THE HAZARDOUS MATERIALS AND WASTE MANAGEMENT DIVISION

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

STATE OF COLORADO

CONSENT AGREEMENT **Number: 01-08-07-02**

IN THE MATTER OF THE LOWRY ECONOMIC REDEVELOPMENT AUTHORITY AND LOWRY ASSUMPTION, LLC

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1. This Consent Agreement ("Consent Agreement") is issued and entered into by the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division (the "Department") pursuant to the Department's authority under section 25-15-308(2), C.R.S. of the Colorado Hazardous Waste Act ("the Act"), sections 25-15-301 to 327, C.R.S., and the Colorado Hazardous Waste Regulations ("the Regulations"), 6 CCR 1007-3, with the Lowry Economic Redevelopment Authority (the "LERA") and Lowry Assumption, LLC, a Colorado Limited Liability Company (the "LAC").

2. The Department, LERA and LAC may be referred to collectively as the "parties." The LERA joins this Consent Agreement for the limited purposes as set forth in paragraph 101 hereof. This Consent Agreement applies to the former Lowry Air Force Base ("LAFB") site, located in the cities of Denver, Colorado and Aurora, Colorado. For purposes of this Consent Agreement, the LAFB site is comprised of five (5) FOSET ("Finding of Suitability for Early Transfer" or "FOSET") parcels, as identified in paragraph 23; all related contaminated off-site groundwater plumes originating on LAFB, including but not limited to, the "northern off-site groundwater plume; and related on-site groundwater plumes, including but not limited to, the groundwater plume underlying the Belle Bonfils property." The LAFB site comprises two discrete operable units ("OUs"), the Groundwater Plumes (OU5) and the Landfill Zone (OU2), which together contain approximately 514 acres. OU5 includes the "northern off-site groundwater plume" that has migrated off of LAFB.

3. The "Havana Perchloroethylene (PCE) plume" and "Havana 1,2-DCA plume" (the "Havana plumes") are included in this Agreement only to the extent that the LERA is responsible for developing the FOSET for the affected site property and to the extent the LAC may address these contaminants, which become commingled with groundwater contamination for which it is responsible under this Agreement. In preparing any FOSET, the LAC will rely on the orders, decrees, or agreements issued by, or entered

into with, the Department with respect to the Havana plumes. The funding requirements and schedules contained in such orders, decrees, or agreements shall constitute response action assurances for purposes of the Colorado's Executive Order, D 013-98. The LAC has no independent obligation to participate in the investigation or remediation of the Havana plumes referenced above. A map more particularly describing LAFB is attached as Exhibit A.

4. In the event the LERA agrees to accept responsibility for any Non-Covered Condition, as provided in Article III, Section 301 of the Cooperative Agreement, or otherwise modify the scope of the "Obligations of the Parties" as defined in the Cooperative Agreement, and/or identified in this Consent Agreement, the Department reserves the right to modify this Consent Agreement in accordance with paragraph 98 herein and impose additional requirements as necessary.

5. For purposes of this Agreement, the Air Force agrees to stay its response action under CERCLA and, as provided in the Enforceable Agreement, defer to the Act as the regulatory scheme governing the cleanup of at LAFB as addressed in this Agreement and the Cooperative Agreement dated August 7, 2002.

STATEMENT OF PURPOSE

6. The purposes of this Consent Agreement are to establish the regulatory framework for achieving the ultimate remediation of the FOSET parcels and the northern off-site groundwater plume as follows:

   a. To establish a procedural framework and schedule for the development, implementation and monitoring of appropriate corrective actions at LAFB and to ensure that such actions are conducted in accordance with the Act and Regulations, and other applicable federal and state environmental laws;

   b. To establish enforceable milestones regarding the completion and submittal of deliverables required under this Consent Agreement;

   c. To ensure that all response and corrective actions taken are protective of human health and the environment, and priority shall be given to the northern off-site groundwater plume;

   d. To ensure that the parties work together in a cooperative spirit that facilitates a cost-effective and timely clean-up of LAFB, that promotes an orderly and effective investigation and clean-up of contamination at LAFB, and that avoids litigation between the parties;

   e. To seek ways to accelerate corrective actions and eliminate unnecessary tasks and

reviews by requiring that the parties work together within each party's statutory role while fully involving other stakeholders as required by law and good practice (as used in this Agreement, the term "stakeholders" includes all interested community members, the Lowry Air Force Base Restoration Advisory Board ("RAB"), property owners, both on and off base, business, and government agencies);

f. To ensure early and meaningful public involvement from the stakeholders in the implementation of this Consent Agreement, in the development and review of work plans, and in the initiation, development, and selection of corrective actions to be undertaken at LAFB, including timely review of applicable data, reports, and work plans developed for LAFB; and

g. To establish a mechanism for reimbursement of all state costs associated with the implementation of this Consent Agreement.

BACKGROUND

7. LAFB was an Army Air Corps Technical School from 1937 to 1950. The first active runways were constructed in 1938. From 1950 through 1954, rocket propulsion and missile guidance systems training were performed on the site. From 1954 through 1958, the US Air Force Academy was temporarily located at the site and conducted periodic technical training associated with nuclear instruments and electronic equipment. From 1958 through 1965, the 451st Strategic Missile Wing provided Titan I missile command and support at the site. In 1966, the runways and airfield operations were closed because of increased local air traffic at the former Denver Stapleton International Airport. From 1976 to 1994, the site provided individual military and technical training for officers and enlisted members of the Air Force, Air Force Reserve, Air National Guard, and other Department of Defense ("DOD") agencies; students from allied nations; and DOD civilian employees. In addition, the base served as the location of the Defense Finance and Accounting Service-Denver Center and Air Force Reserve Personnel Center.

8. In 1992, the site was scheduled for permanent closure under the Base Realignment and Closure Act ("BRAC") of 1988 and the Defense Base Realignment and Closure Act of 1990. The site was formally closed on September 30, 1994. The Department of Defense's formal environmental remediation efforts began in 1975 under the Installation Restoration Program ("IRP"). The objectives of the Air Force IRP are to assess past hazardous waste disposal practices and releases at Air Force installations, and to develop remedial actions for sites that pose a threat to human health or the environment. Sites identified under the IRP at LAFB include fire training areas, landfills, a fly ash disposal area, coal storage yards and underground storage tanks (USTs). Investigations completed at LAFB found that petroleum hydrocarbons, metals, volatile organic compounds and solvents are contaminating groundwater and soils.

9. Interim response actions conducted by the Air Force include the removal of 20 USTs at eight sites, one state approved Resource Conservation and Recovery Act ("RCRA") closure of a 50,000 gallon UST, closure of off-base wells, removal of free-product from the water table, operation of in-situ bioventing systems, the construction of two (2) on-site groundwater collection and treatment systems and the ongoing operation of six off-site subslab depressurization systems in the Heritage Estates Apartment Complex. The Air Force is currently required to conduct all remediation activities at LAFB in accordance with CERCLA, BRAC and other applicable federal and state laws.

10. An Intergovernmental Agreement dated August 1, 1994, by and between the City and County of Denver and the City of Aurora established the Lowry Economic Redevelopment Authority (LERA), also known as the Lowry Redevelopment Authority (LRA). The LERA is an independent, quasi-municipal legal entity created pursuant to sections 29-1-20, et seq, C.R.S. The LERA is responsible for developing and coordinating all reuse plans and development strategies to promote economic redevelopment at LAFB. In an effort to facilitate their mission, the LERA initiated an effort to transfer all properties from Air Force control to the LERA and to privatize the environmental response actions.

11. CERCLA requires the United States to grant a covenant indicating that all remedial action necessary to protect human health and the environment with respect to any hazardous substances remaining on the federal property has been taken prior to transfer of the property. See Section 120(h)(3)(A)(ii)(I) of CERCLA, 42 U.S.C. 9620. However, Section 120(h)(3)(C), of CERCLA, commonly known as "Early Transfer Authority" ("ETA"), and the State of Colorado Executive Order, D 013-98, authorize the deferral of this covenant before all necessary remedial action has been taken at the federal property, so long as, among other requirements, there is an enforceable agreement that provides that all necessary response actions will be taken. The Air Force has requested a CERCLA section 120(h)(3)(C) covenant deferral for approximately 514 acres of LAFB. The covenant deferral request shall be conducted in accordance with CERCLA, section 120(h)(3)(C) and Colorado's Executive Order, D 013-98.

12. In order to expedite reuse and in conjunction with the "early transfer" process, the Air Force and the LERA developed a Cooperative Agreement dated August 7, 2002 for the implementation and completion of the clean-up of five (5) FOSET parcels and related environmental contamination as described in the "Corrective Action Requirements" section below. The environmental remediation will be funded by the Air Force and conducted by the LAC (this process is known as "privatization"). Nonetheless, ultimate liability for clean-up remains with the Air Force pursuant to CERCLA, section 120(h)(3)(A)(ii) and the Enforceable Agreement between the Air Force and CDPHE dated August 7, 2002.

13. The privatization of the environmental remediation responsibilities and property transfer shall be set forth in the following documents: 1) an Enforceable Agreement between the

Department and the Air Force; 2) several Finding of Suitability for Early Transfer (FOSET) documents between the Air Force and the Department; 3) a Cooperative Agreement for Environmental Services between the Air Force and the LERA (as described above); 4) this Consent Agreement between the Department and the LERA and LAC; and 5) the Lowry Remediation Agreement between the LERA and LAC.

NATURE AND EXTENT OF CONTAMINATION ASSOCIATED WITH THIS CONSENT AGREEMENT

14. The multiple uses of LAFB resulted in several groundwater contaminant plumes. Numerous discrete sources of contamination such as sumps, oil and water separators (OWS), underground storage tanks (USTs) and areas of highly contaminated soil have been removed by the Air Force. However, contamination remains in the groundwater and the landfill. The following summarizes the contamination associated with OU5 and OU2 that is the subject of the remediation under this Agreement.

15. Groundwater Plumes (OU5). Groundwater contamination has been identified in both the alluvial groundwater and the bedrock groundwater at the site. OU5 is comprised of seven groundwater contaminant plumes. The Department received the Air Force's "Final OU5 Groundwater Remedial Investigation ("RI") –May 2001 Report" on May 29, 2001. The seven (7) groundwater plumes with on-site sources are identified as the "Main Trichloroethylene (TCE) plume", the "Outdoor Firing Range (OFR) TCE plume", the "Headquarters (HDQs) TCE plume", the three "Fire Training Zone (FTZ) TCE plumes" and the "Yosemite Gate 1,2-Dichloroethane (1,2-DCA) plume". The two plumes with off-site sources are identified as the "Havana Perchloroethylene (PCE) plume" and the "Havana 1,2-DCA/BTEX plume". See Exhibit A, attached hereto.

16. The sources of groundwater contamination in the Main TCE plume, the OFR TCE plume, and the HDQs TCE plume all appear to be a result of leakage from the concrete sewer system that was used historically at the site. In addition, the Main TCE plume may be impacted by the recently discovered USTs at Building 1432. The three small FTZ TCE plumes are believed to be a result of the fire training activities in this area in which solvents and aviation fuel were used to simulate aircraft fires. The Yosemite Street Gate 1,2-DCA plume is believed to be a result of leaking USTs at an on-site service station. The Havana PCE plume is believed to be a result of a release from a former off-site dry cleaner and the Havana 1,2-DCA/BTEX plume is believed to be a result of an off-site auto body and off-site auto mechanic shop. Based upon information submitted by the Air Force, extensive information regarding the nature and extent of groundwater contamination exists in the Administrative Record and Information Repository maintained by the Air Force for the site. However, based on comments provided to the Air Force by the Department and others, determination of the full nature and extent of groundwater contamination will require additional investigation.

17. Landfill Zone (OU2). OU2 is a 74.5 acre parcel located in the south-central portion of LAFB, as defined by the Proposed Plan for Lowry Air Force Base, dated May 4, 1998, and attached hereto as Exhibit B. According to Air Force documents, the landfill was historically used for disposal of Air Force waste, and associated construction waste and debris primarily from training activities conducted at LAFB. Disposal most likely occurred from approximately 1948 until 1980. Based on investigations at the site, the volume of waste and associated soil, including that in trenches and in areas of surface disposal, is estimated to be approximately 1.8 million-cubic yards. Waste thickness is estimated to average 15 feet.

18. The Administrative Record and Information Repository maintained by the Air Force include the results of extensive investigation activities at OU2. Some areas within the landfill have exceedances of the Colorado Department of Public Health and Environment, Water Quality Control Commission, Basic Standards for Groundwater for some Volatile Organic Compounds (VOCs) and metals. A Focused Feasibility Study (FFS) was performed for OU2 and was reviewed by the Department. Based on the FFS, a remedy was selected and a Proposed Plan was released for public comment.

DETERMINATIONS OF THE DEPARTMENT

19. On or about October 20, 1980, LAFB submitted a Part A permit application, pursuant to RCRA, to the United States Environmental Protection Agency (US EPA) and was granted interim status for the storage of hazardous waste. There have been releases of hazardous wastes or hazardous constituents, as defined in the Act and Regulations, into the environment from LAFB that may be harmful to human health or the environment, contrary to the requirements of 6 CCR 1007-3, § 265.5. Certain hazardous wastes and hazardous constituents have been detected and remain in groundwater, surface water, sediments, and soil at LAFB.

ORDER AND AGREEMENT

20. Based on the foregoing determinations and pursuant to its authorities listed above, the Department orders the LAC to comply with all provisions of this Consent Agreement, including all requirements set forth below.

21. The LERA and LAC agree to the terms and conditions of this Consent Agreement. The LERA and LAC agree that this Consent Agreement constitutes an order issued pursuant to section 25-15-308, C.R.S., and is an enforceable requirement of Part 3 of the Colorado Hazardous Waste Act. The LERA and LAC also agree not to challenge:

    a. the issuance of this Consent Agreement;
    b. the factual and legal determinations made by the Department herein;

c. the Department's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Agreement under the Colorado Hazardous Waste Act; and
d. the Department's determination that the Voluntary Clean-up and Redevelopment Act, 25-16-301 et seq., C.R.S., will not be applicable at LAFB.

22. Notwithstanding the above, the LERA and LAC do not admit to any of the factual or legal determinations made by the Department herein, and any action undertaken by the LERA and/or LAC pursuant to this Consent Agreement shall not constitute an admission of liability by the LERA and/or LAC with respect to the conditions at LAFB.

CORRECTIVE ACTION REQUIREMENTS

23. Within sixty (60) days of the effective date of this Consent Agreement, the LAC shall submit, for Department review and approval, a draft Transition Plan (**1st tier milestone** for purposes of Stipulated Penalties as set forth in paragraphs 74 through 78 below). Once approved by the Department, the Transition Plan will be a project management tool used by the LAC, LERA and the Department to ensure efficient and effective transition from the BRAC/CERCLA process previously followed by the Air Force to a streamlined RCRA process defined by this Agreement. The draft Transition Plan shall include, but not be limited to:

a. a detailed summary of LAFB's environmental administrative record for the FOSET parcels and the northern off-site groundwater plume;
b. a detailed summary of the known nature and extent of: 1) OU5 ground water contamination and any related exposure pathways; 2) OU2 environmental conditions; and, 3) ground water contamination and any related exposure pathways within the northern off-site groundwater plume;
c. a detailed description, which includes LERA's proposed reuse priorities, and a map that clearly identifies the individual parcels on LAFB (identified in lines i – v below), that will require separate FOSET and deferral request approvals from the Governor of Colorado (as per paragraph 11 above) along with a detailed description and map of the northern off-site groundwater plume. These "FOSET parcels" are identified as:
    i. two parcels identified as the OU5 fringe areas in the Northwest neighborhood parcel (west of Uinta St.) and north of the Westerly Creek Dam
    ii. one parcel identified as the on-site landfill (OU2)
    iii. one parcel located above the headquarters plume
    iv. one parcel located above the main TCE (Trichloroethylene) plume
    v. one parcel located above the former fire training zone;

d. potential treatability studies/pilot tests that may be proposed to assist in the evaluation of potential ground water remedies on LAFB or the northern off-site groundwater plume;

e. proposed schedules for:

i. submittal of a draft Supplemental Groundwater Characterization Plans (SGCP) to systematically characterize the nature and extent, both horizontal and vertical, of any contamination at or relating to each FOSET parcel described in paragraph 23(c) above, and the northern off-site groundwater plume.

ii. submittal of a FOSET and deferral request application for each FOSET parcel described in paragraph 23(c) above. The FOSET application will not be approved until adequate characterization of the nature and extent of contamination has been achieved at the FOSET parcel(s) proposed for transfer;

iii. submittal of work plans associated with any and all proposed treatability studies/pilot tests, interim remedial actions (IRAs), or corrective action plans (CAPS) associated with ground water remedy evaluation; and

iv. submittal of any other related work products, deliverables etc.

f. identification of all applicable state and federal standards associated with remediation of soil and groundwater contamination at LAFB.

24. The Department will notify the LERA and LAC in writing of its approval, approval with modifications, or disapproval of the draft Transition Plan. In the case of approval with modifications, the LAC is only required to resubmit those sections of those submittals that were not approved, unless otherwise requested by the Department. As used in this Agreement, the term "approved plan" means the approved portions of the submitted plan as modified. In addition, a meeting(s) will be held to review the draft Transition Plan with LAFB stakeholders, before Department approval, to evaluate the outline and contents of the plan, to discuss concerns and comments on the approach and to obtain input from the stakeholders. If, after review of the draft Transition Plan, the Department determines that the plan is disapproved, the LAC shall submit, within forty-five (45) days of receipt of this determination, a revised Transition Plan to reflect any necessary changes based upon the Department's comments. (**2nd tier milestone** for purposes of Stipulated Penalties as set forth in Paragraphs 74 through 78 below).

25. Within thirty (30) days of receipt of the Department's approval or approval with modifications of the draft Transition Plan, the LAC shall begin to implement this Transition Plan in accordance with the procedures and schedules contained in the approved plan **(2nd tier milestone)**.

26. For all proposed activities described in paragraph 23 above or other activities agreed to as part of this Consent Agreement, including but not limited to further characterization of ground water contamination through SGCPs or remedy evaluation through treatability studies and/or pilot tests, the LAC shall submit the work plans pursuant to the schedules

contained in the approved Transition Plan, for Department review and approval (prior to implementation), that detail the scope of the proposed activities **(2nd tier milestone)**. All work plans shall be discussed with the Department prior to preparation to assure that the Department is in conceptual agreement with the intent and content of the plan when it is submitted.

27. The Department shall notify the LERA and LAC in writing of its approval, approval with modifications, or disapproval of all work plans including, but not limited to, SGCPs, treatability studies and/or pilot tests. In the case of approval with modifications, the LAC is only required to resubmit those sections of those submittals that were not approved, unless otherwise requested by the Department.

28. If, after review of the work plans above, including but not limited to SGCPs, treatability studies and/or pilot tests, the Department disapproves any work plan, the LAC shall submit, within forty-five (45) days of receipt of this determination, a revised work plan **(2nd tier milestone)**.

29. Within fifteen (15) days of the Department's approval of SGCPs, treatability study, and/or pilot test work plans, the LAC shall begin to implement the plan in accordance with the procedures and schedules contained in the approved plan **(2nd tier milestone).**

30. Within thirty (30) days of completing the implementation of the work plans, including but not limited to the SGCPs, treatability studies and/or pilot tests, the LAC shall submit a written report, for Department review, detailing the implementation of the work plans **(2nd tier milestone)**.

31. Based on its review of each SGCP report, the Department shall determine whether the full horizontal and vertical extent of the contamination has been adequately characterized at the FOSET parcel(s) and/or the northern off-site groundwater plume. The Department will notify the LERA and LAC in writing of its determination of whether the nature and extent of the contamination in the FOSET parcel(s) and the northern off-site groundwater plume have been adequately characterized, and whether remediation of contamination at, or relating to, that parcel and/or northern off-site groundwater plume is necessary.

32. Based on its review of the treatability studies/pilot tests reports, the Department shall determine whether the treatability study and/or pilot test was effective and should be considered when evaluating remedial alternatives at the FOSET parcel(s). The Department shall notify the LERA and LAC in writing of its determination.

33. If, after review of the SGCP report, the Department determines that the nature and extent of contamination has not been adequately characterized within the FOSET parcel(s) and/or the northern off-site groundwater plume, the LAC shall submit, within forty-five

(45) days of receipt of this determination, a revised SGCP work plan to complete any additional characterization, as necessary **(2nd tier milestone)**.

34. Within forty-five (45) days of receipt of the Department's determination that the contamination has been adequately characterized and that remediation is necessary at a FOSET parcel(s) and/or the northern off-site groundwater plume, the LAC shall submit, for Department review and approval, a draft Phase 1, Corrective Action Plan (CAP) **(1st tier milestone)**. The Phase 1 CAP shall propose remediation objectives and goals and evaluate a range of potential alternatives for the remediation/closure/post-closure care of the FOSET parcel(s) and/or the northern off-site groundwater plume. The draft Phase 1 CAP shall evaluate the alternatives for the appropriate extent of remedial action to prevent, mitigate, and remediate the contamination at, or relating to, the FOSET parcel(s) and/or the northern off-site groundwater plume. This plan shall propose a suitable corrective measure for final closure of the FOSET parcel(s) and/or the northern off-site groundwater plume, which may include a process for monitoring and enforcing any necessary environmental covenants/institutional controls. The draft Phase 1 CAP shall include detail as to how the proposed corrective measure for the remediation of contamination at the FOSET parcel(s) and/or the northern off-site groundwater plume is an appropriate corrective measure for final closure and how it is capable of achieving remediation objectives and goals and maintaining the standards set forth by the Department and the LAC in the Transition Plan. A meeting(s) shall be held to review the draft Phase 1 CAP with LAFB stakeholders to evaluate the outline and contents of the plan, to discuss concerns and comments on the approach and to obtain input from the stakeholders.

35. Based on its review of each Phase 1 CAP, the Department will notify the LAC of its approval, approval with modifications, or disapproval of each Phase 1 CAP. In the case of approval with modifications, the LAC is only required to resubmit those sections of those submittals that were not approved, unless otherwise requested by the Department.

36. If, after review of the Phase I CAP for the FOSET parcel(s) and/or the northern off-site groundwater plume, the Department determines that the information required pursuant to paragraph 34 above is insufficient, the LAC shall submit, within forty-five (45) days of receipt of this determination, a revised Phase I CAP to address any identified deficiencies **(2nd tier milestone).**

37. Within forty-five (45) days of receipt of the Department's approval or approval with modifications for the draft Phase 1 CAP for the individual FOSET parcel(s) and/or the northern off-site groundwater plume, the LAC shall submit a draft Phase 2 CAP for the FOSET parcel(s) and/or the northern off-site groundwater plume **(1st tier milestone).** A meeting(s) shall be held to review the draft Phase 2 CAP with LAFB stakeholders to evaluate the outline and contents of the plan, to discuss concerns and comments on the approach and to obtain input .

38. The Phase 2 CAP shall include, but not be limited to, the following:
    a. Finalized remediation objectives and goals, a detailed outline of the planned corrective measure and performance-monitoring program and a written narrative demonstrating how State standards and remediation objectives, or appropriate risk reduction, would be achieved;
    b. draft language for any institutional controls/environmental covenants proposed
    c. An implementation schedule, including enforceable milestones, for the proposed corrective measure **(1st tier milestones)**;
    d. System design diagrams showing how the system will be constructed in the field
    e. An operation and maintenance plan;
    f. A quality assurance/quality control plan;
    g. Sampling program used to verify the effectiveness of the treatment of the contaminated media;
    h. A plan for the review and reevaluation of the corrective actions at the FOSET parcel(s) and/or the northern off-site groundwater plume, after the completion of construction and startup and/or the recording of institutional controls/environmental covenants and at least every five [5] years thereafter;
    i. long-term monitoring plan to identify locations and frequency for long-term groundwater monitoring **(2nd tier milestones)**;
    j. a contingency plan for dealing with unexpected types of environmental impacts will be provided (if intrusive activities are planned);
    k. Any other information that will lead the Department to accept that the proposed remedy will be protective of human health (including possible indoor air exposures) and the environment and best suited to meet the final remediation objectives and the goals of the LERA, LAC, the Department, local governments and LAFB stakeholders.

39. Prior to finalization of the each Phase 2 CAP, a meeting(s) shall be held to review each Phase 2 CAP with LAFB stakeholders and to discuss concerns and comments on the approach and to obtain input from the stakeholders.

40. Based on its review of each Phase 2 CAP, the Department shall notify the LERA and LAC of its approval, approval with modifications, or disapproval of each Phase 2 CAP. In the case of approval with modifications, the LAC is only required to resubmit those sections of those submittals that were not approved, unless otherwise requested by the Department.

41. If, after review of the Phase 2 CAP for the FOSET parcel(s) or the northern off-site plume, the Department determines that the information required pursuant to paragraph 38 above is insufficient to ensure a protective, cost effective remedy that meets remediation objectives and the goals as set forth in this Agreement and the Act, the LAC shall submit, within forty-five (45) days of receipt of this determination, a revised Phase 2 CAP to address any identified deficiencies **(2nd tier milestone).**

42. Within fifteen (15) days of receipt of the Department's approval of the each Phase 2 CAP, the LAC shall begin to implement the corrective actions in accordance with the procedures and schedules as approved by the Department **(2nd tier milestone)**.

43. The Department shall make its best efforts to review and comment on any documents within forty-five (45) days of receipt.

44. At any time during the development or implementation of any of the activities described in the paragraphs above, the LAC may request Department approval of an interim corrective measure, pending selection of a long-term corrective measure, if the LAC finds that an interim corrective measure is appropriate, will be consistent with the final remediation objectives and goals and will expedite remediation of contaminated ground water considering site specific factors. The LAC shall submit for Department approval a work plan that will include, but not be limited to, details identified in lines a through j (excluding h) of Paragraph 38 above.

45. The Department shall notify the LERA and LAC in writing of its determination that the proposed interim response action is appropriate, will be consistent with the final remediation objectives and goals and will expedite remediation of contamination considering site specific factors.

46. At any time during the development or implementation of the requirements of this Agreement, the Department may require the LAC to expeditiously initiate an interim corrective measure pending completion of a long-term corrective measure, if the Department determines that an interim corrective measure is appropriate, considering site specific factors. The Department shall notify the LERA and LAC in writing of its determination that an interim corrective measure is required. The Department's determination shall specify what actions the LAC must take in order to comply with this requirement including, but not limited to, the submittal of schedules for interim corrective measures and the preparation, submittal and implementation of interim corrective measures work plans **(1st tier milestone)**.

47. If in the course of implementing any of the treatability studies/pilot tests, interim response actions, corrective actions or other activities provided pursuant to this Agreement, the conditions encountered are significantly different than those presented in the Department approved work plan, the Department shall be contacted within 48 hours of discovery and all efforts will be made to address needed modifications in a timely manner. If conditions are found to be "significantly different" than presented in the work plan, the Department shall provide the LAC and LERA with notice and a description of the nature and extent of the condition which constitutes "significantly different" conditions. For purposes of this Agreement, "significantly different" means that the conditions impact the LAC's ability to achieve remediation objectives and goals, schedules and/or the terms of this Consent Agreement. Within forty-five (45) days of the notification, the LAC shall submit a modified work plan, consistent with paragraph 38

above, to address the "significant difference" **(1st tier milestone)**.

48. If the LAC is unable to perform any activity or submit any document within the time required under any and all schedules/milestones described above, the LAC may, prior to the expiration of the time, submit a written request for an extension of the time. The extension request shall include a justification for the delay. All such requests shall be submitted in advance of the date on which the activity or document is due. If the Department determines that good cause exists for an extension, it will grant the request and specify a new schedule in writing. The LAC shall comply with the new schedule which will be incorporated into this Agreement as an enforceable requirement.

49. The LAC shall submit progress reports in writing to the LERA, the Department, and to the Cities of Denver and Aurora on the fifteenth day of each month, which shall include the following information from the previous month:
    a. the progress/results of all sampling and analytical activities;
    b. a summary description of all investigation and corrective activities performed during the previous month; and,
    c. a summary description of activities to be performed in the upcoming month.

50. Within ninety (90) days of satisfactory conclusion of the requirements of this Agreement at each FOSET parcel, the LAC shall submit a Completion Report to the Department **(1st tier milestone)**. Completion Reports shall be submitted for each FOSET parcel so that the Department may make final closure determinations. The Department shall make its best efforts to either accept or reject the LAC's Completion Report within thirty (30) days of Department receipt. If the Department approves the LAC's Completion Report, it shall send an approval letter to the LAC. If the Department disapproves the LAC's Completion Report, it shall include in its notice of disapproval, and a statement of the basis for its disapproval. The LAC shall, within fifteen (15) days of receipt of the Department's disapproval, either 1) submit a notice of acceptance of the determination; or 2) submit a notice of dispute to the determination. If the LAC fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Department's determination.

51. Except in case of an emergency, or in matters regarding enforcement of this Consent Agreement, any party issuing a press release or initiating media contact for the purposes of providing information to the media with regard to corrective action activities covered by this Agreement shall request comments from the other parties and advise the other parties of such press release or media contact, and the contents thereof, at least three (3) days prior to issuance. All other documents generated or meetings scheduled by any party for stakeholder involvement purposes related to this Consent Agreement, or documents prepared by any party for stakeholder involvement purposes related to LAFB, shall be submitted to the other parties for review and comment at least seven (7) days in advance of issuance, unless otherwise agreed to.

STAKEHOLDER PARTICIPATION

52. The parties agree to follow the guidelines set forth in Chapters 3 and 4 of the Final Report of the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC), April 1996 as they relate to stakeholder participation. The parties are committed to seeking active public involvement during all phases of the site characterization, corrective actions, long-term monitoring, and site close-out at LAFB. Towards that end, the parties agree to support to the Restoration Advisory Board ("RAB") and other similar community groups, to enable them to provide advice to the LERA, LAC and the Regulatory agencies with respect to key remediation decisions. The parties agree to maintain the LAFB community relations plan, they also agree to encourage diverse RAB membership, and to seek ways to facilitate open dialogue at RAB meetings.

53. The RAB and any interested stakeholders shall be given the opportunity to review and provide comments, within the timeframes provided for regulatory review, regarding all documents submitted pursuant to this Consent Agreement. The LERA and/or LAC shall provide written responses to all stakeholder comments prior to finalization of documents.

54. The Air Force shall provide the RAB with funding for technical assistance in accordance with the existing Technical Assistance for Public Participation program. Such funding shall be used for hiring a consultant to assist board members in reviewing documents and provide local training courses to educate advisory board members regarding relevant regulatory processes. Support and funding shall be, at a minimum, consistent with current Air Force levels.

55. The LERA shall be responsible for funding for RAB's administrative support. Support and funding shall be, at a minimum, consistent with current Air Force levels.

SCOPE AND EFFECT OF CONSENT AGREEMENT

56. This Consent Agreement shall be effective upon the date signed by the last party. In the event that a party does not sign this Consent Agreement within thirty (30) days of the other parties' signature, this Consent Agreement becomes null and void.

57. The parties' obligations under this Consent Agreement are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions approved pursuant to this Consent Agreement are incorporated into this Consent Agreement and become enforceable under the terms of this Consent Agreement as of the date of receipt by the LERA and/or LAC of the Department's approval.

58. The Department's approval of any submission, standard, or action under this Consent Agreement shall not constitute a defense to, nor an excuse for, any prior violation of any

requirement of the Hazardous Waste Act or the Colorado Hazardous Waste Regulations not specifically addressed herein, or any subsequent violation of any requirement of this Consent Agreement, the Hazardous Waste Act, or the Hazardous Waste Regulations. The LERA and LAC shall comply with all applicable Federal, State, and/or local laws or regulations, and shall obtain all necessary approvals or permits to conduct the investigation and remedial activities required by this Consent Agreement and perform its obligations required hereunder. The Department makes no representation with respect to approval and permits required by Federal and Local laws or regulations or State laws or regulations other than those required under the Act or the Regulations.

FINANICAL RESPONSIBILITY

59. The purpose of financial assurance in this Consent Agreement is to guarantee performance of and payment for all of LAC's obligations under this Consent Agreement, and to provide liability coverage for third-party injury or property damage in accordance with the requirements of this Consent Agreement and the Colorado Hazardous Waste Regulations, 6 CCR 1007-3, Part 266, as amended (hereinafter, all references to regulations in this Financial Responsibility Section shall be to the Colorado Hazardous Waste Regulations, 6 CCR 1007-3).

60. LAC, in accordance with the Cooperative Agreement and Remediation Agreement, shall provide Environmental Insurance Policies. The Department has been provided and has reviewed the Environmental Insurance Policies provided by LAC. The funding of the Corrective Action Measures is anticipated over a five (5) year period in accordance with Section 502 of the Cooperative Agreement, and the limits of such policies and financial assurance are dependant upon such funding.

61. LAC shall comply with the requirements of Section 266.13, regarding the cost estimate for all activities required by this Consent Agreement including work plans, reports and plan submissions. Requirements shall continue for the duration of this Consent Agreement and shall include third-party costs, annual inflation adjustment and a change in the cost estimate when there has been a change in the required activities which result in an increase in the cost of such activities. Within thirty (30) days of the effective date of an approved CAP or interim corrective measures in accordance with this Consent Agreement, a current dollar corrective action cost estimate will be submitted for review and approval. Each modified or revised CAP or interim corrective measure submitted for approval must include a financial assurance section in which amended or revised corrective action costs are included. A copy of the monthly or quarterly Project Cost Summary and Invoice Summary Table of all applicable financial assurance policies will be submitted to the Department, in addition to all written reasons why the Insurance Company has not approved payment for these financial assurance policies.

62. LAC shall provide and maintain financial assurance for all activities required pursuant to this Consent Agreement as set forth in Section 266.14. The wording of the financial assurance mechanism shall be modified appropriately to reflect the fact that the mechanism is being used for all corrective action activities required pursuant to this Consent Agreement, not just closure and/or post-closure. The wording of LAC's financial assurance must be approved by the Department. LAC is allowed to have a 5-year pay-in period to fully fund the financial assurance mechanism. The 5-year pay–in schedule for the Air Force to fund the Clean-up Cost CAP and Closure Cost Insurance Policy, the Pollution Legal Liability Policy, and the Post-Closure Policy shall be in accordance with Section 502 of the Cooperative Agreement. Post-closure coverage must be fully funded at the beginning of the post-closure period or within 5 years whichever is shorter.

63. LAC shall provide and maintain liability coverage as set forth in Part 266.16 for claims arising from activities conducted pursuant to this Consent Agreement. LAC shall provide total liability coverage for sudden and non-sudden occurrences arising from activities conducted pursuant to this Consent Agreement of no less than $4 million per occurrence with $16 million aggregate exclusive of legal defense costs.

64. If the Department determines that the level of financial responsibility required by Paragraphs 62 and 63 is not consistent with the degree and duration of risk associated with the activities required by this Consent Agreement, the Department may adjust the level of financial responsibility required under those paragraphs as may be necessary to protect human health and the environment. This adjusted level shall be based upon the Department's assessment of the degree and duration of the risk associated with the activities required by this Consent Agreement. Within thirty (30) days, LAC shall submit to the Department any requested information related to the requirements of this Consent Agreement to determine whether cause exists for such adjustments of level or type of coverage. Such adjustments may be the subject of Dispute Resolution.

65. If LAC fails to perform any activities in accordance with any of the terms or conditions of this Consent Agreement, after the Department provides LAC with written notification specifying in detail the basis for its determination that LAC failed to properly comply with the same, and LAC has had thirty (30) days to respond, then the Department shall undertake such performance by utilizing LAC's financial assurance mechanism to comply properly with the terms and conditions of this Consent Agreement regarding any activities.

66. LAC shall comply with the requirements of Section 266.17, regarding the incapacity of LAC, guarantors, or financial institutions issuing financial instruments required by this Consent Agreement.

67. In the event the Department promulgates final changes to Section 266, Colorado financial requirements, or promulgates final regulations covering corrective action/interim measure

financial requirements, which specifically apply to Sections 25-15-301(4) and 25-15-308 of the Colorado Hazardous Waste Act, after this Consent Agreement is effective the Department and LAC shall revise the financial requirements of this Consent Agreement in accordance with these published changes or regulations.

RELEASES, RESERVATION OF RIGHTS, AND LIMITATION OF LIABILITY

68. Upon the effective date of this Consent Agreement, and during its term, this Consent Agreement shall stand in lieu of any other enforcement action by the Department against the LAC with respect to the determination cited herein with respect to the remediation of LAFB as set forth herein. This Consent Agreement does not grant any release of liability for any determination, regardless of when it occurred, that are not cited in this Consent Agreement. The Department reserves the right to bring any action it deems necessary to enforce this Consent Agreement.

69. Nothing in the preceding paragraph shall preclude the Department from imposing additional requirements necessary to protect human health or the environment pursuant to the terms of this Consent Agreement. Nor shall anything in this Consent Agreement preclude the Department from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.

70. The LERA and LAC reserve their rights and defenses regarding liability in any proceedings regarding LAFB other than proceedings to enforce this Consent Agreement.

71. Upon the effective date of this Consent Agreement, the LERA and LAC release and covenant not to sue the State of Colorado as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act or the Regulations specifically addressed herein.

72. The LERA and LAC shall not seek to hold the Department liable for any injuries or damages to persons or property resulting from acts or omissions of the LERA and/or LAC, or those acting for or on behalf of the LERA and/or LAC, including its officers, employees, agents, successors, representatives, contractors or consultants in carrying out activities pursuant to this Consent Agreement. The LERA and/or LAC shall not hold out the Department as (a) a party to any contract entered into by the LERA and/or LAC in carrying out activities pursuant to this Consent Agreement; or (b) an owner, operator or generator of hazardous substances at LAFB. Nothing in this Consent Agreement shall constitute an express or implied waiver of immunity otherwise applicable to the Department, its employees, agents or representatives.

PENALTIES FOR NONCOMPLIANCE

73. Failure to comply with the terms of this Consent Agreement following applicable notice and cure periods as set forth herein may subject the LAC to civil penalties and/or punitive damages for any costs incurred by the Department as a result of such failure, as provided by the applicable provisions of law.

STIPULATED PENALITIES

74. Notwithstanding other provisions of this Consent Agreement, any failure by the LAC to meet any regulatory milestone contained in this Consent Agreement may give rise to the assessment of stipulated penalties by the Department, in accordance with paragraphs 74 through 78 (Stipulated Penalties). Nothing in this paragraph shall preclude the Department from taking other enforcement action seeking or imposing relief of an injunctive nature.

75. In the event that the LAC fails to meet any regulatory milestones in accordance with the requirements of this Consent Agreement, the Department may assess a stipulated penalty against the LAC, pursuant to the provisions of this section of this Agreement. Stipulated penalties will accrue from the date of the missed milestone or the date the non-compliance occurs. In no event shall this Agreement give rise to a stipulated penalty for each missed regulatory milestone in excess of the statutory limits set forth in section 25-15-309, C.R.S. of the Act. For purposes of this Section, failure to meet any regulatory milestone means the failure to adequately complete a required action within the specified timeframe.

76. The LAC's liability for stipulated penalties for missed regulatory milestones shall accrue the following rates:

a. up to $15,000 per week for each regulatory milestone designated as **"First Tier".** First Tier regulatory milestones are identified above in the Corrective Action Requirements. Additional First Tier regulatory milestones may be identified as part of any Interim Corrective Measures and the Phase 2 Corrective Measures Work Plans.

b. up to $5,000 per week for each regulatory milestone designated as **"Second Tier".** Second Tier regulatory milestones are identified above in the Corrective Action Requirements. Additional second Tier regulatory milestones may be identified as part of any Interim Corrective Measures and the Phase 2 Corrective Measures Work Plans.

77. Violations of regulatory milestones that run for part of a week shall be subject to the stipulated penalties set forth in the preceding paragraph, prorated for the number of days

of violations. Accordingly, violations of "First Tier" regulatory milestones shall be subject to stipulated penalties of up $2000 per day; violations of "Second Tier" regulatory milestones shall be subject to stipulated penalties of up to $700 per day.

78. Upon determining that the LAC has failed to meet a regulatory milestone, the Department shall so notify the LERA and LAC in writing of the failure within four (4) weeks of the first date of non-compliance. If the Department fails to provide such notice within the four week timeframe, as set forth above the Department is required to provide such notice, no penalties may be assessed without the receipt by the LAC of such written notice from the Department. If the failure in question is not already subject to dispute resolution at the time such notice is received, the LAC shall have ten (10) days after receipt of the notice to invoke the Dispute Resolution provisions of Paragraphs 93-96. No stipulated penalties shall be assessed during the pendency of Dispute Resolution.

EFFECT OF BANKRUPTCY PETITION

79. The obligations imposed by this Consent Agreement require the performance by LAC of actions which are reasonably designed to protect public health and welfare and the environment. Any enforcement of the obligations imposed by this Consent Agreement constitutes, solely for the purposes of 11 U.S.C. section 362(b)(5) (1988), the enforcement of a judgment, other than a money judgment, obtained in an action to enforce the State's regulatory and police powers.

GENERAL PROVISIONS

80. All documents submitted under this Consent Agreement shall use the same titles as stated in this Consent Agreement, and shall reference both the number of this Consent Agreement and the number of the paragraph pursuant to which the document is required. No plan submitted for Department approval under this Consent Agreement may be implemented unless and until written approval is received from the Department. Any approval by the Department of a plan submitted under this Consent Agreement is effective upon receipt by the LAC. All approved plans, including all procedures and schedules contained in the plans, are hereby incorporated into this Consent Agreement, and shall constitute enforceable requirements under Part 3 of the Act.

81. The requirements of this Consent Agreement are severable, and the LERA and LAC shall comply with each and every provision hereof, notwithstanding the effectiveness of any other provision.

82. Unless otherwise specified, time periods begin from the effective date of this Consent Agreement and "days" means calendar days.

83. The section headings set forth in this Consent Agreement are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Consent Agreement.

NOTICES

84. Whenever any person gives or serves any Notice under this Consent Agreement (the term "Notice" as used herein includes any demand or other communication with respect to this Consent Agreement), each such Notice shall be in writing and shall be deemed effective: (i) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (ii) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To the LERA: Lowry Economic Redevelopment Authority
555 Uinta Way
Denver, Colorado 80220
Attention: Tom Markham
with a copy to: International Risk Group

To LAC: Lowry Assumption, LLC
7991 Shaffer Parkway, Suite100
Littleton, CO 80127
Attention: Wayne Dorband

To the Air Force: Air Force Base Conversion Agency
1700 N. Moore Street, Suite 2300
Arlington, VA 22209-2802
Attention: Larry Leehy

To CDPHE: Sheila Gaston
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, B2
Denver, Colorado 80246-1530

Any party may change its address or the individual to whose attention a Notice is to be sent hereunder by giving written notice to the other party in compliance with the provisions of this Section.

OFFSITE ACCESS

85. To the extent any plan submitted by the LAC requires access to property not owned or controlled by the LERA, the LERA and LAC shall use their best efforts to obtain site

access from the present owners of such property to conduct required activities and to allow the Department access to such property to oversee such activities. In the event that site access is not obtained when necessary, the LERA and/or LAC shall notify the Department in writing regarding its best efforts and its failure to obtain such access.

SITE ACCESS AND SAMPLING

86. The Department shall be permitted to oversee any and all work being performed under this Consent Agreement. The Department shall be permitted access to LAFB property at any time work is being conducted pursuant to this Consent Agreement, and during reasonable business hours during any period work is not being conducted, for the purposes of determining the LAC's compliance with the Act, the Regulations, and this Consent Agreement. The Department shall be permitted to inspect work sites, operating and field logs, contracts, manifests, shipping records, and other relevant records and documents relating to this Consent Agreement or any requirement under this Consent Agreement and interview the LAC personnel and contractors performing work required by this Consent Agreement. Nothing in this paragraph limits or impairs the Department's statutory authorities to enter and inspect LAFB or its obligations as identified in Colorado's Department of Defense and State Memorandum of Agreement (DSMOA).

87. The Department may conduct any tests necessary to ensure compliance with this Consent Agreement and to verify the data submitted by the LAC. The LAC shall notify the Department in writing of any sampling activities undertaken pursuant to any plan or requirement of this Consent Agreement a minimum of seventy-two (72) hours prior to the sampling being conducted, and shall provide split samples to the Department upon request.

88. The LAC shall notify the Department in writing of any excavation, construction (including the construction of monitoring wells) or other investigatory or remedial activities undertaken pursuant to any plan or requirement of this Consent Agreement a minimum of seventy-two (72) hours prior to beginning the excavation, construction, or required activity. The LAC shall provide the Department with any blue print, diagram, construction or other permits for any construction activity undertaken pursuant to this Consent Agreement upon request.

FORCE MAJEURE

89. The LERA and LAC shall perform the requirements of this Consent Agreement within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events which constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of the LERA or LAC, and which cannot be overcome by

due diligence.

90. Within seventy-two (72) hours of the time that the LERA or LAC knows or has reason to know of the occurrence of any event which the LERA or LAC has reason to believe may prevent the LERA or LAC from timely compliance with any requirement under this Consent Agreement, the LERA or LAC shall provide verbal notification to the Department. Within seven (7) days of the time that the LERA or LAC knows or has reason to know of the occurrence of such event, the LERA and/or LAC shall submit to the Department a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.

91. The burden of proving that any delay was caused by a force majeure shall at all times rest with the LERA or LAC, as the case may be. If the Department agrees that a force majeure has occurred, the Department will so notify the LERA and LAC. The Department will also approve or disapprove of the LERA and/or LAC's proposed actions for mitigating the delay. If the Department does not agree that a force majeure has occurred, or if the Department disapproves of the LERA and/or LAC's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to the LERA and/or LAC. Pursuant to the Dispute Resolution section, within fifteen (15) days of receipt of the explanation, the LERA and/or LAC may file an objection.

92. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Agreement is found to have been delayed by a force majeure, the LERA and/or LAC, as the case may be, shall perform the requirements of this Consent Agreement that were delayed by the force majeure with all due diligence.

DISPUTE RESOLUTION

93. It is the intention of the parties that all disputes are resolved at the lowest possible level of authority as expeditiously as possible within the following framework. All timeframes for resolving disputes below may be lengthened by mutual consent.

94. Should the parties be unable to agree regarding any matter subject to this Consent Agreement, either party may submit a notice of dispute in writing as soon as practicable, but in no event to exceed ten (10) days of the failure to agree, to the designated representative of the LERA, LAC and the Hazardous Materials and Waste Management Division Director.

95. Should the designated representatives of the LERA, LAC and the Hazardous Materials and Waste Management Division Director be unable to agree within ten (10) days of the other Party's receipt of the Notice of Dispute, the matter shall be elevated to the

designated representatives of the LERA, LAC and the Director, Office of Environmental Programs of the Colorado Department of Public Health and Environment.

96. If agreement cannot be reached within twenty (20) days, the Department shall confirm or modify its decision within an additional fourteen (14) days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act.

REIMBURSEMENT OF COSTS

97. Reimbursement of all state services shall be through and in accordance with the current Department of Defense and State of Colorado Memorandum of Agreement or other appropriate funding mechanism as agreed upon by the Department, as set forth in the Enforceable Agreement between the Department and the Air Force.

MODIFICATIONS

98. The parties may modify this Consent Agreement by written amendment duly signed and authorized by both parties.

SUCCESSORS AND ASSIGNS

99. This Consent Agreement shall insure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, provided however that (i) in accordance with the terms of the Intergovernmental Agreement, the City of Denver and the City of Aurora are not obligated to assume the debts or obligations of the LERA, and nothing in this Consent Agreement shall in any way negate or purport to negate said terms, (ii) the Parties hereto recognize and agree that pursuant to the Cooperative Agreement between the LERA and the Air Force dated August 7, 2002 and the Enforceable Agreement between the Department and the Air Force, the Air Force is obligated to complete the environmental clean-up of LAFB if the LAC fails to complete all required clean-up activities pursuant to the terms of this Consent Agreement.

COMPLETION OF REQUIRED ACTIONS

100. The LAC shall submit a Notice of Completion to the Department upon satisfactory completion of all requirements of this Consent Agreement. The Department shall either accept or reject the LAC's Notice of Completion in writing within thirty (30) days of receipt. If the Department accepts the LAC's Notice of Completion, the Department shall send a letter to the LERA, LAC and the Air Force stating that the actions are

complete. If the Department rejects the LAC's Notice of Completion, it shall include in its notice to the LERA, LAC and the Air Force, a statement identifying the requirements that the Department considers incomplete or not satisfactorily performed and a schedule for completion. The LAC shall, within fifteen (15) days of receipt of the Department's rejection, either 1) submit a notice of acceptance of the determination; or 2) submit a notice of dispute to the determination. If the LAC fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Department's determination.

101. The LERA acknowledges that it has entered into the Cooperative Agreement with the Air Force, and that the Environmental Services to be funded and performed pursuant to the Cooperative Agreement will be governed by the provisions of this Consent Agreement, as provided in the Cooperative Agreement. Furthermore, the LERA will (i) transfer funds received under the Cooperative Agreement to the LAC to fund the performance of said Environmental Services, pursuant to the terms of the Cooperative Agreement and the Lowry Remediation Agreement between the LERA and LAC, (ii) participate in the preparation of informational materials and the public involvement processes as set forth in Paragraphs 51, 52 and 53 hereof, and (iii) provide support to the RAB in accordance with paragraph 55. The LERA shall have no further obligation or liabilities whatsoever under this Consent Agreement.

TERMINATION

102. The parties may terminate this Consent Agreement upon one of the following:

(a) The Department's issuance of a letter of acceptance of LAC's Notice of Completion detailing LAC's satisfactory completion of all requirements of the Consent Agreement;

(b) Notice to the Department that the Air Force has failed to fund the Environmental Services pursuant to the Cooperative Agreement, Section 502 ("Pre-Termination Notice"). LAC and/or LERA shall, at the written request of the Department, meet and confer with the Department regarding the failure to fund within thirty (30) days of issuance of the Pre-Termination notice. If the Department agrees with LAC and/or LERA that the Air Force has failed to fund in accordance with the terms of the Cooperative Agreement, the Department and LAC and/or LERA will mutually agree to terminate this Consent Agreement. If the Department disagrees with LAC and/or LERA's Pre-Termination Notice, the dispute resolution procedures described in paragraphs 93 through 96 of this Agreement may be invoked. A temporary suspension of funding under the Cooperative Agreement shall not trigger the right to request to terminate this Agreement pursuant to this paragraph, so long as the funding is restored within in thirty (30) days, (or as otherwise agreed upon by the parties), and

such suspension has not substantially compromised LAC and/or LERA's ability to perform its obligations under this Consent Agreement; or

(c) Mutual agreement of the parties.

AUTHORIZATION TO SIGN

103. The undersigned warrant that they are authorized to bind legally their respective principals to this Consent Agreement. This Consent Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Agreement.

FOR THE LERA:

Thomas O. Markham

Mr. Thomas O. Markham
Executive Director

8-12-02
Date

FOR THE LAC:

Wayne Dorband

Dr. Wayne Dorband
Managing Member

8-12-02
Date

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

August 13, 2002
Date

Douglas H. Benevento
Director, Office of Environmental Programs
Colorado Department of Public Health and Environment

Approved as to form:

August 13, 2002
Date

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