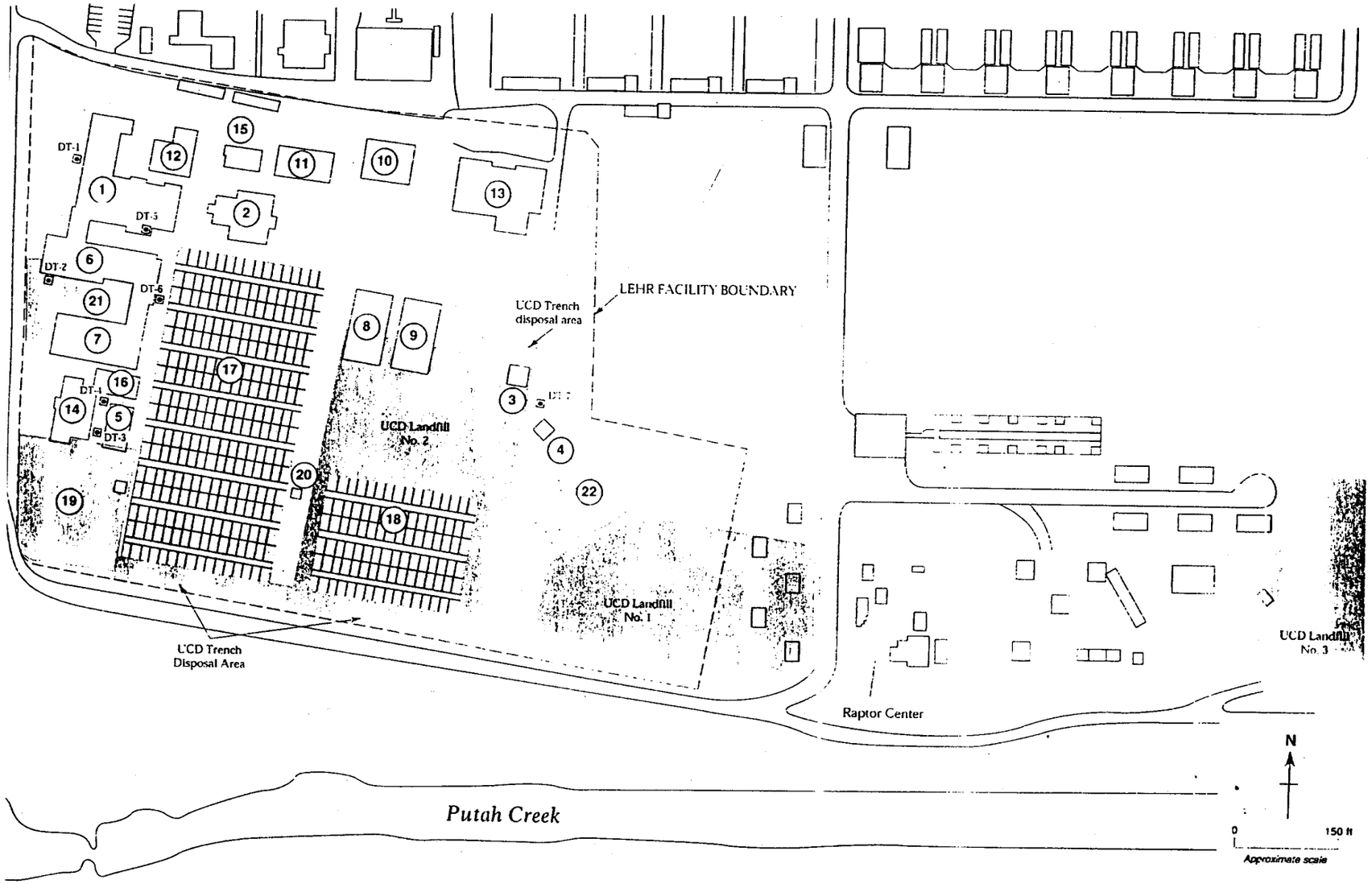
IT IS SO AGREED:

Date	Executive Officer Central Valley Regional Water Quality Control Board

Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

IT IS SO AGREED:

_____	_____
Date	Director California Department of Health Services



ntamination Areas, LEHR/Old Campus Landfill, UC Davis, California

Weiss Associates

06-02-99

ATTACHMENT I

Schedule for submission of draft primary and secondary documents:

Document	Date	1=primary, 2=secondary
RI/FS Work Plan	9/94	NA
Community Relations Plan	4/95	NA
Ecological Scoping Assessment for the DOE Areas	8/97	NA
Quality Assurance Project Plan	2/98	NA
EE/CA for SWT, Ra/Sr and domestic tanks	2/98	NA
Sampling Plan/Standard Operating Procedures	7/98 / 4/98	NA
Removal Work Plan for SWT	4/98	NA
DOE/UCD Data Integration Strategy Memorandum[1]	3/15/99	2
Removal Work Plan for Ra/Sr Treatment Area	3/19/99	1
SW Trenches 1998 Removal Action Confirmation report[2]	6/30/99	2
Dog Pens EE/CA (Western and Eastern, if applicable)	6/15/00	1
Removal Work Plan for domestic tanks	2/15/01	1
Removal Work Plan for Dog Pens	2/15/01	1
Ra/Sr Treatment Area Confirmation Report[2]	9/28/01	2
Domestic Tanks Confirmation Report[2]	2/15/02	2
Western Dog Pens Confirmation Report[2]	As scheduled in the EE/CA, but NLT 2/15/02[3]	2
DOE Areas RI	3/14/02	1
DOE Areas Site-Wide Risk Assessment Input[3]	7/15/02	1
DOE Areas FS	90 days after approval of the SWRA[4] by the RPM's	1
DOE Proposed Plan	60 days after approval of the DOE Areas FS by the RPM's	1
DOE Areas ROD	60 days after approval of the DOE Proposed Plan by the RPM's	1

1. This document will develop Data Management Protocols for integration of data from DOE and UC.

2. To be written in accordance with the section on "OSC Reports" in "Superfund Removal Procedures, Removal Response Reporting: POLREPs and OSC Reports". This includes an analysis of the effectiveness of the removal action at achieving its objectives, documentation of any field modifications to the Removal Work Plan, and a plan for O&M.

3. This schedule assumes a $1 Million removal action alternative for the Western Dog Pens.

4. The Site-Wide Risk Assessment (SWRA) will be completed by UC Davis, per the MOA between DOE and UC Davis. DOE will provide input to the SWRA for the DOE Areas to UC Davis.