UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 10
AND THE
ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
AND THE
UNITED STATES DEPARTMENT OF THE ARMY

IN THE MATTER OF:

U.S. Department of the Army
Port Richardson
Anchorage, Alaska

) FEDERAL FACILITY AGREEMENT
) UNDER CERCLA SECTION 120
) Administrative Docket Number:
) 1093-05-02-120

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ATTACHMENT 1

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

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I. JURISDICTION

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

1.1 The United States Environmental Protection Agency ("U.S. EPA"), Region 10, enters into those portions of this Agreement that relate to the Remedial Investigation/Feasibility Study ("RI/FS") pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499 (hereinafter jointly referred to as "CERCLA"); Sections 3004(u) and (v), 3008(h), and 6001 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6924(u) and (v), 6928(h), and 6961, as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA") (hereinafter jointly referred to as "RCRA"); and Executive Order 12580;

1.2 U.S. EPA, Region 10, enters into those portions of this Agreement that relate to interim actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C. § 9620(e)(2); Sections 3004(u) and (v), 3008(h), and 6001 of RCRA, 42 U.S.C. §§ 6924(u) and (v), 6928(h), and 6961; and Executive Order 12580;

1.3 The Army enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, 42 U.S.C. § 9620(e)(1); Sections 3004(u) and (v), 3008(h), and 6001 of RCRA, 42 U.S.C. §§ 6924(u) and (v), 6928, and 6961;

1.4 The Army enters into those portions of this Agreement that relate to interim actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C. § 9620(e)(2); Sections 3004(u) and (v), 3008(h), and 6001 of RCRA, 42 U.S.C. §§ 6924(u) and (v), 6928(h), and 6961; Executive Order 12580; and the DERP.

1.5 The State of Alaska Department of Environmental Conservation ("ADEC") enters into this Agreement pursuant to Sections 107, 120(e), 120(f), and 121(f) of CERCLA, 42 U.S.C. §§ 9607, 9620(e), 9620(f), and 9621(f); Alaska Statutes 46.03, 46.04, 46.08, 46.09; and 18 Alaska Administrative Code ("AAC") 60, 18 AAC 62, 18 AAC 70, 18 AAC 75, 18 AAC 78, and 18 AAC 80.

II. DEFINITIONS

2.1 The terms used in this Agreement shall have the same meaning as defined in Section 101 of CERCLA, 42 U.S.C. § 9601; the NCP, 40 CFR 300.5; and Section 1004 of RCRA, 42 U.S.C. § 6903. In addition:

(a) "ADEC" shall mean the State of Alaska as represented by the Department of Environmental Conservation, its employees, agents, and authorized representatives;

(b) "Agreement" shall mean this document and shall include all Attachments to this document. All such Attachments

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shall be incorporated by reference and are an integral and
enforceable part of this document;

(c) "ARAR" or "Applicable or Relevant and
Appropriate Requirement" shall mean any standard, requirement,
criterion, or limitation as provided in Section 121(d)(2) of
CERCLA, 42 U.S.C. § 9621(d)(2), and the NCP;

(d) "Authorized representative" may include a
designated contractor or any other designee;

(e) "CERCLA" shall mean the Comprehensive
Environmental Response, Compensation, and Liability Act of 1980,
42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments

(f) "Critical Path Method" or "CPM" shall mean the
methodology that uses certain techniques to represent multiple
relationships between stages in a complicated project undertaken
pursuant to this Agreement. This methodology shows the precedence
relationships between the various activities specified in a given
project and can be used to control and monitor the progress, cost
and resources of a project. This methodology also identifies the
most critical activities in the project.

(g) "Days" shall mean calendar days, unless
otherwise specified. Any submittal that under the terms of this
Agreement would be due on a Saturday, Sunday, or federal or state
holiday shall be due on the following business day;

(h) "Interim Remedial Actions" or "IRAs" are
8703-8706 (March 8, 1990), and shall mean all discrete actions implemented under remedial authority that are taken to prevent or minimize the release of hazardous substances, pollutants, or contaminants so that they do not endanger human health or the environment. Interim actions shall neither be inconsistent with nor preclude implementation of the final expected Site remedy and shall be undertaken in accordance with the NCP, 40 CFR Part 300, as amended, and with the requirements of CERCLA;

(i) "Army" shall mean the United States Army and, to the extent necessary to effectuate the terms of this Agreement (including appropriations and congressional reporting requirements), its employees, agents, successors, assigns, and authorized representatives;

(j) "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300, as amended;

(k) "Operable Unit" or "OU" means a discrete action that comprises an incremental step toward comprehensively addressing Site problems. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of a release, or pathway of exposure. The cleanup of a site can be divided into a number of operable units, depending on the complexity of the problems associated with the site. Operable units may address geographical portions of a site, specific site problems, or initial phases of an action, or may consist of any set
of actions performed over time or any actions that are concurrent
but located in different parts of a site;

(l) "Paragraph" shall mean a numbered paragraph of
this Agreement, designated by an Arabic numeral;

(m) "Part" shall mean one of the thirty-seven (37)
subdivisions of this Agreement, designated by a Roman numeral;

(n) "Parties" shall mean the Army, U.S. EPA, and
ADEC;

(o) "Preliminary Source Evaluation" and
"Preliminary Source Evaluation Report" ("PSE") shall mean the
process (and resulting documentation) of evaluating releases or
threatened releases of hazardous substances, pollutants, or
contaminants from source areas with the potential to constitute a
threat to public health, welfare, or the environment. A
Preliminary Source Evaluation as described in Attachment I, may
consist of two phases: an existing data evaluation (PSE 1) and/or
a limited field investigation (PSE 2).

(p) "RCRA" shall mean the Resource Conservation
and Recovery Act, 42 U.S.C. § 6901 et seq., as amended by the
Hazardous and Solid Waste Amendments of 1984 ("HSWA"), Pub. L.
98-616;

(q) "Record of Decision" or "ROD" is discussed at
40 CFR 300.430 and shall mean the document that summarizes the
selection of an interim remedial action or a final remedial action,
and all facts, analyses of facts, and source-specific policy

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determinations considered in the course of carrying out activities at the Site;

(r) "Remedial Investigation/Feasibility Study Management Plan" shall mean a comprehensive document describing all activities planned within the RI and the FS process to include the Work Plan, Field Sampling Plan ("FSP"), Quality Assurance Project Plan ("QAPP"), Health and Safety Plan ("HSP"), and the Community Relations Plan ("CRP");

(s) "Removal" is defined by Section 311(a)(8) of the Clean Water Act ("CWA"), 33 U.S.C. 1321(a)(8), and shall mean the removal of oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health, welfare, or to the environment. As defined by Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), removal shall mean the cleanup or removal of released hazardous substances from the environment; such actions as may be necessary in the event of the threat of release of hazardous substances into the environment; such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances; the disposal of removed material; or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment that may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of
threatened individuals not otherwise provided for, action taken under Section 104(b) of CERCLA, 42 U.S.C. § 9604(b), post-removal site control, where appropriate, and any emergency assistance that may be provided under the Disaster Relief Act of 1974. For the purpose of the NCP, the term also includes enforcement activities related thereto;

(t) "Scope of Work" shall mean the planning document prepared by the Army, in consultation with U.S. EPA and ADEC, and in accordance with OSWER Directive 9835.8 that identifies the source-specific objectives and general management approach for the RI/FS process for the Site and/or operable unit(s);

(u) "Site" shall mean the physical boundaries of Fort Richardson facility, which occupies approximately 61,900 acres near Anchorage, Alaska. The Site includes other area(s) contaminated by the migration of hazardous substances, pollutants, contaminants, or constituents from sources at Fort Richardson;

(v) "Statement of Work" shall mean the detailed elaboration of the Scope of Work that defines the requirements for developing a management plan;

(w) "U.S. EPA" shall mean the United States Environmental Protection Agency, including Region 10, its employees, agents, and authorized representatives; and

(x) "Work Plan" shall mean the RI/FS or RA Work Plan that is to be prepared in accordance with Office of Solid Waste and Emergency Response ("OSWER") Directives 9355.3-01 (October 1988) and 9355.0-4A (June 1986), and the NCP.
III. PURPOSE

3.1 The general purposes of this Agreement are to:

(a) Ensure that the environmental impacts associated with past and present activities at the Site are thoroughly investigated and that appropriate removal and/or remedial action(s) is/are taken as necessary to protect the public health, welfare, and the environment;

(b) Establish a procedural framework and schedule for developing, implementing, and monitoring appropriate response actions at the Site in accordance with CERCLA, the NCP, national Superfund guidance and policy, RCRA, national RCRA guidance and policy, and applicable state law; and,

(c) Facilitate cooperation, exchange of information, and participation of the Parties in such actions.

3.2 Specifically, the purposes of this Agreement are to:

(a) Investigate historical information about the Site in order to identify those sources of contamination that can be addressed under this Agreement;

(b) Identify removal and Interim Remedial Actions ("IRA") alternatives that are appropriate at the Site prior to the implementation of final remedial action(s) for the Site. IRA alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of IRA(s) to U.S. EPA and ADEC pursuant to CERCLA and applicable state law. This process
is designed to promote cooperation among the Parties in identifying IRA alternatives prior to selection of final IRA(s);

(c) Establish requirements for the performance of a Remedial Investigation ("RI") to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at the Site, and to establish requirements for the performance of an FS for the Site to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants, or contaminants at the Site in accordance with CERCLA and applicable state law;

(d) Identify the nature, objective, and schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of cleanup of hazardous substances, pollutants, or contaminants mandated by CERCLA and applicable state law;

(e) Implement the selected interim and final remedial action(s) in accordance with CERCLA and applicable state law, and meet the requirements of Section 120(e)(2) of CERCLA, 42 U.S.C. § 9620(e)(2), for an interagency agreement among the Parties;

(f) Assure compliance, through this Agreement, with RCRA and other federal and state hazardous waste laws and regulations for matters covered herein;

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(g) Coordinate response actions at the Site with the mission and support activities at Fort Richardson;

(h) Expedite the cleanup process to the extent consistent with protection of human health and the environment;

(i) Provide for ADEC involvement in the initiation, development, selection, and enforcement of remedial actions to be undertaken at Fort Richardson, including the review of all applicable data as it becomes available, and the development of studies, reports, and actions plans; and to identify and integrate state ARARs into the remedial action process; and

(j) Provide for operation and maintenance of any remedial action selected and implemented pursuant to this Agreement.

IV. PARTIES BOUND

4.1 This Agreement shall apply to and be binding upon the Army, U.S. EPA, and ADEC. This Agreement shall also apply to subsequent owners and operators of any portion of the Site. The Army agrees to include notice of this Agreement in any document transferring ownership of property owned by the United States to any subsequent owners and operators of any portion of the Site in accordance with Section 120(h) of CERCLA, 42 U.S.C. § 9620(h), 40 CFR §§ 264.119 and 264.120, and Part XXXII of this Agreement. The requirement for such notice shall apply to real property sold or transferred between agencies of the United States, between the United States and private Parties, and between the United States and state and local governments.

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4.2 The Army will notify U.S. EPA and ADEC of the identity of its contractors and subcontractors performing work under this Agreement. The Army shall provide copies of this Agreement to all contractors and subcontractors performing work under this Agreement. The Army shall ensure that all contractors and subcontractors performing work under this agreement have sufficient experience to deal with the relevant remedial activities at the Site.

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

V. RCRA–CERCLA INTEGRATION

5.1 The Parties intend to integrate the Army's CERCLA response obligations and RCRA corrective action obligations that relate to the release(s) of hazardous substances, hazardous wastes, hazardous constituents, pollutants, or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. § 9601 et seq.; satisfy the corrective action requirements of Sections 3004(u) and (v) of RCRA, 42 U.S.C. § 6924(u) and (v), for a RCRA permit, and Section 3008(h), 42 U.S.C. § 6928(h), for interim status facilities; and meet or exceed all applicable or relevant and appropriate federal and state laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. § 9621, and applicable state law.
5.2 Based upon the foregoing, the Parties intend that any remedial action selected, implemented, and completed under this Agreement will be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA (i.e., no further corrective action shall be required). The Parties agree that with respect to releases of hazardous waste or hazardous constituents covered by this Agreement, RCRA shall be considered an ARAR pursuant to Section 121 of CERCLA, 42 U.S.C. § 9621. Releases or other hazardous waste activities not covered by this Agreement remain subject to all applicable state and federal environmental requirements.

5.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at Fort Richardson may require the issuance of permits under federal and state laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to the Army for ongoing hazardous waste management activities at the Site, U.S. EPA or ADEC shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. With respect to those portions of this Agreement incorporated by reference into permits, the Parties intend that judicial review of the incorporated portions shall, to
the extent authorized by law, be reviewed only under the provisions
of CERCLA.

5.4. Nothing in this Agreement shall alter any
Party's rights with respect to removal actions conducted pursuant
to Section 104 of CERCLA, 42 U.S.C. § 9604. Any removal actions
conducted at the Site shall be conducted in a manner consistent
with this Agreement, CERCLA, the NCP, and Executive Order 12580.

VI. FINDINGS OF FACT

6.1 For purposes of this Agreement, the following
constitutes a summary of the facts upon which this Agreement is
based. None of the facts related herein are admissions nor are
they legally binding upon any Party with respect to any unrelated
claims of persons not a Party to this Agreement.

6.2 Fort Richardson encompasses approximately
25,000 acres near Anchorage, Alaska. Included in this is an
ordinance impact area, an airfield, a manoeuvre area, a cantonement
area, and housing for Fort Richardson personnel.

6.3 Major sources of contamination at Fort
Richardson include areas of white phosphorus at Eagle River Flats,
PCB contamination at the Roosevelt Road transmitter site, volatile
organic compounds at the Poleline Road disposal area, and the fire
training pits.

6.4 Fort Richardson was proposed for inclusion on
the CERCLA National Priorities List ("NPL") in June 1993. 58 Fed.
Reg. 34018 (June 23, 1993).
6.5 The Parties enter this Agreement with the expectation that Fort Richardson will list final on the NPL. Upon final listing, the Project Managers shall, in writing, modify Paragraph 6.4 of this Agreement to include the appropriate Federal Registry citation. If Fort Richardson fails to list final on the NPL, any Party may void this Agreement by providing written notice to the other Parties.

VII. REGULATORY DETERMINATIONS

7.1 For purposes of this Agreement, the following constitutes a summary of the Regulatory Determinations upon which this Agreement is based. None of the Regulatory Determinations related herein are admissions nor are they legally binding upon any Party with respect to any unrelated claims of person(s) not a Party to this Agreement.

7.2 Fort Richardson, collectively, is a Site within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

7.3 Hazardous substances, pollutants, or contaminants within the meaning of Sections 101(14) and 104(a)(2) of CERCLA, 42 U.S.C. §§ 9601(14) and 9604(a)(2), have been disposed of at the Site;

7.4 There have been releases of hazardous substances, pollutants, or contaminants into the environment within the meaning of Sections 101(22), 104, 106, and 107 of CERCLA, 42 U.S.C. §§ 9601(22), 9604, 9606, and 9607, at and from the Site;
7.5 With respect to those releases, the Army is an owner and/or operator within the meaning of Section 107 of CERCLA, 42 U.S.C. § 9607;

7.6 The actions to be taken pursuant to this Agreement are reasonable and necessary to protect human health and the environment; and

7.7 A reasonable time for beginning and/or completing the actions has been, or will be, provided.

VIII. SCOPE OF AGREEMENT

A. Work to be Performed

8.1 The Parties intend that work done and data generated prior to the effective date of this Agreement be retained and utilized to the maximum extent technically feasible in accordance with applicable law.

8.2 The Army will conduct and finance the cost of each RI/FS or other consultant studies in accordance with each RI/FS Management Plan or Work Plan and implement the RD/RA at the Site in accordance with the appropriate RD and the RA Work Plan, and all relevant statutes and regulations.

8.3 All work performed pursuant to this Agreement shall be under the direction and supervision, or in consultation with, a qualified engineer, geologist, or equivalent expert with expertise in hazardous substances remedial investigation and/or remediation.
8.4 The Army shall perform the tasks and submit plans, reports, and other documents as required by the Plans.

8.5 These matters are set forth in more detail below and in the subsequent RI/FS Management Plans, PSE Work Plans, and RA Work Plans. This Agreement fully incorporates the provisions of these Plans that relate to the implementation of this Agreement, including, but not limited to, definitions and procedures for submission, review, and approval of documents. In the event of any inconsistency between this Agreement and the Plans, this Agreement shall govern unless and until duly amended pursuant to Part XXXIII of this Agreement.

B. Preliminary Source Evaluation

8.6 The Army shall evaluate known and potential sources of contamination under the PSE process pursuant to Attachment I.

C. Interim Remedial Actions

8.7 The Army shall, where appropriate, develop and implement Interim Remedial Actions ("IRAs"). The IRA(s) shall be consistent with the purposes set forth in Part III of this Agreement.

D. Remedial Investigations

8.8 The Army shall develop, implement, and report upon remedial investigations of the Site. These investigations shall comply with applicable requirements of CERCLA; the NCP; and, to the extent set forth in this Agreement, pertinent written national guidance and U.S. EPA national policy.
E. Feasibility Studies

8.9 The Army shall design, propose, undertake, and report upon feasibility studies for the Site. These studies shall comply with applicable requirements of CERCLA; the NCP; and, to the extent set forth in this Agreement, pertinent written national guidance and U.S. EPA national policy.

F. Remedial Actions

8.10 The Army shall develop and submit its proposed RA alternative. ADEC may recommend to U.S. EPA the RA alternative it deems appropriate. U.S. EPA and the Army, in consultation with ADEC, shall make final selection of the RA(s) for each OU. In the event of disagreement, U.S. EPA shall make final selection of the RA(s). The selection of RA(s) by the U.S. EPA Regional Administrator shall be final, subject to Part XXXVI.

G. Technical Review Committee

8.11 Pursuant to 10 U.S.C. § 2705(c), the Army shall establish a technical review committee ("TRC") and, in consultation with the Parties, shall provide for representatives from the following organizations to serve as members of the TRC:

a. A representative from the Army;
b. A representative from the ADEC;
c. A representative from the U.S. EPA;
d. A representative from the municipality of Anchorage; and
e. Other designated representatives from the local communities, such as the Eagle River community council and other such representatives.

8.12 The purpose of the TRC is to afford a forum for cooperation between the Army and concerned local officials and citizens and to provide a meaningful opportunity for the members of the TRC to become informed and to express their opinion about significant aspects of the RI/FS or the RD/RA process.

8.13 The Army Base Commander or delegate shall serve as the Chair of the TRC meetings. The Chair shall schedule regular meetings of the TRC as necessary and appropriate. Regular meetings of the TRC shall be for the purpose of reviewing progress under the RI/FS or the RD/RA and discussing other matters of interest to the TRC. Special meetings of the TRC may be held at the request of members.

H. Compliance with the Off-Site Rule

8.14 Any hazardous substance, pollutant or contaminant transferred or otherwise managed off-site as a result of this Agreement must be taken to a facility acceptable under U.S. EPA's Off-Site Rule (58 Fed. Reg. 49200) (September 22, 1993), codified at 40 C.F.R. § 300.440, in accordance with Section 121(d)(3) of CERCLA, as amended, 42 U.S.C. § 9621(d)(3).

IX. PROJECT MANAGERS

9.1 U.S. EPA, ADEC, and the Army shall each designate a Project Manager and Alternate (hereinafter jointly referred to as Project Manager) for the purpose of overseeing the
implementation of this Agreement. Within five (5) days of the
effective date of this Agreement, each Party shall notify the other
Parties of the name and address of its Project Manager. Any Party
may change its designated Project Manager by notifying the other
Parties, in writing, within five (5) days of the change.
Communications between the Parties concerning the terms and
conditions of this Agreement shall be directed through the Project
Managers as set forth in Part XIV of this Agreement. Each Project
Manager shall be responsible for assuring that all communications
from the other Project Managers are appropriately disseminated and
processed by their respective Agencies.

9.2 Project Managers shall have the authority to:
(1) take samples, request split samples, and ensure that work is
performed properly and in accordance with the terms of any final
Management Plan; (2) observe all activities performed pursuant to
this Agreement, take photographs, and make such other reports on
the progress of the work as the Project Managers deem appropriate;
(3) review records, files, and documents relevant to this
Agreement; (4) recommend and request minor field modifications to
the work to be performed pursuant to the Agreement, or in
techniques, procedures, or designs utilized in carrying out this
Agreement; (5) exercise the authorities granted to them in this
Part, and the NCP; and (6) act in accordance with Paragraph 33.1
(Modification/Amendment of Agreement).

9.3 Each Project Manager shall be, or rely on, a
qualified and competent person with experience in hazardous

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substances site investigations and remedial actions and having the
skills necessary to implement this Agreement.

9.4 The Project Managers may, in accordance with
Part XX(J) of this Agreement, make minor field modifications to the
work to be performed pursuant to this Agreement, or in techniques,
procedures, or designs utilized in carrying out this Agreement,
including approval of the addition or redefinition of operable
units/hazardous waste areas, without resort to Part XXXIII of this
Agreement. Any such modification proposed by any Party pursuant to
this Part must be approved orally by all Parties' Project Managers
to be effective. The Army Project Manager shall make a
contemporaneous record of such modification and approval in a
written log, and a summary of the log entry will be included in the
next progress report. Even after approval of the proposed
modification, no Project Manager will require implementation by a
government contractor without approval of the appropriate
Government Contracting Officer.

9.5 The Project Manager for the Army shall be
responsible for day-to-day field activities at the Site, and shall
have all the authority vested in the On-Scene Coordinator and
Remedial Project Manager by the NCP, 40 C.F.R. Part 300. The
Project Manager for the Army shall be physically present at the
Site, or reasonably available to supervise work, during all hours
of work performed at the Site pursuant to this Agreement.

9.6 The Project Managers shall be reasonably
available to consult on work performed pursuant to this Agreement

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and shall make themselves available to each other for the pendency of this Agreement. The absence of the Army, U.S. EPA, or ADEC Project Managers from the Site shall not be cause for work stoppage or delay.

9.7 The Project Managers may decide to address a source area identified in Attachment I within the scope of a Two Party Agreement between the State of Alaska and the Army. In such a case, and upon unanimous written agreement of the Army, U.S. EPA, and ADEC Project Managers, the agreed upon activities at the source area may commence pursuant to the Two Party Agreement. Such source areas will remain within the scope of this Agreement to the extent established in Part 3.5 of Attachment I.

X. ACCESS

10.1 Without limitation on any authority conferred on them by law, U.S. EPA, ADEC, and/or their authorized representatives, shall have authority to enter the Site at all reasonable times for the purposes of, among other things: (1) inspecting records, operating logs, contracts, and other documents relevant to implementation of this Agreement; (2) reviewing the progress of the Army, its response action contractors, or agents in implementing this Agreement; (3) conducting such tests as ADEC and U.S. EPA Project Managers deem necessary; and (4) verifying the data submitted to U.S. EPA and ADEC by the Army. The Army shall honor all requests for such access by U.S. EPA and ADEC, subject only to any statutory or
regulatory requirement as may be necessary to protect national
security or mission-essential activities.

10.2 The Army shall provide an escort whenever U.S.
EPA or ADEC require access to areas designated as restricted in
accordance with relevant Army Policy. U.S. EPA and ADEC will seek
permission from this escort prior to using any camera, sound
recording, or other recording device in such restricted areas. The
Parties agree that the provision of an escort will not unreasonably
delay access or unreasonably restrict use of recording devices. To
the extent possible, U.S. EPA and ADEC shall provide reasonable
notice to the Army Project Manager to request necessary escorts.

10.3 All Parties with access to the Site pursuant
to this Part shall comply with all applicable health and safety
plans.

10.4 The Army shall promptly provide EPA or ADEC
with a full verbal explanation of the reason(s) for denying any
access requested by either U.S. EPA or ADEC. In addition, the Army
shall, within two days, provide a written explanation of the
reason(s) for the denial to the Project Managers, including
reference to the applicable regulations, and, upon request, a copy
of such regulations. The Army shall, as expeditiously as possible,
make alternative arrangements for accommodating the requested
access. The Army shall not restrict the access rights of U.S. EPA
or ADEC to any greater extent than the Army restricts the access
rights of its contractors performing work pursuant to this
Agreement.

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10.5 To the extent that this Agreement requires access to property not owned and controlled by the Army, the Army shall exercise its authorities to obtain access pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and will use its best efforts to obtain signed access agreements for itself, its contractors, agents, U.S. EPA, and ADEC, and provide U.S. EPA and ADEC with copies of such agreements. The Army may request the assistance of ADEC in obtaining such access, and, upon such request, ADEC will use their best efforts to obtain the required access. With respect to the non-Army property upon which monitoring wells, pumping wells, treatment facilities, or other response actions are to be located, the access agreements should provide that no conveyance of title, easement, or other interest in the property shall be consummated without provisions for the continued operation of such wells, treatment facilities, or other response actions on the property. The access agreements should also provide to the extent practicable that the owners of any property where monitoring wells, pumping wells, treatment facilities, or other response actions are located shall notify the Army, ADEC, and the U.S. EPA by certified mail, at least thirty (30) days prior to any conveyance, of the property owner's intent to convey any interest in the property and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other response actions installed pursuant to this Agreement. The requirement for such notice shall apply to real property sold or transferred between agencies of the United States,
between the United States and private Parties, and between the
United States and state and local governments.

10.6 Nothing in this Part shall be construed to
limit the discretion of the Army to exercise the authority of the
President under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), as
delegated by Executive Order 12580.

XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

11.1 Pursuant to the RI/FS management plan, the
Parties shall make available to each other quality-assured results
of sampling, tests, or other data generated by or on behalf of any
Party under this Agreement within sixty (60) days of field testing
or the submittal of data to the laboratory. If quality assurance
is not completed within sixty (60) days, preliminary data or
results shall be made available within the sixty (60) day period
and quality assured data or results shall be submitted as they
become available but in no event later than one hundred (100) days
after testing or the submittal of data to the laboratory. These
periods can be extended upon mutual agreement among the Project
Managers.

11.2 At the written request of either the ADEC or
U.S. EPA Project Manager, the Army shall allow split or duplicate
samples to be taken by ADEC or U.S. EPA during sample collection
conducted during the implementation of this Agreement. The Army’s
Project Manager shall notify the U.S. EPA and ADEC Project Managers
not less than fourteen (14) business days in advance of any
scheduled well drilling, sample collection, or other monitoring activity, conducted pursuant to this Agreement. The Project Managers will be notified prior to any unscheduled sampling event. The fourteen (14) day notification can be waived upon mutual agreement among the Project Managers.

11.3 If preliminary analysis indicates a potential imminent and substantial endangerment to the public health, all Project Managers shall be immediately notified.

11.4 Laboratory reports shall be made available at the Site for the review of the Parties immediately upon completion of laboratory analysis.

XII. QUALITY ASSURANCE

12.1 Throughout all sample collection, transportation, and analyses activities conducted in connection with this Agreement, the Army shall use procedures for quality assurance, for quality control, and for chain-of-custody in accordance with approved U.S. EPA methods, including "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," QAMS-005/80, "Data Quality Objective Guidance," U.S. EPA 1540/687/003 and 004, and subsequent amendments to such guidelines. The Army shall require each laboratory it uses to perform any analysis according to approved U.S. EPA methods and to demonstrate a quality assurance/quality control program consistent with that followed by U.S. EPA and consistent with U.S. EPA document QAMS-005/80.
XIII. REPORTING

13.1 The Army shall submit to the other Parties quarterly written progress reports. The reports will include, but not be limited to, the following information:

(a) A detailed summary of all of the remedial, removal, and investigation activities during the previous quarter, including any analytical results, any community relations activities, and any community contacts or inquiries related to the hazardous substance contamination at the Site;

(b) An outline of the planned activities for the upcoming quarter and a revised depiction of the timeline for Attachment I using the CPM process. Any revisions to the primary milestones to this timeline shall be made pursuant to the procedures specified in Part XXXIII of this Agreement;

(c) A detailed statement of the manner and the extent to which the timetables and deadlines are being met;

(d) The status of efforts to obtain rights-of-entry necessary for monitoring and well installation off-Base; and

(e) The status of any other activities proposed or underway, personnel changes, or funding availability, that affects or potentially affects any phase of the activities undertaken pursuant to this Agreement.

13.2 The quarterly written progress reports shall be submitted on the twentieth (20th) day of each calendar quarter following the effective date of this Agreement.
13.3 In addition to the requirements of this Part, the Army shall notify the Parties promptly upon learning that any CPM milestone may be or has been missed. CPM milestones include milestones that affect or potentially affect the timely delivery of a primary or secondary document, and any other milestone identified by mutual agreement of the Project Managers.

XIV. NOTICE TO THE PARTIES

14.1 All Parties shall expeditiously transmit primary and secondary documents, and all notices required herein. Time limitations shall commence upon receipt.

14.2 Unless otherwise provided, notice to the individual Parties shall be provided under this Agreement to the following addresses:

(A) For the Army:

Cristal Fosbrook, Project Manager
6th ID(L) & USAG, AK
Public Works
Attn: APVR-PW
Fort Richardson, Alaska 99505
(Ph.) (907) 384-3044
(Fax) (907) 384-3047

and

Col. Robert Wrentmore
Director, Public Works
Attn: APVR-PW
HQ, 6th Infantry Division
Fort Richardson, Alaska 99505
(B) For U.S. EPA:

U.S. Environmental Protection Agency
Region 10
Superfund Federal Facility Branch
1200 Sixth Avenue, HW-124
Seattle, Washington 98101
Attn: R. Matthew Wilkening, Project Manager
(Ph.) 206-553-1284
(Fax) 206-553-0957

(C) For the State of Alaska:

Alaska State Department of
Environmental Conservation
Southcentral Regional Office
Contaminated Site Program
3601 "C" Street, Suite 1334
Anchorage, AK 99503
Attn: Jennifer Roberts, Project Manager
(Ph.) 907-563-6529
(Fax) 907-273-4331

XV. PERMITS

15.1 Nothing in this Agreement relieves the Army from the requirement of obtaining an otherwise applicable permit or other authorization whenever it proposes a response action involving the shipment or movement off-Site of a hazardous substance, or undertakes any activities not directly related to response actions at the Site.

XVI. RETENTION OF RECORDS

16.1 The Army shall preserve for a minimum of ten (10) years after termination and satisfaction of this Agreement the Administrative Record, and any post-Record of Decision primary and secondary documents and reports in their possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys that relate to the presence of hazardous
wastes and constituents, hazardous substances, pollutants, and contaminants at the Site or to the implementation of this Agreement, despite any document retention policy to the contrary. After this ten (10) year period, the Army shall notify the other Parties at least forty-five (45) days prior to destruction or disposal of any such documents or records. Upon request by any Party, the Army shall make available such records or documents, or true copies. Documents may be converted to permanent electronic or optical media and paper originals disposed of after forty-five (45) days notification to the other Parties.

XVII. PUBLIC PARTICIPATION AND ADMINISTRATIVE RECORD

17.1 The Parties agree that this Agreement and any subsequent plan(s) for remedial action at the Site arising out of this Agreement shall comply with the administrative record and public participation requirements of CERCLA, including Sections 113(k) and 117 of CERCLA, 42 U.S.C. §§ 9613(k) and 9617, the NCP, and U.S. EPA national guidance on public participation and administrative records.

17.2 The Army shall develop and implement a Community Relations Plan ("CRP") that responds to the need for an interactive relationship with all interested community elements, both on- and off-Site, regarding activities and elements of work undertaken by the Army. The Army agrees to develop and implement the CRP in a manner consistent with Section 117 of CERCLA, 42 U.S.C. § 9617, the NCP, and U.S. EPA national guidance.
17.3 The Army shall establish and maintain a certified copy of the administrative record at or near Fort Richardson in accordance with Section 113(k) of CERCLA, 42 U.S.C. § 9613(k). The administrative record shall be established and maintained in accordance with U.S. EPA national policy and guidelines. Army shall provide to U.S. EPA and ADEC a copy of the Administrative Record Index, with updates as changes occur. In addition, the Army shall promptly provide copies of any document included in the Administrative Record to U.S. EPA and/or ADEC, upon request.

XVIII. CREATION OF DANGER/EMERGENCY ACTION

18.1 In the event U.S. EPA or ADEC determine that activities conducted pursuant to this Agreement, or any other circumstances or activities, are creating an imminent and substantial endangerment to the health or welfare of the people on the Site or in the surrounding area or to the environment, U.S. EPA or ADEC may require or order the Army to stop further implementation of this Agreement for such period of time as needed to abate the danger. Any unilateral work stoppage for longer than twenty-four (24) hours requires the concurrence of the U.S. EPA Division Director, in accordance with Paragraph 21.9.

18.2 In the event the Army determines that activities undertaken in furtherance of this Agreement or any other circumstances or activities at the Site are creating an imminent and substantial endangerment to the health or welfare of the people on the Site or in the surrounding area or to the environment, the

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Army may stop implementation of this Agreement for such periods of time necessary for U.S. EPA and ADEC to evaluate the situation and determine whether the Army should proceed with implementation of the Agreement or whether the work stoppage should be continued until the danger is abated. The Army shall notify the other Parties as soon as is possible, but not later than twenty-four (24) hours after such stoppage of work, and provide U.S. EPA and ADEC with documentation of its analysis in reaching this determination within five (5) days of any such stoppage. If, after consultation with ADEC, U.S. EPA disagrees with the Army determination, it may require the Army to resume implementation of this Agreement.

18.3 If U.S. EPA concurs in the work stoppage by the Army, or if U.S. EPA or ADEC require or order a work stoppage, the Army's obligations shall be suspended and the time periods for performance of that work, as well as the time period for any other work dependent upon the work that was stopped, shall be extended, pursuant to Part XXV of this Agreement. Any disagreements pursuant to this Part shall be resolved through the dispute resolution procedures in Part XXI of the Agreement by referral directly to the DRC.

XIX. FIVE YEAR REVIEW

19.1 If a remedial action is selected that results in any hazardous substances, pollutants, or contaminants remaining at the Site, the Parties shall review such remedial action no less often than each five (5) years after the initiation of such remedial action to assure that human health and the environment are
being protected by the remedial action being implemented. The U.S. EPA Project Manager and the ADEC Project Manager shall advise the Army Project Manager of their findings in this regard. If any Party determines that additional action is required, the Agreement may be amended pursuant to Part XXXIII. If the Parties are unable to agree on the need to amend this Agreement, dispute resolution under Part XXI shall be available to any Party.

XX. CONSULTATION WITH U.S. EPA AND ADEC

A. Applicability

20.1 The provisions of this Part establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either primary or secondary documents. In accordance with Section 120 of CERCLA, 42 U.S.C. § 9620, and 10 U.S.C. § 2705, the Army will normally be responsible for issuing primary and secondary documents to U.S. EPA and ADEC. As of the effective date of this Agreement, all draft and draft final documents for any deliverable document identified herein shall be prepared, distributed, and subject to dispute in accordance with Paragraphs 20.3 through 20.24.

20.2 The designation of a document as "draft" or "final" is solely for purposes of consultation with U.S. EPA and ADEC in accordance with this Part. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final," to the public for review and comment as appropriate and as required by law.
B. General Process for RI/FS and RD/RA Documents

20.3 Primary documents include those documents that are major, discrete portions of RI/FS or RD/RA activities. Primary documents are initially issued by the Army in draft subject to review and comment by U.S. EPA and ADEC. Following receipt of comments on a particular draft primary document, the Army will respond to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary document will become the final primary document either thirty (30) days after the submittal of a draft final document if dispute resolution is not invoked, unless otherwise agreed as provided in Paragraph 20.18, or as modified by decision of the dispute resolution process. U.S. EPA and ADEC shall, within the first fifteen (15) days of this thirty (30) day period for finalization of draft final primary documents, identify to the Army any issues or comments in order to provide sufficient time for review, discussion, and modification of draft final documents as necessary to resolve potential disputes.

20.4 Secondary documents include those documents that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by the Army in draft subject to review and comment by U.S. EPA and ADEC. Although the Army will respond to comments received, the draft secondary documents may be finalized in the context of the corresponding primary documents. A secondary document may be disputed only at the time the corresponding draft
final primary document is issued. However, RD/RA SOWs may be disputed as if they were a primary document.

C. Primary Documents

20.5 The Army shall complete and transmit draft documents for the following primary documents to U.S. EPA and ADEC for review and comment in accordance with the provisions of this Part:

(a) Community Relations Plan ("CRP")
(b) Preliminary Source Evaluation ("PSE") 2 Report
(c) RI/FS Management Plan, including Scope of Work, Work Plan, Field Sampling Plan ("FSP"), Quality Assurance Project Plan ("QAPP"), and Treatability Study Work Plan (as needed)
(d) Remedial Investigation/Feasibility Study ("RI/FS"), including RI, Baseline Risk Assessment, FS
(e) Record of Decision ("ROD")
(f) Pre-Final (95%) Remedial Design ("RD")
(g) Remedial Action ("RA") Work Plan, as needed
(h) RA Report
(i) Operation & Maintenance ("O & M") Report, as needed
(j) Close-Out Report, as needed

20.6 Only the draft final documents for the primary documents identified above shall be subject to dispute resolution. The Army shall complete and transmit draft primary documents in
accordance with the schedules and deadlines established pursuant to Part XXIV of this Agreement. Primary documents may include secondary document target dates as provided for in Paragraph 20.8. The purpose of target dates is to assist the Army in meeting deadlines, but target dates do not become enforceable by their inclusion in the primary documents and are not subject to Parts XXII, XXIII, XXIV, and/or XXV.

D. Secondary Documents

20.7 The Army shall complete and transmit draft documents for the following secondary documents to U.S. EPA and ADEC for review and comment in accordance with the provisions of this Part:

(a) PSE 1 Report
(b) PSE 2 Work Plan
(c) Statement of Work
(d) Conceptual Site Model, and initial identification of DQO's, ARARs, and TBCs
(e) Health and Safety Plan ("HSP")
(f) Treatability Study Report, as needed
(g) Proposed Plan
(h) 35% Remedial Design, as needed
(i) RD Work Plan
(j) Base-wide Studies (other than the CRP) and Monitoring Documents
(k) Sampling and Data Results
(l) Additional secondary documents, as agreed.

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20.8 U.S. EPA and ADEC will comment on the draft documents for the secondary documents listed above. Such documents shall not be subject to dispute resolution except as provided by Paragraph 20.4. Target dates shall be established pursuant to Part XXIV of this Agreement for the completion and transmission of draft secondary documents.

E. Meetings of the Project Managers on Development of Documents

20.9 The Project Managers shall meet or confer at least every thirty (30) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site on the primary and secondary documents. Prior to preparing any draft document specified in Paragraphs 20.5 and 20.7 above, the Project Managers shall meet to discuss the document results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft document. Prior to the development of either a Statement of Work, Management Plan, or Sampling and Analysis Plan, the Project Managers shall meet to develop a Scope of Work that will be used when preparing a Sampling and Analysis Plan or Management Plan for a remedial site inspection or investigation.

F. Identification and Determination of Potential ARARs

20.10 For those primary or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft document the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. ADEC shall identify all
potential state ARARs as early in the remedial process as possible consistent with the requirements of Section 121 of CERCLA, 42 U.S.C. § 9621, and the NCP. The Army shall consider any official written interpretations of ARARs provided by ADEC. Draft ARAR determinations shall be prepared by the Army in accordance with Section 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), the NCP, and pertinent written national guidance issued by U.S. EPA and ADEC, which is not inconsistent with CERCLA and the NCP.

20.11 In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a source-specific basis and that ARARs depend on the specific hazardous substances, pollutants, and contaminants at a source, the particular actions proposed as a remedy, and the characteristics of a source. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be re-examined throughout the RI/FS process until a ROD is issued.

G. Review and Comment on Draft Documents

20.12 The Army shall complete and transmit each draft primary document to U.S. EPA and ADEC on or before the corresponding deadline established for the issuance of the document. The Army shall complete and transmit the draft secondary document in accordance with the target dates established for the issuance of such documents.

20.13 Unless the Parties mutually agree to another time period, all draft documents shall be subject to a thirty (30) day period for review and comment. Review of any document by U.S. EPA
or ADEC may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, applicable state laws, and any pertinent national guidance or policy issued by U.S. EPA or ADEC. Comments by U.S. EPA and ADEC shall be provided with adequate specificity so that the Army may respond to the comments and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Army, U.S. EPA or ADEC shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, U.S. EPA or ADEC may extend the thirty (30) day comment period for an additional twenty (20) days by written notice to the Army prior to the end of the thirty (30) day period. On or before the close of the comment period, U.S. EPA and ADEC shall transmit by next day mail their written comments to the Army.

20.14 Representatives of the Army shall make themselves readily available to U.S. EPA and ADEC during the comment period for purposes of informally responding to questions and comments on draft documents. Oral comments made during such discussions need not be the subject of a written response by the Army on the close of the comment period.

20.15 In commenting on a draft document that contains a proposed ARAR determination, U.S. EPA and ADEC shall include a reasoned statement of whether they object to any portion of the

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proposed ARAR determination. To the extent that U.S. EPA or ADEC do object, they shall explain the basis for their objection in detail and shall identify any ARARs that they believe were not properly addressed in the proposed ARAR determination.

20.16 Following the close of the comment period for a draft document, the Army shall give full consideration to all written comments on the draft document submitted during the comment period. Within thirty (30) days of the close of the comment period on a draft secondary document, the Army shall transmit to U.S. EPA and ADEC its written response to comments received within the comment period. Within thirty (30) days of the close of the comment period on a draft primary document, the Army shall transmit to U.S. EPA and ADEC a draft final primary document that shall include the Army's response to all written comments received within the comment period. While the resulting draft final document shall be the responsibility of the Army, it shall be the product of consensus to the maximum extent possible.

20.17 The Army may extend the thirty (30) day period for either responding to comments on a draft document or for issuing the draft final primary document for an additional twenty (20) days by providing notice to U.S. EPA and ADEC. In appropriate circumstances, this time period may be further extended in accordance with Part XXV.

H. Availability of Dispute Resolution for Draft Final Primary Documents

20.18 Project Managers may agree to extend by fifteen (15) days the period for finalization of the draft final primary
documents provided in Paragraph 20.3 for discussion and
modification of draft final primary documents as necessary to
resolve potential disputes.

20.19 Dispute resolution shall be available to the Parties for draft final primary documents as set forth in
Part XXI.

20.20 When dispute resolution is invoked on a draft final primary document, work may be stopped in accordance with the procedures set forth in Part XXI (Dispute Resolution).

I. Finalization of Documents

20.21 The draft final primary document shall serve as the final primary document if no Party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process should the Army's position be sustained. If the Army's determination is not sustained in the dispute resolution process, the Army shall prepare, within not more than thirty-five (35) days, a revision of the draft final document that conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision process may be extended in accordance with Part XXV hereof.

J. Subsequent Modifications

20.22 Following finalization of any primary document pursuant to Paragraph 20.21 above, any Party may seek to modify the document, including seeking additional field work, pilot studies, computer modeling, or other supporting technical work, only as provided in Paragraphs 20.23 and 20.24.

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

20.24 In the event that a consensus among the Parties is reached, the modification shall be incorporated by reference and become fully enforceable under the Agreement. In the event that a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke dispute resolution as provided in Part XXI to determine if such modification shall be made. Modification of a document shall be required only upon a showing that: (1) the requested modification is based on significant new information, and (2) the requested modification could be of significant assistance in evaluating effects on human health or the environment, in evaluating the selection of remedial alternatives, or in protecting human health or the environment.

20.25 Nothing in this Part shall alter U.S. EPA's or ADEC's ability to request the performance of additional work that was not contemplated by this Agreement. The Army's obligation to perform such work must be established by either a modification of a document or by amendment to this Agreement.
XXI. RESOLUTION OF DISPUTES

21.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Part shall apply. All Parties to this Agreement shall use their best efforts to informally resolve disputes at the Project Manager level. If the Project Managers cannot resolve the issue, the Project Managers shall elevate the informal dispute to their immediate supervisors through written notification to each such supervisor no later than five (5) days before the thirty (30) day time period specified in Paragraph 21.3 is set to expire. The immediate supervisors shall have five (5) days from the date the supervisors were notified in writing by the Project Managers to resolve the informal dispute. If the dispute still cannot be resolved informally, the following procedures of this Part shall be implemented to resolve a dispute.

21.2 It is the intent of the Parties to this Agreement that all formal disputes brought under this Part be resolved by the DRC or the SEC. This Agreement provides that the Army and ADEC may elevate a formal dispute to the Administrator of U.S. EPA for final resolution. However, the Army and ADEC intend that generally only those disputes which are determined to have significant national policy implications will be so elevated.

21.3 Within thirty (30) days after: (1) the issuance of a draft final primary document pursuant to this Agreement, or (2) any action that leads to or generates a dispute, the disputing Party shall submit to the Dispute Resolution
Committee ("DRC") a written statement of dispute setting forth the
nature of the dispute, the work affected by the dispute, the
disputing Party's position with respect to the dispute, and the
information the disputing Party is relying upon to support its
position.

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

21.5 The DRC will serve as a forum for resolution
of disputes for which agreement has not been reached through
informal dispute resolution. The Parties shall each designate one
individual and an alternate to serve on the DRC. The individuals
designated to serve on the DRC shall be employed at the policy
level (SES or equivalent) or be delegated the authority to
participate on the DRC for the purposes of dispute resolution under
this Agreement. The U.S. EPA representative on the DRC is the
Hazardous Waste Division Director ("Division Director") of
U.S. EPA's Region 10. The Army's designated member is the Garrison
Commander for Fort Richardson. ADEC's designated member is the
South Central Regional Administrator of ADEC. Written notice of
any delegation of authority from a Party's designated
representative on the DRC shall be provided to all other Parties.
21.6 Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision. The DRC members shall, as appropriate, confer, meet, and exert their best efforts to resolve the dispute and issue a written decision signed by all Parties. If the DRC is unable to unanimously resolve the dispute within this 21-day period, the written statement of dispute shall be forwarded by the disputing party to the Senior Executive Committee ("SEC") for resolution within seven (7) days after the close of the twenty-one (21) day resolution period.

21.7 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. EPA's representative on the SEC is the Regional Administrator of EPA Region 10. ADEC's representative on the SEC is the Division Director of Spill, Prevention and Response. Army's representative on the SEC is the Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health). The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute.

21.8 Following elevation of a dispute to the SEC, the SEC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision signed by all Parties. If the SEC is unable to resolve the dispute within this 21-day period, then the Regional Administrator of U.S. EPA shall issue a final written position on the dispute within fourteen (14) days. The time for issuing such a decision may be extended by EPA for an
additional seven (7) days upon notice to other Parties. This
authority cannot be delegated.

21.9 Within fourteen (14) days of receipt of the
EPA Region 10 Regional Administrator's final written position on
the dispute, the Army or ADEC may request that the Administrator of
EPA resolve the dispute. The request must be in writing, and must
identify the basis for the dispute by the Secretary of the Army or
the Commissioner of ADEC and whether the dispute has significant
national policy implications. If no such request is made within
the fourteen (14) day period, the Army and ADEC shall be deemed to
have agreed with the EPA Region 10 Regional Administrator's written
position. If such a request is made, the EPA Administrator will
review and resolve the dispute in accordance with applicable law
and regulations within twenty-one (21) days. Upon request and
prior to resolving the dispute, the Administrator shall meet and
confer with all the Parties to discuss the issues under dispute.
The Administrator shall provide five (5) days advance notice of
such a meeting to all Parties in order to afford the Parties the
opportunity to attend. Upon resolution, the Administrator shall
provide the Parties with a written final decision setting forth
resolution of the dispute. The duties of the EPA Administrator set
forth in this Part shall not be delegated.

21.10 The pendency of any dispute under this Part
shall not affect the Army's responsibility for timely performance
of the work required by this Agreement, except that the time period
for completion of work affected by such dispute shall be extended

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for a period of time usually not to exceed the actual time taken to
resolve any good faith dispute in accordance with the procedures
specified herein. All elements of the work required by this
Agreement that are not affected by the dispute shall continue and
be completed in accordance with the applicable schedule.

21.11 When dispute resolution is in progress, work
affected by the dispute will immediately be discontinued if the
Hazardous Waste Division Director for U.S. EPA's Region 10 or the
Director of ADEC request, in writing, that work related to the
dispute be stopped because, in U.S. EPA's or ADEC's opinion, such
work is inadequate or defective, and such inadequacy or defect is
likely to yield an adverse effect on human health or the
environment, or is likely to have a substantial adverse effect on
the remedy selection or implementation process. To the extent
possible, U.S. EPA and ADEC shall consult with all Parties prior to
initiating a work stoppage request. After stoppage of work, if any
Party believes that the work stoppage is inappropriate or may have
potential significant adverse impacts, that Party may meet with the
other Parties to discuss the work stoppage. Following this
meeting, and further consideration of the issues, the U.S. EPA
Region 10 Hazardous Waste Division Director will issue, in writing,
a final decision with respect to the work stoppage. The final
written decision of the U.S. EPA Region 10 Hazardous Waste Division
Director may immediately be subjected to formal dispute resolution.
Such dispute may be brought directly to either the DRC or the SEC,
at the discretion of the Party requesting dispute resolution.

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

21.13 Resolution of a dispute pursuant to this Part
of the Agreement constitutes a final resolution of that dispute
arising under this Agreement. All Parties shall abide by all terms
and conditions of any final resolution of dispute obtained pursuant
to this Part of this Agreement.

XXII. ENFORCEABILITY

22.1 The Parties agree that:

(a) Upon the effective date of this Agreement, any
standard, regulation, condition, requirement, or order which has
become effective under CERCLA and is incorporated into this
Agreement is enforceable by any person pursuant to Section 310 of
CERCLA, 42 U.S.C. § 9659, and any violation of such standard,
regulation, condition, requirement, or order will be subject to
civil penalties under Sections 109 and 310(c) of CERCLA, 42 U.S.C.
§§ 9609 and 9659(c);

(b) All deadlines associated with the RI/FS shall
be enforceable by any person pursuant to Section 310 of CERCLA,
42 U.S.C. § 9659, and any violation of such deadlines will be
subject to civil penalties under Sections 109 and 310(c) of CERCLA,
42 U.S.C. §§ 9609 and 9659(c);
(c) All terms and conditions of this Agreement that relate to interim or final remedial actions, including corresponding schedules and deadlines, and all work associated with the interim or final remedial actions, shall be enforceable by any person pursuant to Section 310(c) of CERCLA, 42 U.S.C. § 9659(c), and any violation of such terms or conditions will be subject to civil penalties under Sections 109 and 310(c) of CERCLA, 42 U.S.C. §§ 9609 and 9659(c); and

(d) Any final resolution of a dispute pursuant to Part XXI of this Agreement that establishes a term, condition, schedule, or deadline shall be enforceable by any person pursuant to Section 310(c) of CERCLA, 42 U.S.C. § 9659(c), and any violation of such term, condition, schedule, or deadline will be subject to civil penalties under Sections 109 and 310(c) of CERCLA, 42 U.S.C. §§ 9609 and 9659(c).

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

XXIII. STIPULATED PENALTIES

23.1 In the event that the Army fails to submit a primary document to U.S. EPA and ADEC pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement that relates to an interim or final remedial action, U.S. EPA may assess a stipulated penalty against the Army. A stipulated penalty may be assessed in an amount not to exceed five thousand