

**MEMORANDUM OF AGREEMENT BETWEEN  
THE UNITED STATES DEPARTMENT OF ENERGY AND  
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA  
REGARDING THE INVESTIGATION AND 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; and

Whereas, the research at LEHR was initially performed under Project Agreement Nos. 4 and 6 of Contract No. AT(11-1)-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), and which was thereafter redesignated Contract EY-76-C-03-0472 by Contract Modification 43 (January 10, 1977), and 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 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 a Memorandum of Agreement for Environmental Restoration and Decontamination dated March 13, 1990 (amended on February 17, 1993, and again on November 30, 1993, and 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, UC Disposal Areas, Affected Groundwater and portions of the Adjacent Areas, and has begun remediating portions of the LEHR Facility; and

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

Whereas, the Parties wish to replace the Prior MOA with a new Memorandum of Agreement ("Agreement") that establishes a new relationship between the Parties regarding the investigation and remediation of the LEHR Facility, UC Disposal Areas, and Affected Groundwater that sets forth the activities each will undertake in the future; and

Whereas, the Parties have completed the research work under the Contract and desire to transfer the remaining DOE Improvements to 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 complete the investigation and remediation of the LEHR Facility, UC Disposal Areas, and Affected Groundwater, and to allocate responsibility, if any, for the Adjacent Areas and to transfer to the University the DOE Improvements at the LEHR Facility, while providing access to DOE to complete certain decontamination activities required as a result of the research performed under the Contract.

B. The University and DOE intend this Agreement as a settlement of their responsibilities and liabilities to each other for the continuing investigation and remediation of the LEHR Facility, UC Disposal Areas, Affected Groundwater, and Adjacent Areas. 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 Exhibit 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.

2. The term "UC Disposal Areas" means the following areas shown in Exhibit 1: UC landfill cells beneath the LEHR Facility; Landfills 1, 2 (exclusive of dog pens), and 3; the 49 waste holes; and the UC Davis disposal trenches (south and east of Landfill 2). The Parties agree that the areas specifically listed above as "UC 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 Exhibit 1.

3. The term "Affected Groundwater" means groundwater containing known or suspected groundwater contaminants released from the LEHR Facility or UC Disposal Areas.

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

5. The term "known or suspected groundwater contaminants" means the following constituents or characteristics occurring in groundwater: alkalinity, americium-241; bromodichloromethane; calcium; carbon-14; chemical oxygen demand (COD); chlordane; chloride; chloroform; 1,1-dichloroethane (1,1-DCA); 1,2-dichloroethane (1,2-DCA); 1,1-dichloroethene (1,1-DCE); 1,2 dichloropropane; dieldrin; endrin; hexavalent chromium; magnesium; nitrate as NO<sub>3</sub>; organophosphates; pH; potassium; plutonium-241; sodium; specific conductance; strontium-90; sulfate; total chromium; total dissolved solids (TDS); 1,1,1-trichloroethane (1,1,1-TCA); tritium; and the degradation products of

bromodichloromethane, chloroform, 1,1-dichloroethane, 1,2-dichloroethane, 1,1-dichloroethene, 1,2 dichloropropane and 1,1,1-trichloroethane.

## ARTICLE II - COOPERATION AND COORDINATION

### A. Dispute Resolution

In the event 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 Julie McNeal, Director of Environmental Health & Safety ("EH&S"), at the University of California, Davis ("UC Davis"), TB-30, Davis, California 95616. The University shall give written notice of any decision to invoke the dispute resolution procedure to Mike Brown, DOE Project Coordinator at the DOE Oakland Operations Office, 1301 Clay Street, Oakland, California 94612-5208. 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 Project Coordinator 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 Environmental Restoration Division of the Oakland Operations Office ("OAK") of DOE and the Vice Chancellor-Administration of UC Davis for resolution.

3. The DOE Director and UC Davis Vice Chancellor shall confer and, within thirty (30) days of receiving the dispute, issue a joint decision resolving the dispute or referring the matter to mediation.

4. From the date of the joint decision referenced in the previous paragraph, 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.

5. In the event that 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 assure that they comply with applicable federal and state health and safety standards.

C. Meetings

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

D. Contacts with the Public

UC Davis in coordination with OAK shall take the lead in working with the public on issues involving the investigation and remediation of the LEHR Facility, UC Disposal Areas, Affected Groundwater, and Adjacent Areas. In the event that 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 assure that, to the extent reasonably practicable, the remediation strategies, methodologies and cleanup levels (including applicable or relevant and appropriate requirements, or ARARs, set forth in Section 121 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9621) used 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 investigative and remedial activities. The Parties realize that DOE and the University will begin to submit documents relating to the activities each is obligated to perform under this Agreement and that such documents may contain, among other things, proposals on remediation strategies, methodologies and cleanup levels. 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 assure that any issues regarding remediation strategies, methodologies, cleanup levels and other topics are resolved consistently, quickly and efficiently.

3. The Parties recognize that, from time to time, either Party may wish to meet privately with representatives of one or more of the regulatory agencies. Such private meetings shall not be deemed to constitute a breach of this Agreement. Each Party agrees to give the other Party reasonable advance notice of its intent to meet privately with one or more regulatory agencies.

4. 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 investigative and remedial activities, including, but not limited to, data, primary documents (remedial investigation reports, feasibility studies, etc.), schedules, cleanup standards, future plans and methodologies.

2. The University agrees to use best efforts to provide DOE (and any persons designated by DOE) with reasonable access to the portions of the LEHR Facility described in Sections A and C of Exhibit 3 and other parts of the UC Davis campus if necessary for DOE to conduct the activities DOE is required to perform under this Agreement. DOE shall limit its requests concerning such areas to areas that it must access to conduct the activities it has agreed to perform under this Agreement, and shall provide UC Davis with reasonable advance notice of when, where and why it needs access to a particular area.

3. DOE will direct the contractors it selects to conduct DOE's activities under this Agreement to keep the University advised of their activities and to coordinate in advance with the University as to 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.

4. DOE shall notify the University through the UC Davis Project Manager of any of its activities that might implicate the permit requirements of RCRA regarding the LEHR Facility. DOE shall also provide any other information related to its activities that may have potential impacts on 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.

### **ARTICLE III - RESPONSIBILITIES OF THE UNIVERSITY**

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

A. Environmental Restoration

1. Except as otherwise provided for in Section IV.A and Section V.C of this Agreement, the University agrees to assume responsibility on October 1, 1996, for completion 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 UC Disposal Areas and Affected Groundwater.

2. The University shall install the two monitoring wells described in the LEHR Environmental Restoration Program (as revised on July 2, 1996) as "survey wells UCD2-28 and UCD2-29 located immediately east of well 8n/2e/22N."

3. As required by federal or state regulatory agencies and except as otherwise provided in Section V.C of this Agreement, the University agrees to take appropriate measures necessary to address the Affected Groundwater to the satisfaction of the regulatory agencies.

4. Subject to the provisions of Section IV.A and Section 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.

5. The University agrees to incorporate the DOE reports and assessments described in Paragraph 5 of Section IV.A into any cumulative risk assessment the University is required to prepare for the LEHR Facility, UC Disposal Areas, Affected Groundwater, or Adjacent Areas.

**B. Removal of Wastes and Samples**

1. UC Davis has prepared a detailed inventory list of all research materials in the University's possession that were used for DOE research under the Contract (attached as Exhibit 2 to this Agreement). DOE shall not have and shall not assume any responsibility for any research materials not identified in Exhibit 2, regardless of whether the research materials were used for DOE research under the Contract.

2. 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 except as provided in Paragraph 1 of this Section III.B.

C. Regulatory Approval

For purposes of this Article III, the phrase "satisfaction of the regulatory agencies" means approval and acceptance of the University activities under this Agreement by the applicable regulatory agencies at the time the work is completed but does not include future, more stringent agency requirements. Compliance with any such future, more stringent agency requirements relating to the University work performed under this Agreement shall be the sole responsibility of the University.

#### 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 and remedial 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. DOE shall pay the University \$500,000 each year during DOE's current and next two fiscal years (1997, 1998 and 1999); the University agrees to use these funds solely for investigating, monitoring, or remediating Affected Groundwater and other activities related to the environmental restoration of the LEHR Facility and UC Disposal Areas. DOE reserves the right to pay all or some of these funds in advance of the fiscal year in which they are due; the decision whether to make advance payments rests entirely in DOE's discretion, and in no event shall DOE pay the University more than \$1.5 million under this Paragraph 2 of Section IV.A regardless of whether it pays any funds in advance.

3. The Parties acknowledge that DOE completed its current groundwater monitoring program at the LEHR Facility for calendar year 1996. DOE shall prepare and submit the report on groundwater monitoring for calendar year 1996 as required by federal and state regulatory agencies. DOE shall perform any required storm water monitoring at the LEHR Facility until it has completed its remedial activities, not including operations and maintenance activities, under this Agreement to the satisfaction of the regulatory agencies. DOE shall not be required to perform such monitoring after the completion of such remedial activities while waiting for the notification of the satisfaction of the regulatory agencies with such remedial activities. This storm water monitoring shall not include any monitoring required as a result of University operations or releases.

4. DOE shall pay the reasonable and necessary costs incurred by state regulatory agencies that have jurisdiction over the LEHR Facility and UC Disposal Areas during DOE's current and next two fiscal years (1997, 1998, and 1999) as set forth in

DOE Nonresearch Grants DE-FG03-96SF20733 and DE-FG03-96SF20956. After September 30, 1999, 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 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 incurred after September 30, 1999, between the Parties.

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

B. Removal of Wastes

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: (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 this Agreement to the satisfaction of the regulatory agencies. 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 this Agreement 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 under this Agreement as required under applicable laws and regulations.

C. Regulatory Approval

For purposes of this Article IV, the phrase "satisfaction of the regulatory agencies" means approval and acceptance of the DOE activities under this Agreement by the applicable regulatory agencies at the time the work is completed but does not include future, more stringent agency requirements. Compliance with any such future, more stringent agency requirements relating to the DOE work performed under this Agreement shall be the sole responsibility of DOE.

## 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, 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, UC Disposal Areas, 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, UC Disposal Areas, 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, 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 or remediation of the LEHR Facility, UC Disposal Areas, 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 and remedial 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 and remediation of the LEHR Facility, UC Disposal Areas, and 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 and remedial work; and claims related to the investigation and remedial 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 and remediation of the LEHR Facility, the UC Disposal Areas, 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.

4. **Claims by the University Alleging New Sources of Contaminants in Soils or New Contaminants in Groundwater.** Subject to the following limitations, the covenants not to sue in Section V.B shall not apply to the University to the extent that it may assert claims against DOE for the cost of investigating and remediating new sources of contaminants in soils or new contaminants in groundwater.

(a) For purposes of the exception in this Paragraph (V.C.4), the term "new sources of contaminants in soils" shall mean sources of contamination: (i) arising out of, or connected with, work under the Contract that result in a net increase in investigative and remedial costs greater than \$100,000 either as to a single such source or as to the total for a number of such sources; and (ii) that are not located in one of the areas listed in Paragraphs 1 through 3 of Section I.C or that are not described as one of the responsibilities listed in Section III.A or Section IV.A. If such new sources of contaminants in soils are discovered, DOE will negotiate in good faith with the University to address such sources and to allocate the costs of doing so in excess of \$100,000 among the Parties according to their respective responsibilities for the new sources. If such negotiations fail, the University may assert a claim against DOE for the Department's share of the investigative and remedial costs in excess of \$100,000 that the University incurs in addressing the new sources of contaminants in soils. In the event that the University asserts a claim against DOE under the exception in this Paragraph (V.C.4), DOE reserves all of its rights to assert any and all defenses it may have under any agreement (including, but not limited to, this Agreement, the Occupancy Agreement and the Contract) and under any applicable law or regulation; provided, however, that DOE shall not assert that it is entitled to credit for past costs as defined in Section V.A.

(b) For purposes of the exception in this Paragraph (V.C.4), the term "new contaminants in groundwater" shall mean contaminants: (i) whose presence in groundwater, either alone or in aggregate, results in a net increase in

investigative and remedial costs for groundwater greater than \$650,000; and (ii) which are not on the list of known or suspected groundwater contaminants in Paragraph 5 of Section I.C. If such new contaminants are discovered in groundwater, DOE will negotiate in good faith with the University to address such contaminants and to allocate the costs of doing so in excess of \$650,000 among the Parties according to their respective responsibilities for the new contaminants in groundwater. If such negotiations fail, the University may assert a claim against DOE for the Department's share of the investigative and remedial costs in excess of \$650,000 that the University incurs in addressing the new contaminants in groundwater. In the event that the University asserts a claim against DOE under the exception in this Paragraph (V.C.4), DOE reserves all of its rights to assert any and all defenses it may have under any agreement (including, but not limited to, this Agreement, the Occupancy Agreement and the Contract) and under any applicable law or regulation; provided, however, that DOE shall not assert that it is entitled to credit for past costs as defined in Section V.A.

## **ARTICLE VI - DOE IMPROVEMENTS AT LEHR**

### **A. Transfer of Certain DOE Improvements to the University**

1. Pursuant to Article VII of the Occupancy Agreement, DOE shall promptly transfer ownership of the DOE Improvements or portions thereof (hereafter referred to as "former DOE Improvements or portions thereof") identified in Section A of Exhibit 3 of this Agreement to the University. This transfer of ownership of the DOE Improvements or portions thereof 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 identified in Section A of Exhibit 3 of this Agreement to the University, 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.

B. Facilities DOE Will Retain for the Duration of DOE Environmental Restoration Activities at LEHR

1. DOE will retain the facilities or portions thereof identified in Section B of Exhibit 3 of this Agreement until the completion of DOE's environmental restoration activities at LEHR.

2. The University will allow DOE the continued use and occupancy of the two trailers known as the DOE Silver and Brown trailers. The trailers shall be provided to DOE on a rent free basis upon payment by DOE of the lease payments for the Brown trailer or upon payment of the balloon payment due at the end of the lease. The University shall continue to make these trailers available until DOE has completed its environmental restoration activities at LEHR.

C. DOE Improvements to be Transferred to the University Upon Completion the DOE Order 5400.5 Certification Process

1. In accordance with DOE Order 5400.5, DOE has completed a radiological survey of spaces within the DOE Improvements listed in Section C of Exhibit 3 of this

Agreement. In order to ensure the integrity and credibility of the survey results, the University agrees that it shall not under any circumstances use any of these DOE Improvements or portions thereof prior to the time of release until DOE specifically authorizes such use in writing and the Parties have executed an entry agreement. Police, fire, maintenance, and health and safety personnel may enter any DOE Improvement in order to carry out any necessary and required functions.

2. Upon completion of the certification process provided in DOE Order 5400.5, DOE and the University will execute a transfer agreement that shall include: (1) DOE's authorization to enter these DOE Improvement or portions thereof; (2) the University's acceptance of the results of the radiological survey and of responsibility for any contamination by hazardous substances, radioactivity or ionizing radiation fields that may occur during the University's use of these DOE Improvements or portions thereof; and (3) other terms and conditions the Parties deem necessary.

3. The Parties acknowledge that, prior to the release of the DOE Improvements, DOE will publish a notice of the DOE Improvements' release in the Federal Register in accordance with DOE Order 5400.5. DOE agrees to use best efforts to complete these actions in a timely and expeditious manner. Upon completion of these actions, DOE will promptly transfer ownership of the DOE Improvements listed in Section C of Exhibit 3 to the University.

D. Occupancy of DOE Improvements Retained by DOE

DOE, in its sole discretion, may allow the University to use the DOE Improvements listed in Section B of Exhibit 3 or portions thereof for work not sponsored by DOE, subject to the following conditions.

1. The University shall be responsible for any contamination by hazardous substances, radioactivity or ionizing radiation fields that occurs during the University's use of these DOE Improvements or portions thereof.

2. The University agrees to assume all maintenance and operational responsibilities and costs for these DOE Improvements or portions thereof that it occupies for work not sponsored by DOE. The University shall protect, preserve, maintain (including normal replacement of parts), and repair these DOE Improvements or portions thereof that it uses in accordance with sound industry practices.

3. Ownership of parts replaced by the University in carrying out its normal maintenance obligations under this Agreement shall pass to and vest in DOE upon their installation in the affected DOE Improvement, in DOE's personal property, or in DOE's equipment.

4. The University may, with the written approval of the OAK Assistant Manager for Environmental Management, install, arrange, or rearrange any readily movable machinery, equipment, and other items belonging to the University in these DOE Improvements or portions thereof occupied by the University. Ownership of any such item shall remain with the University even though it may be attached to a DOE Improvement unless the OAK Assistant Manager for Environmental Management determines that it is attached in such a way that removal would cause substantial injury to these DOE Improvement or other DOE property. Nothing in this Paragraph (VI.D.4) shall be construed to require written approval from DOE for the University to perform its maintenance and operational responsibilities as provided in Paragraph 2 of this Section VI.D.

5. The University shall not construct or install any fixture in or make any structural alterations to these DOE Improvements without advance written approval of the OAK Assistant Manager for Environmental Management.

6. The University agrees to return these DOE Improvements or portions thereof that it uses to DOE's control, if and when requested by DOE, in the same condition as the University received them less normal wear and tear, subject to the provisions of Paragraph 2 of Section VI.D.

7. If the University fails to abide by the provisions of this Section D of Article VI or by any terms or conditions of an entry agreement, the OAK Assistant Manager for Environmental Management may, after the University has been given notice and a reasonable opportunity to remedy the failure, require the University to vacate with reasonable diligence and dispatch any or all of the DOE Improvements listed under Section B of Exhibit 3 and used for work sponsored by entities other than DOE.

8. In consideration for its use of these DOE improvements, the University shall provide the OAK Assistant Manager for Environmental Management with an annual summary describing all published articles or reports concerning the work carried out in these DOE Improvements, and that lists the entity sponsoring the work, the hazardous substances that were used, the amounts of hazardous wastes generated, how these wastes are disposed of, and the name of the appropriate person for DOE to contact if the Department has any questions about the use of the affected DOE Improvement.

9. Persons engaged in support of the activities DOE has agreed to perform under this Agreement or close out of the Contract have a priority right to use any DOE Improvement listed in Section B of Exhibit 3. Any disputes concerning this priority right

shall be resolved by the OAK Contracting Officer and such disputes are not subject to the provisions of Section II.A.

E. Access to the DOE Improvements Occupied by the University

Upon request by DOE, the University may grant access during normal business hours to DOE, its agents, and contractors to the DOE Improvements occupied by the University for purposes of performing the activities under this Agreement. The DOE access requests shall be approved by the University in its discretion, which approval shall not be unreasonably withheld. DOE shall have the right to enter, during normal business hours and without the prior approval of the University, the DOE Improvements that have not yet been released for University occupancy.

F. Liability

1. Subject to the provisions of Article V of this Agreement, DOE shall transfer ownership of the DOE Improvements in their "As-Is" condition, with all faults, and the University assumes the risk of adverse physical conditions associated with the DOE Improvements. As of the transfer date of the DOE Improvements, the University, for itself and its agents, affiliates, successors and assigns, hereby releases and forever discharges DOE from any and all claims which the University has or may have in the future, arising out of the physical condition of the DOE Improvements excepting any claim arising under any express term of this Agreement, including without limitation, Articles IV or V. The above release shall not apply to any claims relating to the parties remedial obligations under this Agreement for the LEHR Facility, UC Disposal Areas, Affected Groundwater, and Adjacent Areas and shall not expand or modify the Covenants Not to Sue set forth in Article V.

2. The University agrees, when DOE has granted the University exclusive occupancy of any DOE Improvement or portion thereof, or exclusive use of personal property, equipment, materials and supplies, whether or not modified by the University, and whether or not said Improvements or portions thereof, or materials are appurtenant, to assume any and all liability for any damage to such Improvements or portions thereof or property as provided herein, prior to the time ownership of such Improvements is transferred to the University. The University agrees to indemnify and hold harmless the United States Government for such liability in proportion to and to the extent such liability, loss, expense, attorneys fees, claims for injury or damage are caused by or result from the negligent or intentional acts or omissions of University employees, agents or contractors associated with non-DOE sponsored activities.

3. The University agrees to assume any and all liability for any violation of third party intellectual property rights, including but not limited to patent and copyright infringement for work sponsored by entities other than DOE that is done in any space in the DOE Improvements that have not been transferred to the University (or portions thereof) or done with any personal property, equipment, materials and supplies owned by DOE, whether or not modified by the University, and whether or not such personal property equipment, materials or supplies are appurtenant to a DOE Improvement.

G. Transfer of Ownership of the Retained DOE Improvements

Except as specifically provided in Paragraph 1 of Section VI.A and Paragraph 3 of Section VI.C, nothing in this Agreement shall be deemed to convey ownership of the DOE Improvements listed in Section B of Exhibit 3 to the University until such time as DOE has completed the remedial work provided in Article IV. Upon completing the remedial work

described in Article IV, DOE shall perform the decontamination and decommissioning activities, if any, required under DOE Order 5400.5 for the DOE Improvements listed in Section B of Exhibit 3. Upon completing these activities, DOE shall transfer ownership of the remaining DOE Improvements to the University in accordance with the procedures set forth in Section C of this Article VI.

## 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 investigation and remediation of the LEHR Facility, the UC Disposal Areas, the 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, UC Disposal Areas, Affected Groundwater, and Adjacent Areas; 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, UC Disposal Areas, Affected Groundwater, and Adjacent Areas and to 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.

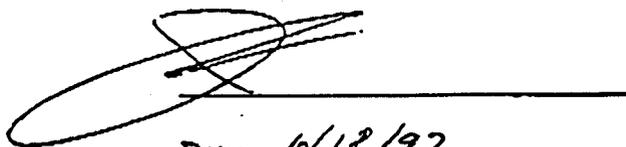
J. Headings

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

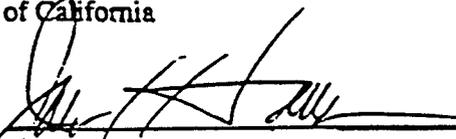
This Agreement may be executed in counterparts, each of which shall be deemed an original, and when taken together shall constitute an integrated agreement.

United States Department of Energy



Date: 6/18/97

The Regents of the University  
of California



Date: 6/23/97

**EXHIBIT 2**

GREEN TAG	Inventory TPHRL, Rm. 725 I.D.	SAC DATE	Estimated Activity (Pu-241 $\mu$ Ci)
0	81J40L	11-30-84	1
0	86I18K	2-24-88	10
0	81B08N	11-30-84	1
0	77G18Y	5-6-82	1
0	78K43X	1-13-83	1
0	79E51B	4-3-86	10
0	87I22J	2-24-88	10
0	79G57X	7-6-83	1
0	81K42C	11-30-84	1
0	82B02C	10-31-85	10
0	79E51A	4-6-84	1
0	79K71Y	5-7-82	CONTROL
0	78K43X	7-24-82	1
0	79G57Z	10-5-85	10
0	81C14S	10-31-85	10
0	82C07A	9-5-86	10
0	81C11U	5-5-83	1
0	81C14S	10-31-85	10
0	81G16W	11-30-84	1
0	78K48C	5-16-83	1
0	79B57G	10-7-85	1
0	82B02B	8-8-86	10
0	77F11Y	4-20-82	1
0	MCY21065	2-15-84	1
0	MCY21068	11-3-86	10
0	MCY21067	11-18-85	10
0	MCY21064	12-19-83	1
0	MCY21063	11-3-86	10
0	MCY21066	11-3-86	10
0	MCY21061	8-9-83	1
0	MCY21058	10-30-86	10
0	MCY21067	11-18-85	1
0	MCY21069	11-19-84	1
0	MCY21062	8-18-84	1
0	MCY21059	9-9-83	1
0	MCY21058	10-30-86	1
0	MCY21063	11-3-86	1
0	MCY21060	8-10-84	1

### EXHIBIT 3

#### A. DOE Improvements to be Transferred to the University Immediately

Maintenance Shop - H-212: All rooms

Main Building (3792) - H-213: All rooms

Reproductive Biology Laboratory (4085) - H-215: All rooms

Specimen Storage (4084) - H-216: Rooms 420, 421, 422, 423, and 424

Inter-regional Project No.4 (3792) - H-217: All rooms

Animal Hospital No.2 (3846) - H-218: Rooms 301, 302, 303, 304, 305, 306, 307, 30713, 308, 311, 314, 315, 316, 318, 333, and 334

Occupational and Environmental Medicine (4315) - (H-289) (Old LEHR Receiving Business): All rooms

Co-60 Annex (4316) - H-290: Rooms 601, 602, 603, and 604

Geriatrics Building No. 1 (4450) - H-292: North half only

Geriatrics Building No.2 (4451) - H-293: All rooms

Cellular Biology Laboratory (4452) - H-294: All rooms

Small Animal Housing H-296: Entire area

Storage Space (H-300)

Toxic Pollutant Health Research Laboratory - H-299: All Rooms

#### B. DOE Improvements to be Retained by DOE Until DOE Cleanup Activities End

Animal Hospital No. 1 (3750) - H-219: Rooms 200B, 200C, 200D, 201, 202, and 203

Geriatrics Building No. 1 (4450) - H-292: South half only

### EXHIBIT 3

C. DOE Improvements to be Released to the University at the Completion of the DOE Order 5400.5 Certification Process

Animal Hospital No. 2 (3846) - H-218: All rooms except Rooms 301, 302, 303, 304, 305, 306, 307, 30713, 308, 311, 314, 315, 316, 318, 333, and 334

Animal Hospital No. 1 (3750) - H-219: All rooms except Rooms 200B, 200C, 200D, 201, 202, and 203

Co-60 (4249) - H-229: Entire Building

Feed Mix, Specimen Storage (4084) - H-216: Room 425