MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF ENERGY AND THE REGENTS OF THE UNIVERSITY OF CALIFORNIA REGARDING THE INVESTIGATION, REMEDIATION, LONG-TERM SURVEILLANCE, MAINTENANCE, AND CONTINGENT REMEDIATION OF THE LABORATORY FOR ENERGY-RELATED HEALTH RESEARCH AT THE UNIVERSITY OF CALIFORNIA, DAVIS

INTRODUCTION

Whereas, the United States Department of Energy ("DOE") and The Regents of the University of California ("the University") (referred to collectively as "the Parties") entered into Contract DE-AC03-76SF00472 ("the Contract") for the operation of the Laboratory for Energy-Related Health Research ("LEHR"); and

Whereas, the research at LEHR was initially performed under Project Agreement Nos. 4 and 6 of Contract No. AT(l1-1)-10, which was consolidated under Contract No. AT(04-3)-472 (June 29, 1965), which was thereafter redesignated Contract No. E(04-3)-472 by Contract Modification 32 (June 26, 1975), which was thereafter redesignated Contract EY-76-C-03-0472 by Contract Modification 43 (January 10, 1977), which was thereafter redesignated Contract DE-AM03-76SF00472 by Contract Modification No. A057 (April 18, 1979), and which was finally redesignated Contract DE-AC03-76SF00472 by Contract Modification No. A095 (August 9, 1984); and

Whereas, the University is the owner of the land upon which the LEHR Facility is located and gave DOE the right to occupy the land and to build improvements thereon in an Occupancy Agreement dated June 29, 1965 ("Occupancy Agreement"); and

Whereas, the Parties entered into a Memorandum of Agreement ("MOA") dated August 29, 1988 (amended on September 29, 1989), which outlined the University's use of the

buildings, structures, facilities, and other improvements owned by DOE ("the DOE Improvements") at the LEHR Facility under the Occupancy Agreement; and

Whereas, the Parties entered into an MOA for environmental restoration and decontamination dated March 13, 1990 (amended on February 17, 1993, and again on November 30, 1993, and again on June 18, 1997, referred to collectively as the "Prior MOA"), which outlined the roles and responsibilities of the Parties regarding the investigation and remediation of the LEHR Facility and other areas; and

Whereas, DOE has investigated the LEHR Facility, the University Disposal Areas, University-Affected Groundwater and DOE-Affected Groundwater (as defined in Article I.C), and portions of the Adjacent Areas, and has begun remediating portions of the LEHR Facility; and

Whereas, the University has investigated the LEHR Facility, the University Disposal Areas, University-Affected Groundwater, DOE-Affected Groundwater, and portions of the Adjacent Areas, and has begun remediating portions of the University Disposal Areas and University-Affected Groundwater and is continuing to investigate some of these areas; and

Whereas, the Parties wish to replace the Prior MOA with a new MOA ("Agreement") that establishes a new agreement between the Parties regarding the investigation, remediation, long-term surveillance and maintenance, and contingent remediation ("IR & LTSMCR") of the LEHR Facility, the University Disposal Areas, University-Affected Groundwater, and DOE-Affected Groundwater, as well as future LEHR Facility redevelopment by the University.

Now, therefore, the Parties agree as follows:

ARTICLE I − PURPOSE AND SCOPE

A. The purpose of this Agreement is to allocate between the Parties in an equitable and efficient manner activities necessary to perform future IR & LTSMCR consistent with each Party's Record of Decision ("ROD") for the LEHR Facility, the University Disposal

Areas, University-Affected Groundwater, and DOE-Affected Groundwater, and to provide access to DOE to complete IR & LTSMCR activities as required pursuant to the DOE ROD, and to provide the means to integrate DOE's IR & LTSMCR activities with future University of California, Davis ("UC Davis"), remediation, site maintenance, and redevelopment projects.

B. The University and DOE intend this Agreement to be a settlement of their responsibilities and liabilities to each other for the implementation of the IR & LTSMCR of the LEHR Facility. Neither the fact of execution of this Agreement nor any of the terms of this Agreement is or shall be construed as an admission of liability or fact by the University or DOE.

C. The following definitions apply in this Agreement:

1. The term "LEHR Facility" means the following areas within the designated boundary shown in Figure 1: Maintenance Shop (H-212); Main Building (H-213); the 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); the cobalt-60 irradiation field; the southwest trenches; the strontium-90 and radium-226 leach fields and the radium-226 waste tanks; the dog pens and associated soils and gravel; the seven septic tanks; the Imhoff storage tanks; and the DOE disposal box.

Figure 1. LEHR Facility/Old Campus Landfill, UC Davis, California

2. The term "University Disposal Areas" means the following areas shown in Figure 1: University landfill cells beneath the LEHR Facility; Landfills 1, 2 (exclusive of dog pens), and 3; the 49 waste burial holes; and the UC Davis eastern and southern disposal trenches. The Parties agree that the areas specifically listed above as "University Disposal Areas" are not part of the LEHR Facility for purposes of this Agreement even though some of them are partially or entirely within or beneath the designated boundary shown in Figure 1.

3. The term "DOE-Affected Groundwater" means groundwater containing contaminants released from the LEHR Facility as a result of DOE-funded activities. "DOE-Affected Groundwater" excludes groundwater impacted by releases from the University Disposal Areas regardless of whether it is determined that the University Disposal Areas contain waste from the LEHR Facility.

4. The Term "University-Affected Groundwater" means groundwater containing contaminants released from the University Disposal Areas.

5. The term "Adjacent Areas" means the portions of the UC Davis campus and adjacent areas, including, but not limited to, areas shown in Figure 1, other than the LEHR Facility and University Disposal Areas.

6. The term "Contingent Remediation" means an undetermined remedial action implemented by DOE if residual soil contaminants in a DOE area impact groundwater in the future. The response action, if required, will be determined in the future based on available technology, site conditions, and acceptance by the regulatory agencies in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") process.

7. The term “Soils Management Plan” (“SMP”) means the development of a plan describing the nature and extent of contamination remaining on the LEHR Facility. The SMP will describe the following elements: (1) the distribution of soil contaminants in the LEHR Facility, (2) controls and procedures to be used to reduce the potential human risks from exposure associated with contaminated soil and reduce the risk of potential environmental harm, and (3) procedures for the management and disposal of waste soils generated during the maintenance, repair, and construction activities or other activities that may disturb the subsurface soils.

8. The term “Long-Term Surveillance and Maintenance” refers to the mechanisms necessary to ensure both short- and long-term protection of the public and the environment after initial cleanups at facilities in the DOE complex have reached closure. These mechanisms include physical and institutional controls, information management, environmental monitoring, and risk assessment. The DOE Office of Legacy Management, established in 2003, focuses on the long-term performance of remedies and the effects of residual contamination at sites.

ARTICLE II − COOPERATION AND COORDINATION

A. Dispute Resolution

If a dispute arises under this Agreement, the Parties shall use the dispute resolution procedure set forth below.

1. DOE shall give written notice of any decision to invoke the dispute resolution procedure to the Director of Environmental Health & Safety (“EH&S”) at UC Davis, Davis, California 95616. The University shall give written notice of any decision to invoke the dispute resolution procedure to the Team Leader of the Environment Team, DOE Office of Legacy Management, 2597 B ¾ Road, Grand

Junction, Colorado 81503. Either Party may change the designated recipient of the written notice by providing written notification to the other Party.

2. The UC Davis Director of EH&S and the DOE Team Leader of the Environment Team shall then confer in an effort to resolve the dispute. If the Parties cannot resolve the dispute within fifteen (15) days, the dispute shall be raised to the Director of the Office of Site Operations, DOE Office of Legacy Management, and the Associate Vice Chancellor of Safety Services of UC Davis for resolution.

3. The DOE Director of the Office of Site Operations and UC Davis Associate Vice Chancellor of Safety Services shall confer and, within thirty (30) days of receiving the dispute, issue a joint decision resolving the dispute. If the Parties cannot resolve the dispute, the dispute shall be raised to the Deputy Director of the DOE Office of Legacy Management and the UC Davis Vice Chancellor of Administration for resolution.

4. The DOE Deputy Director of the Office of Legacy Management and UC Davis Vice Chancellor of Administration shall confer and, within thirty (30) days of receiving the dispute, issue a joint decision resolving the dispute or referring the matter to mediation. From the date of the joint decision referenced in the previous sentence, the Parties shall select a mediator within fifteen (15) days, exchange mediation statements within (30) days, and set the matter for mediation conference within forty-five (45) days, or later at the request of the mediator.

5. If the Parties are unable to resolve the dispute after the mediation conference referenced in the previous paragraph, either Party may seek any appropriate relief available at law or in equity. Except as otherwise provided in this Agreement, the Parties reserve all of their respective rights under applicable law, this Agreement, the Occupancy Agreement, and the Contract.

B. Health and Safety Oversight

DOE and the University shall oversee and manage their respective workers, contractors, and subcontractors to ensure that they comply with applicable federal and state health and safety standards.

C. Meetings

DOE, the University, and their respective contractors shall meet as frequently as necessary to effectively coordinate and implement their respective activities under this Agreement.

D. Contacts with the Public

DOE will coordinate with UC Davis in the planning and execution of their public involvement activities relating to the IR & LTSMCR of the LEHR Facility and DOE-Affected Groundwater. If the Parties have a dispute regarding contacts with the public, the Parties shall use their best efforts to resolve the dispute according to the procedures set out in Section II.A of this Agreement. The Parties shall also use best efforts to provide each other with reasonable prior notice of the public release of information and documents.

E. Support and Coordination of Investigative and Remedial Activities

1. The University and DOE shall cooperate to ensure that, to the extent reasonably practicable, the IR & LTSMCR, remediation strategies, and site development by both Parties are consistent and cost-effective—provided, however, that the duty to cooperate shall not require either Party to unreasonably delay its activities under this Agreement.

2. The University and DOE shall coordinate with each other, to the extent reasonably practicable, all communications with federal, state, and local regulatory agencies, including presentations and reports of findings, monitoring

results, and recommendations concerning their respective IR & LTSMCR activities. The Parties realize that DOE and the University have submitted and will continue to submit documents relating to the activities each is obligated to perform under this Agreement and that such documents contain and may contain, among other things, proposals on remediation strategies, methodologies, cleanup levels, and IR & LTSMCR. The Parties acknowledge that each has the same rights as any member of the public to comment on submissions made by the other Party. However, each Party agrees that it shall provide any comments it may have on the other Party's submissions first to the Party making the submission in order to promote cooperation between the Parties and to ensure that any issues regarding IR & LTSMCR, and other topics, are resolved consistently, quickly, and efficiently.

3. DOE agrees to conduct its activities in such a manner as to minimize, to the extent reasonably practicable, disruption of the University's research. Any communications from DOE to the University's research staff and campus services shall be coordinated through the DOE and UC Davis Project Managers.

F. Providing Information and Access

1. Each Party agrees to provide the other Party with all available non-privileged information on its site activities, including, but not limited to, data, primary documents (e.g., remedial investigation reports, feasibility studies), schedules, cleanup standards, future plans, and methodologies.

2. The University agrees to use reasonable efforts to provide DOE (and any persons designated by DOE) with access to the portions of the LEHR Facility or other parts of the UC Davis campus if necessary for DOE to conduct the activities DOE is required to perform under the DOE ROD. DOE shall limit its requests

concerning such areas to areas that it must access to conduct the activities and shall provide UC Davis with reasonable advance notice of when, where, and why it needs access to a particular area.

3. The University agrees to record a Land Use Covenant restricting the future use of the University-owned property above the DOE areas as described in the DOE ROD and so that DOE (and any person designated by DOE) will have access to the former DOE areas in order that DOE may perform any long-term surveillance and maintenance or contingent remediation as shown on Figure 2. In order to implement and maintain the Land Use Covenant and other activities the Parties have agreed to, the University will sustain certain costs. In order to compensate the University for those costs, subject to Article VII B DOE agrees to provide a Grant to the University to cover costs associated with the Land Use Covenant and other agreed-to tasks until the Land Use Covenant is entirely terminated for the DOE areas. The Grant applies to the DOE Areas for the LEHR site. The work includes, but is not limited to:

   (a) Recording the Land Use Covenant with the California Department of Toxic Substances Control.

   (b) Developing and maintaining internal policies and procedures to ensure that land use restrictions are maintained.

   (c) Visiting sites to ensure that land use restrictions are maintained.

   (d) Developing and providing annual training for campus stakeholders affected by the restrictions.

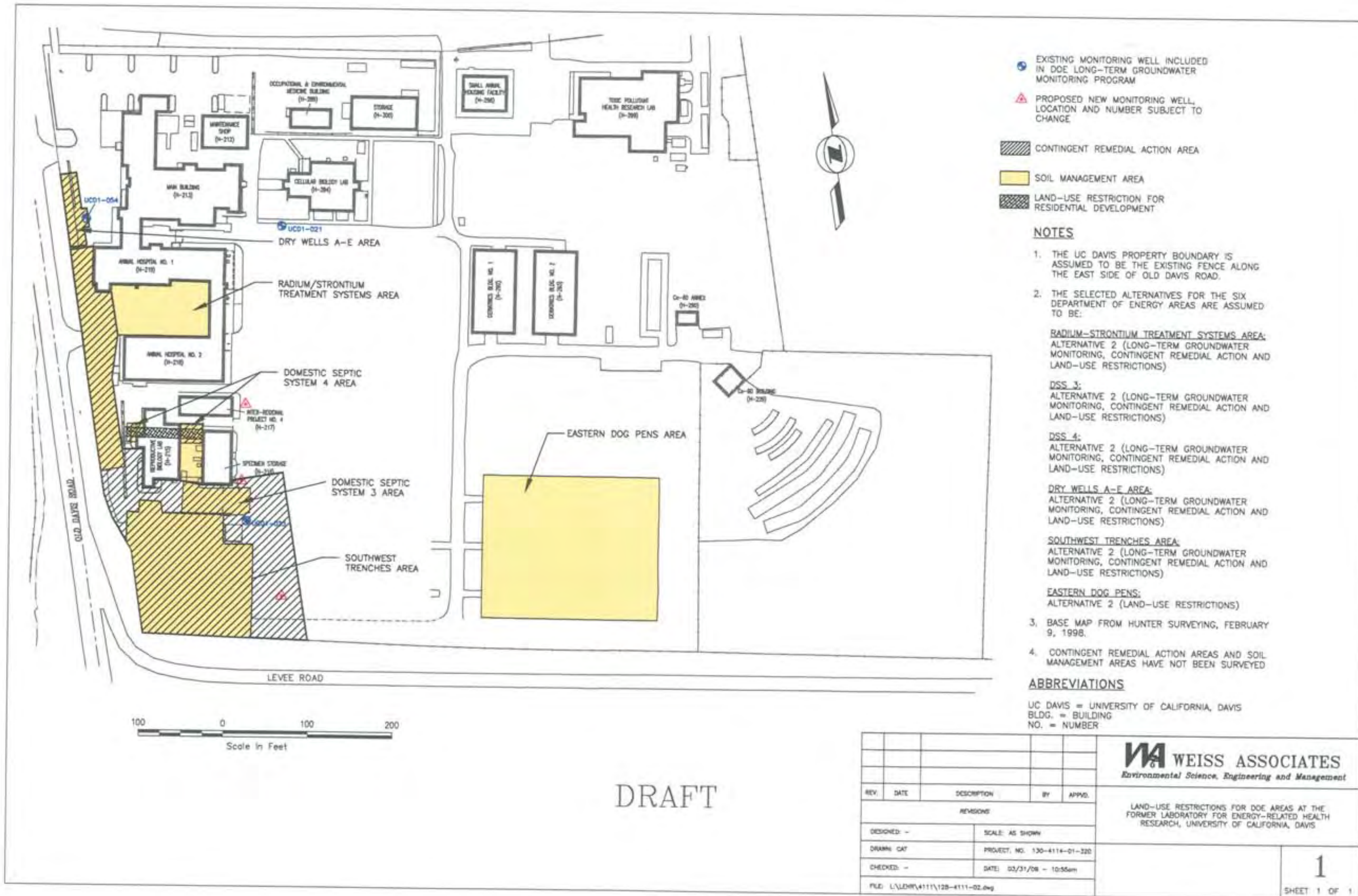

Figure 2. Land Use Restrictions for DOE Areas at the Former Laboratory for Energy-Related Health Research, UC Davis, California

(e) Providing for activities that require the implementation of the DOE Areas SMP.

(f) Controlling weeds and performing miscellaneous maintenance activities, as requested by DOE.

(g) Conducting DOE groundwater and surface water monitoring and reporting, as requested by DOE.

(h) Providing other services as agreed to by DOE and UC Davis.

Such Grant shall be in place within sixty (60) days of the effective date of this Agreement and shall be renewed annually for as long as the Department of Toxic and Substance Control (DTSC) Land Use Covenant remains in place. The University shall have no obligation to perform the services identified in subparagraphs (b) through (h), above, during any period for which DOE has not provided a Grant that covers the University's full costs for providing such services. In accordance with the provisions of CERCLA, DOE shall conduct Five-Year Reviews to ensure the protectiveness of the remedy. Following each Five-Year Review, DOE shall consult with the United States Environmental Protection Agency ("EPA"), DTSC, and the Regional Water Quality Control Board, or the successors to these agencies, to determine whether it is necessary for the Land Use Covenant to remain in effect or whether the Land Use Covenant can be terminated entirely or amended to delete specific DOE waste units from the land use restrictions.

4. DOE will direct the contractors it selects to conduct DOE activities to keep the University apprised of their activities and to coordinate in advance with the University regarding any activities that might interfere with the University's use of those DOE

Improvements that have been transferred to the University pursuant to Article VI of this Agreement.

5. DOE shall notify the University through the UC Davis Project Manager of any of its activities that might implicate the permit requirements of the Resource Conservation and Recovery Act ("RCRA") regarding the LEHR Facility. DOE shall also provide any other information related to its activities that could impact UC Davis's National Pollutant Discharge Elimination System ("NPDES") Permits (i.e., the permit for the main campus waste water treatment plant and the campus's general storm water permit) as they apply to the LEHR Facility. The University is responsible for obtaining and complying with the NPDES Permits. The University is responsible for obtaining and complying with any permits that are required in connection with the activities set forth in Article III. DOE is responsible for obtaining and complying with any NPDES, RCRA, or other permits that are required in connection with the activities set forth in Article IV.

6. DOE and the University shall each pay, in accordance with state and federal law, those reasonable and necessary costs incurred by such state regulatory agencies related to the activities that each Party is obligated to perform under this Agreement or under other agreements with, or directives from, such regulatory agencies. The Parties shall cooperate to ensure that they establish reasonable and efficient procedures that will allow the state regulatory agencies to allocate their costs.

ARTICLE III – RESPONSIBILITIES OF THE UNIVERSITY

The University agrees to undertake at its own expense the following activities:

A. Environmental Restoration

1. The University agrees to conduct required response actions inclusive of the remedial investigation, feasibility study, removal, remedial action, reports, sampling, analyses, and any other investigative and remedial activities required by federal and state regulatory agencies involving the University Disposal Areas and University-Affected Groundwater.

2. The University agrees to perform groundwater monitoring and reporting for DOE-Affected Groundwater until ninety (90) days after the signature of both Parties to this Agreement. The University agrees to include an analysis of DOE-Affected Groundwater in the University Feasibility Study and ROD. The University shall have no obligation to perform, or responsibility for, any interim action or response action that federal and state regulatory agencies may require for DOE-Affected Groundwater by inclusion of an analysis or discussion of DOE-Affected Groundwater in the University Feasibility Study or ROD.

3. Subject to the provisions of Sections IV.A and V.C of this Agreement, the University agrees to conduct any investigative or remedial work that federal or state agencies may require for sources of contaminants in the Adjacent Areas.

B. Removal of Wastes and Samples

1. Except as otherwise provided for in Section IV.A of this Agreement, the handling, storage, and disposal of all wastes (radioactive, hazardous, mixed, and solid) generated by the University's activities under this Agreement, and of all samples and other

research materials of the University currently stored in the LEHR Facility, are the sole responsibility of the University.

C. In the event that the University plans a project beyond repair, maintenance, and minor construction that may trigger the SMP, the University will notify DOE at least ninety (90) days prior to the commencement of field activities.

ARTICLE IV − RESPONSIBILITIES OF DOE

DOE agrees to undertake at its own expense the following activities:

A. Environmental Restoration

1. DOE shall complete the remedial investigations, feasibility studies, removal, remedial action, reports, sampling, analyses, and any other investigative, remedial, and IR & LTSMCR activities required by federal and state regulatory agencies for the LEHR Facility, to the satisfaction of the regulatory agencies—provided, however, that any decontamination or decommissioning of the DOE Improvements has been or shall be performed under the Atomic Energy Act of 1954 and applicable DOE Orders.

2. Ninety (90) days after signature by both Parties to this Agreement, DOE will assume full responsibility for groundwater monitoring and reporting for DOE-Affected Groundwater. All post–University ROD actions required for DOE-Affected Groundwater shall be the sole responsibility of DOE. Any interim or removal actions required by federal and state regulators before EPA signs the University ROD shall be the sole responsibility of DOE.

3. DOE shall prepare an SMP describing the nature and extent of contamination remaining in DOE areas to address actions that may be required to protect public health and the environment relevant to residual DOE contamination left on site. A plan will be

prepared with the DOE Remedial Action Work Plan and will address the need for any evaluation, risk assessment, sampling, characterization, containment, treatment, removal, disposal, or other action that may be required for future remediation, use, operations, or maintenance activities anticipated to be undertaken by the University. DOE is solely responsible for the costs of implementing the SMP and any additional administrative, engineering, design, construction, or operations and maintenance costs incurred by the University in the course of its projects that arise due to the presence of DOE contamination left at the site. The Parties may agree to the implementation of the SMP by the University on behalf of DOE. If the University plans a project at the site that will necessitate the implementation of the SMP, and that may require additional evaluation, the University will request DOE's input on the management options.

4. DOE shall continue to perform storm water monitoring, as required, at Lift Station-1. This storm water monitoring shall not include any monitoring required as a result of University operations or releases.

5. DOE agrees to prepare any reports, assessments, or other documents that may be required by federal or state regulatory agencies relating to its IR & LTSMCR of the LEHR Facility. Such reports and assessments may include, but are not limited to, risk assessments, ecological assessments, and assessments concerning release limits on residual radionuclides in soils.

6. The handling, storage, and disposal of all wastes (radioactive, hazardous, mixed, and solid) generated by DOE's activities under this Agreement are the sole responsibility of DOE. For purposes of this Agreement, the term "wastes" shall not include the following: (1) research materials, if any, that the University failed to identify as having

been used for DOE research under the Contract as required by the Prior MOA and Paragraph 1 of Section III.B of this Agreement, or (2) contaminated media such as soil, structures, buildings, debris, surface water, or groundwater that remain *in situ* once DOE has completed its activities under the DOE ROD to the satisfaction of the regulatory agencies unless such contaminated media are required to be removed or managed to comply with an SMP, or as part of contingent remediation determined to be necessary in the future. No waste will be disposed of, or otherwise remain, on University property without the express written permission of the University—provided, however, that DOE shall have no obligation to remove any contaminated media that remain *in situ* once DOE has completed its activities under the DOE ROD to the satisfaction of the regulatory agencies. The University agrees that permission to dispose of wastes at the LEHR Facility will not be unreasonably withheld. DOE shall be responsible for filing annual reports with the State of California for the management of hazardous and radioactive mixed wastes generated by or associated with DOE's activities as required under applicable laws and regulations.

ARTICLE V − COVENANTS NOT TO SUE

A. Covenants Not to Sue for Past Costs

Each Party covenants that it shall not sue or otherwise seek recovery or reimbursement of any kind from the other Party, or its employees, contractors, representatives, or agents, for costs it incurred after September 30, 1989, through and including the effective date of this Agreement, in investigating or remediating the LEHR Facility, the University Disposal Areas, University-Affected Groundwater, DOE-Affected Groundwater, and Adjacent Areas. For purposes of this Agreement, such costs are referred to herein as "past costs" and consist of sums a Party paid or

became obligated to pay during the period set forth above for investigation or remediation of the LEHR Facility, the University Disposal Areas, University-Affected Groundwater, DOE-Affected Groundwater, and Adjacent Areas; for regulatory oversight costs; for defense or attorneys fees related to the investigation and remedial work; and for compliance with the orders or mandates of agencies or courts related to the investigation and remedial work.

B. Covenants Not to Sue for Future Costs

Except as specifically provided below in Section V.C of this Agreement, each Party covenants that it shall not sue or otherwise seek relief of any kind from the other Party, or its employees, contractors, representatives, or agents, for costs incurred after the effective date of this Agreement, arising from the obligations each Party has assumed under this Agreement. For purposes of this Agreement, such costs are referred to as “future costs” and consist of, but are not limited to, sums for investigation, remediation, or IR & LTSMCR of the LEHR Facility, the University Disposal Areas, University-Affected Groundwater, DOE-Affected Groundwater, and Adjacent Areas; for compliance with this Agreement; for regulatory costs; for defense or attorneys fees related to the investigation and remedial work; and for compliance with the orders or mandates of agencies or courts related to the investigation, remediation, or IR & LTSMCR work. Except as specifically provided below in Section V.C of this Agreement, these covenants not to sue apply to all claims involving the investigation, remediation, or IR & LTSMCR of the LEHR Facility, the University Disposal Areas, University-Affected Groundwater, and DOE-Affected Groundwater; claims for investigation or remediation of the Adjacent Areas; claims for regulatory costs; and claims involving compliance with the orders or mandates of agencies or courts related to the investigation, remediation, and IR & LTSMCR work based on federal law, state law, the Contract, or the Occupancy Agreement.

C. Exceptions to the Covenants Not to Sue

The Parties agree that the covenants not to sue set forth in this Section V shall not apply in the following situations:

1. **Claims Seeking to Enforce this Agreement.** The covenants not to sue in this Section V shall not apply to claims by either Party to enforce the terms of this Agreement.

2. **Claims by a Regulatory Agency in Conflict with this Agreement.** The Parties acknowledge that one purpose of this Agreement is to allocate between the Parties responsibilities for certain activities related to the investigation, remediation, or IR & LTSMCR of the LEHR Facility, the University Disposal Areas, University-Affected Groundwater, DOE-Affected Groundwater, and Adjacent Areas. Should a regulatory agency assert a claim against a Party involving an activity or area that is the responsibility of the other Party under this Agreement, the covenants not to sue set forth in this Section V shall not apply to the extent that the Party against which the agency asserted the claim may seek relief from the other Party requiring it to respond to the agency's claim and to reimburse the Party against which the agency asserted the claim for any costs it incurred in responding to the claim.

3. **Claims by Third Parties other than Regulatory Agencies.** Neither the covenants not to sue nor any other provision of this Agreement shall apply to claims by third parties other than regulatory agencies. With respect to third-party claims, the Parties reserve all of their respective rights under applicable law, this Agreement, the Occupancy Agreement, and the Contract.

ARTICLE VI – DOE IMPROVEMENTS AT THE LEHR

A. Transfer of Certain DOE Improvements to the University

1. Pursuant to Article VII of the Occupancy Agreement, DOE transferred ownership of the DOE Improvements or portions thereof (hereafter referred to as "former DOE Improvements or portions thereof") to the University. This transfer of ownership of the DOE Improvements or portions thereof did not and does not affect in any way DOE's decontamination and decommissioning obligations under the Occupancy Agreement, the Contract, or this Agreement.

2. DOE previously released the DOE Improvements and the University has been using these improvements for research and appropriate support work sponsored by entities other than DOE. The University shall be responsible for any contamination by hazardous substances, radioactivity, or ionizing radiation fields resulting from the University's use of these former DOE Improvements or portions thereof.

ARTICLE VII – MISCELLANEOUS PROVISIONS

A. Amendment

This Agreement may be amended at any time by mutual consent of the Parties. Any such amendments shall be in writing, shall be explicitly identified as an Amendment to this Agreement, and shall be signed by both Parties.

B. Anti-Deficiency Act

No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that DOE shall obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341. Payments by DOE are subject to the availability of appropriated funds. Payments by the University are subject to the availability of designated funds. The Parties agree that, during the period in which this Agreement remains in effect, each will be diligent in seeking appropriation or designation of funds for the purpose of performing its respective obligations under this Agreement.

C. Entire Agreement

This Agreement contains the entire agreement between the Parties with respect to the IR & LTSMCR of the LEHR Facility, the University Disposal Areas, University-Affected Groundwater, DOE-Affected Groundwater, and Adjacent Areas, and with respect to the University's ownership of, and DOE access to, the DOE Improvements at the LEHR Facility. It supersedes all prior understandings, negotiations, oral agreements, or written agreements between the Parties including, but not limited to, the Prior MOA and Article XIV ("CONTINGENCIES - LITIGATION AND CLAIMS") of Contract EY-76-C-03-0472 as to the investigation and remediation of the LEHR Facility, the University Disposal Areas, University-Affected Groundwater, and DOE-Affected Groundwater—provided, however, that this Agreement does not supersede the Contract or the Occupancy Agreement except as to their application to the investigation and remediation of the LEHR Facility, the University Disposal Areas, University-Affected Groundwater, DOE-Affected Groundwater, Adjacent Areas, and DOE access to the DOE Improvements at the LEHR Facility prior to the termination of the Occupancy Agreement.

D. Effective Date

The effective date of this Agreement is the date of the last signature.

E. No Third-Party Beneficiaries

This Agreement is solely for the benefit of the University and DOE, and shall create no rights in favor of, and may not be enforced by, any other person or entity.

F. Successors and Assigns

This Agreement shall bind and inure to the benefit of the Parties and their respective successors and assigns.

G. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California and the United States.

H. Waiver of Provisions

No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

I. Separability

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

J. Headings

The subject headings used in this Agreement are for convenience only and shall not be deemed to affect the meaning or construction of any of the terms of this Agreement.

K. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, and when taken together shall constitute an integrated agreement.

United States Department of Energy
~~Deputy~~ Director, Office of Legacy Management

David W. Geiser

Date: June 23, 2009

The Regents of the University
of California

Date: JULY 8, 2009