MEMORANDUM

SUBJECT: Approval of the San Fernando Valley Groundwater Basin Cooperative Agreement Application for Construction of the North Hollywood/Burbank Treatment Facility

FROM: Patti Clear
Regional Project Manager, (T-4-1)

THRU: Paula Bisson, Chief
State Programs Section, (T-4-1)
Melinda Taplin, Chief
Grants Administration Section (P-2-2)

TO: Lea Boyd
Grants Specialist (P-2-2)

Background

The San Fernando Valley Basin (SFVB) is located in Los Angeles County and the groundwater basin provides a drinking water source for the cities of Los Angeles, Burbank, Glendale and San Fernando. The SFVB groundwater supply will become more critical to Southern California when the Metropolitan Water District of Southern California will lose over half of its Colorado River Aqueduct supply to the State of Arizona.

In early 1980, the volatile organic chemicals trichloroethylene (TCE) and perchloroethylene (PCE) were discovered in the SFVB groundwater. Currently, contamination in about 30 of Los Angeles Department of Water and Power (LADWP) production wells (about 40 percent) in the San Fernando Valley exceeds the State Department of Health Services (DHS) action levels of 5 parts per billion (ppb) for TCE and 4 ppb for PCE. Because of this contamination, approximately 13 LADWP production wells are now out of service, and water from the remaining contaminated wells is blended with water from uncontaminated sources to meet DHS requirements. The Cities of Glendale and Burbank also have a number of wells out of service because of high TCE & PCE levels.
In March 1985, EPA and the LADWP entered into an advance match Cooperative Agreement for an operable unit Feasibility Study for the most contaminated area, the North Hollywood/Burbank area and an overall Remedial Investigation (RI) for the San Fernando Valley Groundwater Basin. The tasks associated with this cooperative agreement have been completed and the agreement expired on May 31, 1987. Since Superfund was not reauthorized, funding for the operable unit and the RI was delayed by about a year.

The Cooperative Agreement for the RI will be awarded shortly to LADWP. This action will be an amendment to the RI Cooperative Agreement. This approval memo addresses funding for a Remedial Action operable unit for construction of an aeration treatment facility in Area 1 of the San Fernando Superfund Sites. The purpose of this project is to mitigate the observed spread of groundwater contaminants in Area 1 by extraction, treatment and hydraulic containment.

Remedial Action (RA)

In response to the continued plume migration of the contaminants TCE and PCE, the LADWP will construct an interim remedial facility in North Hollywood. The project consists of a system of groundwater extraction wells, a collector pipeline, aeration tower, and granular activated carbon-air filtering units. The contaminated groundwater will be extracted and treated down to the Maximum Contaminant Levels (MCLs) for all volatile organic substances at 5 ppb for TCE and 4 ppb for PCE.

The cost of the Remedial Action is summarized in the chart below.

1. Groundwater Extraction Wells $632,000
2. Aeration Facility $725,000
3. Construction Contingency $135,000
4. Continued Operations (total) $2,246,395
5. Collector pipeline (cost assumed by LADWP) $623,575

Total $4,362,670

After the groundwater is treated it will be conveyed by gravity via an existing pipeline to LADWP's North Hollywood Pumping Station for chlorination and distribution. The South Coast Air Quality Management District has approved the design and issued a construction permit for the facility.
DHS, EPA and LADWP have plans to enter into a Three Party Agreement that will define specific responsibilities, cost shares and other applicable provisions for the operation and financing of this project. EPA signed this Three Party Agreement on July 7, 1987, and is waiting for DHS's and LADWP's signatures. Articles from the Three Party Agreement will be incorporated as special conditions to this Cooperative Agreement amendment.

The draft Record of Decision (ROD) for this project has been distributed for review by other Divisions within EPA, DHS and EPA Headquarters. It is anticipated that the ROD will be signed by the Regional Administrator in August. It is my understanding that this Cooperative Agreement amendment will be awarded as soon as possible to enable LADWP to begin incurring project costs, however, LADWP will not be able to draw down on their Letter of Credit until the ROD and Three Party Agreement are signed.

The LADWP has self-certified that their procurement system meets the requirements of 40 CRF Part 33. In April 1987, the EPA Inspector General completed an audit of LADWP's procurement and accounting systems. The IG found that LADWP's procurement system meets EPA requirements.

The special conditions for this Cooperative Agreement Amendment are attached.

Approval

By the memorandum, I approve the Remedial Action project to construct the North Hollywood/Burbank Treatment Facility.
I. Some special conditions in the Remedial Investigation Cooperative Agreement apply to the Remedial Action Cooperative Agreement amendment. These special conditions are Number's 1-9, 11, 14, 16, 17, 19-23, 26-29.

II. Articles from the three party agreement between the United States Environmental Protection Agency (EPA), the Department of Water and Power of the City of Los Angeles (DWP) and the California Department of Health Services (DOHS) also apply to this Remedial Action Cooperative Agreement Amendment and are incorporated as special conditions to this amendment. These Articles are Numbers 4, 8, 10-29.

III. Additional Special Conditions

1. Site Safety Plan

DWP will be responsible for the development and implementation of a site plan for the site where remedial response is contemplated. This plan will be consistent with the requirements of the National Contingency Plan (NCP) and applicable Federal and State safety standards and guidance. Each subagreement awarded under this Agreement must contain a condition that requires contractors and subcontractors to comply with the approved safety plan and all relevant Federal health and safety standards. No field work at a site shall occur until a safety plan for that site has been reviewed by EPA, for consistency with EPA requirements, and is finalized.

2. RD/RA Quarterly Reports

DWP agrees to include in its quarterly report information on change orders and construction contingency fund expenditures. EPA has obligated $2,976,819 for the project. $135,700 is the amount for the construction contingency fund. DWP agrees to inform EPA, in its quarterly report, of the total expenditures from the contingency fund to date (dollars and percentage); total expenditures from the fund during the reporting period (dollars and percentage); unusual expenditures from the contingency fund.
during the reporting period, such as change orders exceeding 75 percent of the fund; and the balance remaining. DWP also agrees to inform EPA, to the best of its ability, at least one reporting period before additional funds are required in the contingency fund.

3. Off-Site Reporting

For any Federal fiscal year quarter in which off-site treatment, storage, or disposal takes place, DWP's quarterly report shall detail the following information: type and form of wastes; quantity of wastes; name, location, and identification number of facility(ies) utilized; pretreatment of wastes before transportation and at the facility; final method of treatment or disposal; compliance status of the facility and summary of any State inspection reports prepared during the quarter; and, if wastes were landfilled, the disposal cell number or location and type of liner.

4. Resident Inspection

DWP shall provide, unless otherwise approved by EPA, full time resident inspection of construction activities to ensure, to the maximum extent practicable, compliance with the subagreement documents.

5. Construction Contingencies

EPA obligates $2,976,819 to the remedial action project to be conducted at the San Fernando Area I Superfund site pursuant to this Cooperative Agreement. $135,700 is the amount for the construction contingency fund. DWP agrees to conduct the necessary change order cost review, pursuant to 40 CFR Part 33, and a Superfund technical and administrative review to ensure consistency with the Statement of Work (SOW) for this Agreement and the Record of Decision for the site. DWP will inform the EPA and DOHS when total project change orders exceed 75 percent of the construction contingency fund. DWP shall not authorize such changes until first having received EPA and DOHS approval in writing.

6. Remedial Action Report

DWP agrees to prepare a remedial action report for the San Fernando Area I site at the completion of the remedial action project performed under this Cooperative Agreement. This report shall be submitted to the EPA Remedial Project Manager for review within sixty (60) days after the joint EPA/State inspection and acceptance of the remedy by the State. This report shall, at a minimum: summarize the work contained in the SOW for this Agreement and certify that this work was
performed; detail actual costs and schedule; explain and justify modifications made to this work (if any); list criteria used in determining that the remedy is functional and operational and detail how these have been met; and describe final site monitoring and maintenance provisions.

7. Compliance with Guidance

In implementing the remedial action project at the San Fernando Area I Superfund site pursuant to this Agreement, DWP agrees to comply with the remedy as approved in the Record of Decision for this site, and with guidance provided in the manual Superfund Remedial Design and Remedial Action Guidance, OERR, June 1986.

8. Design

DWP agrees to submit the design for the remedy at the San Fernando Area I Superfund site to EPA for review and approval. EPA will review the design for compliance with the ROD and for technical adequacy. DWP agrees to accommodate EPA comments and to revise the design accordingly. Should EPA determine that major design changes are occurring that would significantly alter the scope of the remedy, the EPA Project Manager will notify DWP in writing. DWP agrees to halt design activities temporarily and to negotiate a mutually acceptable solution with EPA.

9. Cost Analysis

DWP agrees to conduct a cost analysis of all contractor change order requests estimated to exceed $10,000 in accordance with 40 CFR 33.290. DWP agrees to conduct a technical and administrative review of all change order requests to ensure consistency with the Record of Decision. The review, at a minimum, will examine the technical basis for the change order requests, the allowability of proposed cost changes, compliance with contractual and regulatory requirements, and conformance with the approved SOW for this Agreement. DWP agrees to submit to EPA for review all change order technical and administrative analyses as attachments to the quarterly report.
THREE PARTY AGREEMENT
FOR THE NORTH HOLLYWOOD/BURBANK TREATMENT
FACILITY AT THE SAN FERNANDO AREA I
SUPERFUND SITE

This is a contract among the United States Environmental Protection Agency (EPA), the Department of Water and Power of the City of Los Angeles (DWP) and the California Department of Health Services (DOHS), who agree as follows:

1. Authority

This State Superfund/Political Subdivision Contract ("SS/PSC") is entered into pursuant to sections 104(a)(1), (c)(2), and (c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9601 et seq. as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), and pursuant to California Health and Safety Code Section 253000 et seq.

2. Cooperative Agreement

EPA and DWP have entered into a Cooperative Agreement providing for a Superfund remedial action (operable unit) to be undertaken at the North Hollywood/Burbank site. A copy of the Cooperative Agreement is attached hereto as Exhibit A and incorporated herein by reference as though fully set forth. Exhibit A also includes a description of the site and the response actions taken in connection with the site. This Contract fulfills a requirement of the Cooperative Agreement by providing for the financing of the construction and continued operations costs for the project.

3. Duration of the Contract

The Contract shall become effective upon execution by the three parties and shall remain in effect until completion of the activities described in the Cooperative Agreement. The parties may agree to extend, by amendment, the duration of the Contract for the period necessary to implement any remedial activities that the parties agree to undertake beyond those defined in the Cooperative Agreement. This Contract may be terminated before the activities described in the Cooperative Agreement are completed if the parties jointly agree upon 30 days' written notice to the other parties.

4. Negation of Agency Relationship

Nothing contained in this Contract shall be construed to create, either expressly or by implication, the relationship of agency among EPA, DWP and DOHS. Any standards, procedures, or protocols prescribed in this Contract or the Cooperative Agreement to be followed during the performance of obligations under this
Contract or the Cooperative Agreement are for assurance of the quality of the final product of the actions contemplated by the Cooperative Agreement, and do not constitute a right to control the actions of any party. EPA (including its employees, agents, and contractors) is not authorized to represent or act on behalf of DWP or DOHS in any matter relating to the subject matter of this Contract, and DWP and DOHS (including their employees, agents, and contractors) are not authorized to represent or act on behalf of EPA or each other in any matter relating to the subject matter of this Contract.

5. **Outside Parties**

This Contract is intended to benefit only the DWP, DOHS and EPA. It extends no benefit or right to any other party not a signatory to this Contract. In addition, EPA does not assume any liability to other parties with respect to losses due to bodily injury or property damages that exceed the limitations contained in the provisions of 28 U.S.C. sections 1346(b), 2671-2680. To the extent permitted by State law, neither DWP nor DOHS assumes any liability to any other parties with respect to losses due to bodily injury or property damage.

6. **Parties' Representatives**

Upon signing this Contract, the State's Department of Health Services certifies that the agency has legal authority to enter into the Contract on behalf of the State and to fulfill its terms. The State also certifies that DWP has the legal authority to enter into the Contract as a political subdivision of the State and to fulfill its terms. EPA has designated:

**Patti Cleary**
215 Fremont St., San Francisco, CA 94150
415 974-8501

to serve as Regional Project Manager for this Contract.

The State has designated:

**John Casey**
101 S. Broadway, Room 7011, Los Angeles, CA 90012
213 620-2803

to serve as State Project Officer for this Contract.

The DWP has designated:

**Henry Venegas**
111 N. Hope St., Los Angeles, CA 90012
213 481-6157

to serve as the Local Project Manager for this Contract.
The parties each have the right to change their respective project coordinator. Such a change shall be accomplished by notifying in writing the other parties at least five days prior to the change.

7. Duties of the Regional Project Manager, State Project Project Officer and Local Project Manager

The EPA Regional Project Manager, the State Project Officer and Local Project Manager have joint authority to make project decisions that do not enlarge the scope of the response actions at the site or the cost of the project covered by the Contract. In addition, the Local Project Manager will report modifications of schedules or activities to the EPA Project Manager and the State Project Officer.

8. Roles and Responsibilities

A. DWP

The DWP shall act as lead agency for the remedial action work conducted under the Cooperative Agreement and this SS/PSC. DWP shall arrange for the services of contractors to perform the remedial action work described in the Scope of Work (SOW) of the Cooperative Agreement. The DWP shall comply with all pertinent provisions of 40 CFR Parts 30 and 33 (including an accounting system that accurately reflects costs and retains records for cost recovery purposes under CERCLA) with respect to any procurement activities undertaken pursuant to this SS/PSC or the Cooperative Agreement or the expenditure of any funds provided to the DWP by EPA pursuant to this SS/PSC or the Cooperative Agreement.

The DWP shall ensure that any remedial action work conducted pursuant to this SS/PSC is in accordance with the SOW of the Cooperative Agreement and the Record of Decision (ROD) for the North Hollywood Operable Unit.

In overseeing the remedial action work described in the SOW of the Cooperative Agreement, the DWP shall ensure, to the maximum extent practicable, that the remedial action work is conducted in accordance with all applicable EPA guidance, including but not limited to the Superfund Remedial Design and Remedial Action Guidance manual, Vols. I & II, published by OERR in June 1986 and subsequent revisions and directives.

The DWP will inform EPA and DOHS of any proposed changes in the scope of remedial action work under the Cooperative Agreement. No changes in scope of work shall be made unless approved by EPA and DOHS, and incorporated by written amendment into the Cooperative Agreement.

The DWP shall consult with EPA and DOHS during all phases of remedial action work.
The DWP shall submit all data, analyses, summaries, studies plans, reports, specifications, contract documents, recommendations or other pertinent information ("documents") required or generated under this SS/PSC or the Cooperative Agreement to EPA and DOHS for review and concurrence prior to issuance or implementation.

B. DOHS

DOHS may review all documents submitted by DWP and concur on such documents, if appropriate. In the event that DOHS does not provide DWP and EPA with written comments or with a written request for an extension of time within thirty (30) days of receipt of any document DOHS will be deemed to have concurred on the document.

DOHS shall review any substantive changes in the scope of work or project costs under the Cooperative Agreement. No changes in the scope of work or project costs may be made without the written concurrence of EPA and DOHS. Any such changes must be embodied as amendments to the Cooperative Agreement.

DOHS may consult with EPA and DWP during all phases of remedial action work, and shall provide written comments/concurrences when appropriate.

C. EPA

EPA may review all documents submitted by the DWP or DOHS under this SS/PSC or the Cooperative Agreement, and concur on such documents, if appropriate. In the event that EPA does not provide DOHS and the DWP with written comments or with a written request for an extension of time within thirty (30) days of receipt of any document, EPA will be deemed to have concurred on the document.

EPA shall review any proposed substantive changes in the scope of work or project costs under the Cooperative Agreement. No changes in the scope of work or project costs may be made without the written concurrence of EPA and DOHS. Any such changes must be embodied as amendments to the Cooperative Agreement.

EPA may consult with DWP and DOHS during all phases of remedial action work, and shall facilitate the resolution of any disputes which may arise under this SS/PSC.

9. Coordination of Parties Participating in Response

The following agencies and/or entities will participate in the remedial action at the North Hollywood/Burbank site conducted pursuant to this Contract: EPA, the State and the DWP. EPA will oversee the participation of each in close coordination with the State Project Officer and the Local Project Manager.
Payment will be made in the following manner:

DWP agrees that it will promptly review, audit and pay DWP costs incurred for project materials, labor and services and approved invoices received from the several contractors according to the terms and conditions of each individual contract. Thereafter, DWP will draw down against a letter of credit established by EPA for its 90 percent allocated share and will send an invoice to DOHS for its 10 percent allocated share of the construction costs, which invoice DOHS agrees to pay within 30 days of receipt. The parties further agree that for each invoice period DWP's statement to EPA and invoice to DOHS will show the total expenditure pursuant to each of the individual contracts, and above-described DWP costs as well as the determination of the respective allocated shares for EPA and DOHS. DOHS & EPA have the right to withhold payment if billings are improper. DWP will include an informative summary of work progress with its invoices to DOHS. Each party will be granted access to each other's books and records and their subcontractors to conduct audits if deemed necessary. Each party reserves the right to contract with an outside auditor to conduct periodic reviews of project records.

Subject to the provisions of section 33 hereunder, payments made by DOHS pursuant to this Contract shall be credited toward DOHS's cost share obligation under CERCLA § 104(c)(3).

14. Continued Operations Costs Sharing

Pursuant to CERCLA section 104(c)(6), EPA is authorized to cost-share in the continued operations of the treatment plant for Area I until the Record of Decision (ROD) establishing the final remedy for the San Fernando site for Area I is signed. EPA will provide 90% of the costs of continued operations of the remedial action provided under this contract, consistent with the approved plan for continued operations, for a period of time beginning with the date of completion of the activities described in the cooperative agreement and terminating thereafter at the time of commencement of operation of the final remedial action for the San Fernando sites.

DOHS agrees that it is responsible for paying 10 percent of the continued operations costs defined in the cooperative agreement. Although the State is responsible for the cost share, the political subdivision, DWP, agrees to provide the 10 percent DOHS cost share for continued operations. At the conclusion of EPA's participation, which will be when the ROD is signed for the final remedial action for the San Fernando site for Area I, DWP and the State must assure full responsibility for operations and maintenance. When operation and
maintenance costs are determined, the contract and cooperative agreement will be amended accordingly. Payment will be made in the following manner:

DWP will draw down against a letter of credit established by EPA for its 90 percent allocated share.

DWP will include their 10 percent cost share in their cooperative agreement application for the remedial action operable unit. The State guarantees payment of all continued operations, and operations and maintenance costs in the event of default by DWP.

During the remedial action, DWP shall submit to EPA and DOHS for review and approval a continued operations plan (COP). At a minimum, the plan shall include: a description and schedule of COP activities; an estimate of the duration of such activities; remedy performance standards; a contingency plan for abnormal occurrences; safety requirements for COP activities; staffing requirements; equipment and materials requirements; a monitoring program to demonstrate the continued effectiveness of the remedial action; annual COP costs and a description of site use and disposition of facilities following completion of continued operations. Should major changes to the statement of work occur during implementation of the remedial action, DWP agrees to modify its COP, with the concurrence of EPA and DOHS, to reflect these changes.

15. Off-Site Treatment, Storage, or Disposal

Pursuant to CERCLA section 104(c)(3)(B), the State is required to assure the availability of a hazardous waste facility. DWP, in its invitation for bids for the remedial action, will require respondents to provide adequate capacity for waste disposal at a facility (or facilities) that meets all applicable requirements of the Resource Conservation and Recovery Act (RCRA) and that is consistent with EPA's off-site disposal policy. A RCRA compliance inspection shall be completed by EPA or DHS for the waste facility within six (6) months prior to the receipt at the designated facility of wastes from the site. Prior to award of the contract, the EPA Regional office in which the facility is located will review the results of the compliance inspection and other available information to determine if the facility meets the criteria set forth by EPA.

16. Access to the Site and Permits

DWP agrees to satisfy all Federal, State, and local requirements for permits and approvals. The State, to the extent of its legal authority, shall secure access to the site and adjacent properties, as well as all rights-of-way and easements necessary to complete the response actions undertaken pursuant to this Contract. As requested by EPA, the State also shall
obtain or assist EPA in obtaining any permits that are necessary to complete satisfactorily the activities described in the SOW.

17. State Access During Remedial Response

Representatives of DWP and DOHS and EPA shall have access to the site to review work in progress and shall comply with the site safety plan. No other party shall be responsible for any harm to any other parties' representatives or other persons arising out of or otherwise resulting from any act or omission by EPA, DOHS, or DWP or their respective representatives during the course of any on-site visit.

18. Site Safety Plan

DWP will be responsible for the development and implementation of a site safety plan for the site where remedial response is contemplated by this Contract. This plan will be consistent with the requirements of the NCP and applicable Federal and State safety standards and guidance.

19. Community Relations

The DWP, DOHS, and EPA agree to encourage public participation in agency activities relating to the Superfund remedial action operable unit, which is planned to protect public health and the environment. DWP and the State agree to fully assist EPA, the lead agency for conducting community relations, in accordance with the San Fernando Valley Basin Community Relations Plan (January 1986), "Community Relations in Superfund: A Handbook" (draft, March 1986), and the National Contingency Plan (November 1985), and any forthcoming revisions to these documents.

Specifically, tasks include, but are not limited to:

a) Establishing and maintaining information repositories throughout the Basin and in the City of Los Angeles.

b) Expanding and updating EPA's computer mailing system by adding and revising addresses from community elements such as residents, agencies, elected officials, community groups, and media.

c) Transmitting copies of all North Hollywood/Burbank groundwater treatment facility correspondence between local and state agencies and the aforementioned community elements to an EPA project representative.

d) Organizing community meetings: securing location and room setup, obtaining equipment, and arranging for various presentations and programs.

e) Assisting with public meeting facilitation and recording.
20. Confidential Information

At EPA's request and to the extent allowed by State or local law, the DWP shall make available to EPA any information in its possession concerning the site. EPA will make available to the DOHS or the DWP any information in its possession concerning the work being conducted pursuant to this Contract if the DOHS or the DWP submits a request for such information. If the DOHS or the DWP provides any information to EPA under a claim of confidentiality, this information will be treated in accordance with 40 CFR Part 2 if the DOHS or the DWP has given EPA notice of a claim of confidentiality. EPA will not disclose information submitted under a claim of confidentiality unless EPA is required to do so by Federal law and has given the DOHS or DWP advance notice of EPA's intent to release that information. Absent notice of such claim, EPA may make said information available to the public without further notice.

21. Cost Effective Response

CERCLA section 104(c)(4) requires that CERCLA-funded actions provide a cost-effective response, balancing the need for protection of public health, welfare, and the environment against the availability of amounts from the fund to respond at other sites. If DWP requests additional fund-financial response at the site, EPA will evaluate the request against available fund monies and whether it is consistent with the NCP. This Contract does not commit EPA to future funding for response actions at the site.

22. Change Order and Claims Management

DWP or its agent(s) will conduct technical and administrative reviews of any contractor change order requests or claims. These reviews will examine the technical basis for the change order requests or claims and will determine whether they are merited. DWP will inform the EPA and DOHS when total project change orders exceed 75 percent of the construction contingency fund.

23. Reporting Requirements

The DWP agrees to submit quarterly progress reports to the RPM and SPO, detailing technical progress of the project, changes to the SOW, and other major changes to the project.

24. Pre-final Inspections

DWP will participate in the pre-final construction conference.
No party to this Contract shall attempt to negotiate for nor collect reimbursement of any response costs on behalf of the other party, unless party agrees, and authority to do so is hereby expressly negated and denied.

B. Cooperation and Coordination in Cost Recovery Efforts

EPA, DWP and the State agree that they will cooperate in and coordinate efforts to recover their respective costs of response actions taken at the site(s) described herein, including the negotiation and settlement and the filing and management of any judicial actions against potentially responsible parties. This shall include coordination in the use of evidence and witnesses available to each in the preparation and presentation of any cost recovery action, excepting any documents of information which may be confidential under the provisions of any applicable State, Federal, or local law or regulation.

C. Judicial Action

EPA, DWP and the State agree that any judicial action taken by any party pursuant to CERCLA as amended against a potentially responsible party for recovery of any sums expended in response actions at the site described herein shall be filed in the United States District Court for the judicial district in which the site described in this Contract is located, or in such other judicial district of the United States District Courts as may be authorized by sections 113 of CERCLA and agreed to in writing by the parties to this Contract.

D. Litigation Under CERCLA Section 106 and 107

Signature of this Contract does not constitute a waiver of EPA's right to bring an action against any person or persons for liability under section 106 or 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended, or any other statutory provision or common law.

28. Transfer of Guarantees and Warranties

Upon DOHS's and DWP's acceptance of the remedy and assumption of responsibility for O&M, all guarantees and warranties associated with the remedy will transferred to DWP's possession. The DOHS will provide for such transfer in all agreements for remedial action negotiated with response contractors.

29. NPL Deletion

At the successful completion of the remedial action at the site, performed pursuant to this Contract, the State may
request EPA to delete the site from the National Priorities List (NPL). The State agrees to participate in the NPL deletion process by commenting on the proposed site deletion and by reviewing the site NPL deletion package.

30. Failure to Comply with Terms of the Contract

If DWP or the State fails to comply with the terms of this Contract, EPA may proceed under the provisions of section 104(d)(2) of CERCLA as amended. If EPA fails to comply with any requirements of this Contract, DWP or the State, after providing sixty (60) days notice, may seek in the appropriate court of competent jurisdiction to enforce the Contract.

31. Dispute Resolution

The parties shall use their best efforts to resolve informally any disputes which may arise under this SS/PSC by the representatives designated in paragraph six. If the representatives are unable to agree upon an appropriate resolution, the dispute shall be elevated to the EPA Toxics Division Director, State and DWP, then to the Deputy Regional Administrator, Director of DOHS and the General Manager of DWP who will resolve the dispute within 30 days.

If the Parties are unable to reach agreement on the resolution of a dispute under the SS/PSC, the EPA Regional Administrator shall resolve the dispute. The Regional Administrator's determination shall be reflected in the final remedial action.

32. Amendments to the Contract

Any change in this Contract must be agreed to, in writing, by all three parties hereto, except as provided elsewhere in the Contract.

33. Contract Closeout

This Contract will remain in effect until a final cost reconciliation is made to ensure that both the State costs, being provided by DWP and EPA have contributed their full cost shares for the project(s) conducted pursuant to it. This includes: satisfactory completion of the remedial activities described in the SOW; the final accounting of all
project costs, including all change orders and outstanding contractor claims; EPA receipt of documentation of all costs incurred; verification by audit of DWP's eligible costs for the water treatment plant; and receipt of all DWP provided State cost share payments made under this Contract.

Jeff Zelikson  
Acting Director  
Toxics and Waste Management Division  
Environmental Protection Agency

__________________________  
Signature

__________________________  
Date

Alex R. Cunningham  
Chief Deputy Director  
California Department of Health Services

__________________________  
Signature

__________________________  
Date

Duane L. Georgeson  
Assistant General Manager-Water  
Los Angeles Department of Water and Power

__________________________  
Signature

__________________________  
Date
LOS ANGELES DEPARTMENT OF WATER AND POWER
SPECIAL CONDITIONS

1. EPA awards this Cooperative Agreement in accordance with the Federal Grant and Cooperative Agreement Act of 1977. This Agreement is subject to all applicable EPA assistance regulations. Accounting for assistance funds (including receipts, State matching contributions and actual expenditures) must be in accordance with generally accepted accounting principles. Supporting vouchers and records of expenditures must be maintained to show application of funds to activities for which EPA financial assistance is intended. Such records may be subject to inspection by the Office of the Inspector General or by other authorized agencies of the federal government.

2. The recipient shall comply with the provisions of OMB Circular A-128 (copy enclosed) governing the audit of Federal financial assistance to State and local governments and Indian tribes.

3. This Agreement is subject to the procurement standards of Title 40 of the Code of Federal Regulations Part 33 (copy enclosed).

4. In accepting this Cooperative Agreement, the Los Angeles Department of Water and Power (LADWP) agrees to the following conditions for the letter of credit method of financing:
   a) Cash drawdowns will occur only when needed for disbursements.
   b) Timely reporting of cash disbursements and balances will be provided, as required by the EPA Letter of Credit Users Manual.
   c) The same standards of timing and reporting will be imposed on secondary recipients, if any.
   d) When a drawdown under the letter of credit occurs, the recipient will show on the voucher (Form TFCS-5805) the Cooperative Agreement number, the appropriate EPA account number, and the drawdown amount applicable to each site/activity account (see attached "Instructions for Using the Agreements"). The eighth digit of the account number (see Item 39, page 1 of the Cooperative Agreement) is the code to the appropriate activity assignment.
J - Pre-Remedial Activities
L - Remedial Investigation/Feasibility Study
N - Remedial Design
R - Remedial Action
S - Operation and Maintenance.

e) When funds for a specific activity have been exhausted but the work under the activity has not been completed, LADWP may not draw down from another activity or site account without written permission from the EPA Award Official.

f) Funds remaining in an account after completion of an activity may be either returned to EPA or adjusted to another activity or site, at EPA's discretion.

g) LADWP must submit an interim SF-290, Financial Status Report (FSR) from date of award to September 30 of each calendar year, no later than December 31 of the same calendar year. At the end of the project period, LADWP must submit an FSR covering the entire period. These reports should be sent to the Grants Administration Section, P-2-2.

Failure on the part of the LADWP to comply with the above conditions may cause the unobligated portions of the letter of credit to be revoked and the financing method changed to a reimbursable basis.

5. The cost principles of OMB Circular A-87 are applicable to this award. When indirect costs are included within the assistance budget, the recipient must be in compliance with A-87 and EPA regulations regarding allowable project costs and use the current approved provisional indirect costs rate, if a final rate has not been approved. Actual indirect costs charged to this Cooperative Agreement may not exceed the final approved rates as negotiated annually between the recipient and the appropriate cognizant Federal agency.

6. In accordance with section 2(d) of the Prompt Payment Act (PL 97-177), Federal funds may not be used by the LADWP for the payment of interest penalties to contractors when bills are paid late, nor may interest penalties be used to satisfy cost-sharing requirements. Obligations to pay such interest penalties will not be obligations of the United States.
7. No portion of this award may be used for lobbying or propaganda purposes as prohibited by 18 USC section 1913 or by section 607(a) of Public Law 96-74.

8. LADWP agrees to negotiate a fair share objective with EPA as soon as possible. The recipient agrees to submit to the Region IX Small and Disadvantaged Business Utilization Coordinator, P-1, a completed EPA Form 6005-1 within fifteen working days after the end of each federal fiscal quarter. Negative reports are required.

9. CERCLA section 104(c)(4) requires that CERCLA-funded actions provide a cost-effective response, balancing the need for protection of public health, welfare, and the environment against the availability of amounts from the fund to respond at other sites. If the State requests additional fund-financed response at the site, EPA will evaluate the request against available fund monies to determine whether it is appropriate. This Cooperative Agreement does not commit EPA to future funding for response actions at the site.

10. All activities conducted under this Cooperative Agreement shall be consistent with the National Contingency Plan (NCP), 40 CFR Part 300. Remedial alternatives developed as part of any remedial investigation and feasibility study funded under this Agreement will be identified, evaluated, and ultimately categorized as source control or management of migration measures based upon the factors established in section 300.68(e) of the NCP.

11. The EPA Remedial Project Manager or his/her designee will conduct periodic reviews and visits to evaluate project activities to assure compliance with applicable EPA requirements and regulations. The LADWP Project Officer agrees to ensure that schedules and reporting requirements are met or that any changes are agreed to by EPA. All LADWP-proposed modifications to schedules or activities will be reported to the EPA Cooperative Agreement Project Officer for review and concurrence. The EPA Cooperative Agreement Project Officer agrees to notify the LADWP Project Officer of schedule changes resulting from EPA enforcement activities.

12. The LADWP agrees to satisfy all Federal, State, and local requirements, including permits and approvals, necessary for implementing activities addressed in this Cooperative Agreement. The LADWP will provide access to the site as well as all rights-of-ways and easements necessary to complete the response actions. The LADWP will provide access to EPA employees and contractors at all reasonable times. The LADWP may not approve any compensation to property owners without EPA approval.
13. The following agencies and/or entities will participate in the Remedial Investigation at San Fernando Valley Sites conducted pursuant to this Cooperative Agreement: the Environmental Protection Agency, LADWP, and the Department of Health Services. The LADWP agrees to oversee the participation of each in close coordination with the EPA Cooperative Agreement Project Officer. The LADWP further agrees to inform the EPA Cooperative Agreement Project Officer in the event that problems arise and/or the role of any one agency significantly increases or decreases from that described in LADWP's Cooperative Agreement application dated February 19, 1987.

14. The LADWP, State, and EPA agree to encourage public participation in agency activities relating to the Superfund Remedial Investigation/Feasibility Study (RI/FS), Remedial Design/Remedial Action (RD/RA), and all Operable Units that may be planned and implemented to protect public health and the environment. LADWP and the State agree to fully assist EPA, the lead agency for conducting community relations, in accordance with the San Fernando Valley Basin Community Relations Plan (January 1986), "Community Relations in Superfund: A Handbook" (draft, March 1986), and the National Contingency Plan (November 1985), and any forthcoming revisions to these documents. Specifically, tasks include, but are not limited to:

a) Establishing and maintaining information repositories throughout the Basin and in the City of Los Angeles.

b) Expanding and updating EPA's computer mailing system by adding and revising addresses from community elements such as residents, agencies, elected officials, community groups, and media.

c) Transmitting copies of all Superfund-related correspondence between local and state agencies and the aforementioned community elements to an EPA project representative.

d) Organizing community meetings: securing location and room setup, obtaining equipment, and arranging for various presentations and programs.

e) Assisting with public meeting facilitation and recording.

f) Providing text, graphics, and photographs to be used in summaries of technical documents, fact sheets, briefings, exhibits, and community presentations.
g) Conducting public comment periods on Superfund-related materials and preparing Responsiveness Summaries to comments received on documents including the RI/FS work plan, RI/FS report, and RD/RA report.

15. A final safety plan shall be prepared for field activities performed at each site pursuant to this Cooperative Agreement. For National Priorities List (NPL) sites, these plans shall be submitted to the EPA Cooperative Agreement Project Officer for review prior to implementation. The plan shall be consistent with the requirements of the National Contingency Plan and applicable Federal and State safety standards and guidance. Each subagreement awarded under this Agreement must contain a condition that requires contractors and subcontractors to comply with the approved safety plan and all relevant Federal health and safety standards. No field work at a site shall occur until a safety plan for that site has been reviewed by EPA, for consistency with EPA requirements, and is finalized.

16. The LADWP will allow public access to its records in accordance with applicable city law. EPA will allow public access to its records in accordance with the procedures established under the Freedom of Information Act (PL 93-502), regulations promulgated pursuant thereto, and Agency guidance. Both parties agree to protect each other's claims for confidentiality, particularly with regard to documents related to pending or ongoing enforcement actions, generated by either the State or EPA.

17. The LADWP agrees to submit progress reports to the EPA Cooperative Agreement Project Officer within thirty (30) days of the end of each Federal fiscal quarter. These reports shall include a summary of expenditures by object class for each activity, both to date and since the previous report; estimates (percentages) of work elements completed for each activity, including a description of the basis for the estimates; estimated variances (cost and time) expected at project completion; and any significant findings, problems encountered, schedule compliance (including justification for non-compliance) and any additional funding needs.

18. The LADWP agrees to submit all plans, reports, specifications, and/or recommendations to the EPA Cooperative Agreement Project Officer for review and concurrence, prior to issuance or implementation, to ensure technical adequacy and consistency with the scope of work of this Agreement. Final subagreement documents or plans and subagreement changes shall be submitted to the EPA Cooperative Agreement Project Officer prior to issuance for review to ensure compliance with the terms of this Agreement.
19. The LADWP agrees that no human subject testing or health effects analyses may be funded under this Agreement. Any CERCLA health-related activities must be coordinated with the United States Department of Health and Human Services, pursuant to sections 104(b) and 104(i) of CERCLA.

20. This Agreement is intended to benefit only the LADWP and EPA. It extends no benefit or rights to any party not a signatory to this Agreement. In addition, EPA does not assume any liability to third parties with respect to losses due to bodily injury or property damages that exceed the limitations contained in the provisions of 28 U.S.C. sections 1346(b), 2671-2680. To the extent permitted by law, the LADWP does not assume liability to any third parties with respect to losses due to bodily injury or property damage.

21. If, during the period of performance for this Agreement, responsible parties agree to perform, or to pay for the performance of, any work elements included in the statement of work (SOW) for this Agreement, EPA and the LADWP agree to negotiate jointly any necessary modifications to this Agreement. If appropriate, this Agreement may be amended to adjust the LADWP's letter of credit and the project SOW accordingly.

22. EPA has determined that participation in a response action at a site by a contractor that is a potentially responsible party (PRP) or works for a PRP at the site could create an organizational conflict of interest (i.e., the contractor would be placed in a position where its interests would conflict with its ability to perform the work properly or would otherwise adversely affect State or Federal enforcement action). Therefore, the LADWP shall require each bidder or offeror on any subagreement funded under this Cooperative Agreement to provide, with its bid or proposal: (1) information on its status and the status of parent companies, subsidiaries, affiliates, subcontractors, and current clients as PRPs at the site; (2) certification that, to the best of its knowledge and belief, it has disclosed such information or no such information exists; and (3) a statement that it immediately shall disclose any such information discovered after submission of its bid or proposal or after award. The LADWP shall evaluate such
information and shall exclude any bidder or offeror if the LADWP determines the bidder's or offeror's conflict of interest is significant and cannot be avoided or otherwise resolved.

23. 1. The contractor shall not provide data generated or otherwise obtained in the performance of its responsibilities under this contract to any party other than LADWP and Federal agencies and their authorized agents.

2. The contractor shall not accept employment from any party other than LADWP or Federal agencies for work directly related to the site(s) covered under this contract for a period of three years from termination of the contract, or until any litigation related to the site(s) is completed, whichever is longer, unless it has received a written release from this restriction from the contracting agency, including an EPA concurrence.

3. The contractor, upon request, shall provide witnesses and documentation of activities performed and costs incurred under this contract to LADWP, State and Federal agencies during the period of performance and for three years from termination of the contract, or until any litigation related to the site(s) is completed, whichever is longer. The contractor shall be entitled to reasonable compensation for any such activities performed.

24. Any emergency response activities conducted pursuant to the National Contingency Plan, 40 CFR section 300.65, shall not be restricted by the terms of this Agreement. EPA and the LADWP may jointly suspend or modify the remedial activities in the SOW of this Agreement during and subsequent to necessary emergency response actions.

25. Nothing contained in this Agreement shall be construed to create, either expressly or by implication, the relationship of agency between EPA and the LADWP. Any standards, procedures, or protocols prescribed in this Agreement to be followed by the LADWP during the performance of its obligations under this Agreement are to assure the quality of the final product of the actions contemplated by this Agreement, and do not constitute a right to control the actions of the LADWP. EPA (including its employees and contractors) is not authorized to represent or act on behalf of the LADWP.
in any matter relating to this Agreement, and the LADWP (including its employees and contractors) is not authorized to represent or act on behalf of EPA in any matter related to this Agreement. Neither EPA nor the LADWP shall be liable for the contracts, acts, errors, or omissions of the agents, employees, or contractors of the other party entered into, committed, or performed with respect to or in the performance of, this Agreement.

26. LADWP agrees that, with respect to the claims that it may be entitled to assert against any third person (herein called the "responsible party," whether one or more) for reimbursement of any services, materials, monies, or other thing of value expended by LADWP for response activity at the site(s) described herein, the LADWP will not enter into a settlement with, or initiate a judicial or administrative proceeding against, a responsible party for the recovery of such sums unless it first gives notice in writing to EPA not less than thirty (30) days in advance of the date of the proposed settlement or commencement of the proposed judicial or administrative proceedings. Neither party to this Agreement shall attempt to negotiate for nor collect reimbursement of any response costs on behalf of the other party, and authority to do so is hereby expressly negated and denied.

27. EPA and the LADWP agree that judicial action taken by either party against a potentially responsible party pursuant to CERCLA for recovery of any sums expended in response actions at the site described herein shall be filed in the United States District Court for the judicial district in which the site described in this Agreement is located, or in such other judicial district of the United States District Court as may be authorized by section 113 of CERCLA, and agreed to in writing by the parties of this Agreement.

28. The award of this Agreement does not constitute a waiver of EPA's right to bring an action against any person or persons for liability under sections 106 or 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or any other statutory provision or common law.

29. Any recovery achieved by the LADWP pursuant to settlement, judgement, or consent decree or any action against any of the responsible parties will be shared with EPA in proportion to EPA's contribution to the site response activities under CERCLA.
30. If, after the completion of the remedial investigation as described in the SOW for this Agreement, it is determined that conditions at the site described herein pose no significant threat to public health, welfare, or the environment, EPA and the LADWP agree to negotiate any necessary modifications to this Agreement. At that time, this Agreement shall be amended to revise the project SOW and, if necessary, the LADWP's letter of credit will be adjusted accordingly.

31. In conducting the RI funded by this Agreement, the LADWP agrees to comply with the manual Guidance on Remedial Investigations Under CERCLA OERR, June 1985.