



**DEPARTMENT OF LAW**

**OFFICE OF THE ATTORNEY GENERAL**

April 28, 1994

Ms. Tammy Tobia  
6th Infantry Division (c)  
Office of the Staff Judge Advocate  
ATTN: APVR-FR-JA  
Ft. Richardson, AK 99505

Re: Ft. Richardson Federal Facility Agreement:  
A.G.O. File No. 661-94-0044

Dear Tammy:

Enclosed please find the final of the Two Party Agreement. It incorporates the clarifications to the modification section we discussed.

Please feel free to call me at 269-5274 if you have any questions.

Very truly yours,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

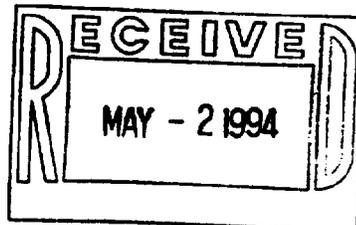
By:

Breck Tostevin  
Assistant Attorney General

BCT:vo

Encl

cc: Jennifer Roberts (w/encl)  
Dean Ingemansen, EPA Office of  
Regional Counsel (w/encl)



**WALTER J. HICKEL, GOVERNOR**

PLEASE REPLY TO:

- 1031 WEST 4TH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
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- KEY BANK BUILDING  
100 CUSHMAN ST., SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
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- P.O. BOX 110300 - STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
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## FT. RICHARDSON ENVIRONMENTAL RESTORATION AGREEMENT

WHEREAS, the State of Alaska, Department of Environmental Conservation, (ADEC) and the United States Army (Army) desire to remedy environmental contamination due to past practices at Ft. Richardson and avoid the expense of formal enforcement proceedings, it is hereby covenanted and agreed as follows:

### Jurisdiction

1. The Army enters this Agreement following its obligations under 33 U.S.C. § 1323 (federal facility compliance with state water pollution standards); Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. § 4321, and the Defense Environmental Restoration Program ("DERP"), 10 U.S.C. § 2701 et seq.

2. ADEC enters the Agreement under the above authorities and Alaska Statutes 46.03, 46.04, 46.08, and 18 Alaska Administrative Code ("AAC") 62, 18 AAC 70, 18 AAC 75, 18 AAC 78 and 18 AAC 80.

### Purpose

3. The Parties enter this Agreement to perform necessary assessment, monitoring, remediation, and closure of source areas identified in Attachment A of this Agreement. These activities will follow the schedules listed in Attachment B.

### Findings and Conclusions

4. The United States of America owns and the Army operates Fort Richardson located within the Municipality of Anchorage, Alaska.

5. A companion Federal Facility Agreement (FFA) for Ft. Richardson has been entered into between the U.S. Environmental Protection Agency, the United States Army, and the Alaska Department of Environmental Conservation pursuant to section 120 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., to address the Army's obligations under CERCLA. This agreement does not include source areas which are addressed in the Ft. Richardson FFA. After completion of all required actions, the source area(s) addressed in this Agreement will be included in a Record of Decision in the companion FFA.

6. ADEC finds that releases of petroleum products and oil within the meaning of AS 46.03.826, AS 46.03.740 and 18 AAC 75.990(35) have occurred at the source areas identified in Attachment A, and have contaminated the land and waters of the State of Alaska.

7. Therefore, ADEC alleges the initiation of proceedings under AS 46.03.850 is justified.

#### Schedule of Actions

8. The Army shall submit the documents and complete the actions set forth in this Agreement.

#### Review and Comment on Documents

9. The Army shall complete and send each draft document to ADEC by the corresponding deadline established in attachment B. All draft final work plans for field work, site assessments or remedial actions (both interim and final) must be submitted to ADEC a minimum of 45 days prior to the start of field work or construction. Site Assessment and Remedial Action draft reports must be submitted to ADEC within 120 days after completion of field work.

10. 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 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 state and federal laws and ADEC guidance documents. Comments by ADEC shall be provided with adequate specificity so that the Army can respond to the comments and incorporate changes as a result of the comments, if appropriate, into the final document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and upon request of the Army, ADEC shall provide a copy of the cited authority or reference. 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 30 day period. On or before the close of the comment period, ADEC shall transmit written comments to the Army.

11. Representatives of the Army shall make themselves readily available to 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.

12. 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 document, the Army shall transmit to the ADEC a draft final document that shall include the Army's response to all written comments received during the comment period and incorporate the needed changes to reflect ADEC's comments on the draft document. 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.

13. The Army may extend the thirty (30) day period for either responding to comments on a draft document or for issuing a draft final document for an additional twenty (20) days by providing notice to ADEC. ADEC has fifteen days to review the draft final document (with response to comments) prior to final acceptance or invoking of dispute resolution. In appropriate circumstances, these time periods may be further extended in accordance with paragraphs 63-68.

14. Project Managers may agree to extend by fifteen (15) days the period for finalization of the draft final documents in order to discuss and/or modify draft final documents as necessary to resolve potential disputes.

15. Dispute resolution shall be available to the Parties for draft final documents as set forth in paragraphs 39-41.

16. The draft final document shall serve as the final document if no Party invokes dispute resolution regarding the document. If dispute resolution is invoked and the Army's position 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 may be extended in accordance with paragraphs 63-68.

#### Subsequent Modifications

17. Following finalization of any document pursuant to paragraphs 9-16 above, any Party may seek to modify the document, including seeking additional field work, or other supporting technical work, only as provided in paragraph 18.

18. A Party may seek to modify a document after finalization if it determines, based upon 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 other Project Manager.

19. 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.

20. Nothing in paragraphs 17-20 shall alter 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.

### Site Assessment Work Plans

21. The Army shall submit site assessment work plans under the schedules in Attachment B. These plans outline the course of the site investigation to delineate the vertical and horizontal level and extent of petroleum hydrocarbon contamination in soil and groundwater at each source area. Implementation of these plans shall include a Quality Assurance Program Plan addressing all planned source area activities. Field work will be conducted by a qualified person as defined in 18 AAC 78.995. Each site assessment plan shall incorporate data in the possession of the Army or its consultants and provide for gathering other data required under this Agreement.

### Site Assessment Reports

22. The Army shall submit to ADEC a site assessment report for each source area having a documented release of petroleum products or hazardous substances. These reports will be submitted by the deadlines in Attachment B. The site assessment report shall contain the following: a detailed written or, if applicable, visual description of all work performed and summary of all pertinent data prepared by the Army and its consultants, monitoring well construction data and soil boring logs; site maps detailing existing improvements and (if known) the location of former fuel dispensing equipment, water table elevation maps, petroleum-product level and thickness (isoplot) maps, organic-contaminant concentration maps; aquifer interpretations, other potential source areas within 1/4 mile, interpretations of field observations and analytical data, and recommendations for any follow up work.

23. If upon review of a site assessment report the ADEC reasonably determines additional contamination assessment is required, ADEC shall notify the Army in writing. This writing will set forth the reason(s) the ADEC concluded that additional assessment is required.

### Clean up Levels

24. The petroleum contamination source areas will be remediated pursuant to the levels set forth in 18 AAC 75 (non-UST petroleum); the interim soil guidance for non-ust soil cleanup levels, dated July 17, 1991; the guidance for storage, remediation and disposal of non-ust petroleum contaminated soils, dated July 29, 1991; and for water, the applicable water standards set out in 18 AAC 70; and the applicable federal regulatory requirements for Maximum Contaminant Levels for drinking water; and interim guidance for surface and groundwater cleanups, dated September 26, 1990.

25. If the Army wishes to reduce water contamination concentrations to levels which exceed levels specified in paragraph 24, the Army may prepare a risk assessment which sets forth the Army's justification for the proposed elevated clean-up levels. The risk assessment shall include an exposure assessment, toxicity assessment and risk characterization.

26. The risk assessment elements are described as follows:

a. Exposure Assessment - The Exposure Assessment shall identify routes by which receptors may be exposed to contaminants and shall estimate contaminant levels to which receptors may be exposed. The Exposure Assessment should:

1. Identify contaminant concentrations found at the source area;
2. Identify background contaminant concentrations found on the base and in the aquifer as a whole;
3. Identify potential exposure routes;
4. Identify potential receptors for each exposure route; and
5. Estimate or calculate expected contaminant concentrations to which actual or potential receptors may be exposed.

b. Toxicity Assessment - The Toxicity Assessment shall determine human health and environmental criteria based on information from scientific literature for contaminants at the source area. The criteria shall be developed for applicable exposure routes identified in the Exposure Assessment which may include:

1. Potable water exposure route for ingestion, dermal contact, and inhalation of vapors and mists;
2. Non-potable domestic water exposure route for dermal contact, inhalation of vapors or mists, ingestion of food crops irrigated with such water, lawn watering, ingestion by pets and livestock, and other related exposures;

c. Risk Characterization - The Risk Characterization shall utilize the results of the Exposure Assessment and the Toxicity Assessment to characterize cumulative risks to the affected population and the environment for contaminants found at the source area. Based on contamination levels presently found at the source area, a risk characterization shall be performed which considers:

1. Risks to human health and safety from the contamination;
2. Effects on the public welfare from exposure to the contamination; and
3. Environmental risks in areas which are, or will be, ultimately affected by the contamination.

d. Any risk assessment prepared pursuant to this paragraph shall be submitted to the department within ninety (90) days of ADEC approval of the site assessment report required by paragraph 22. The ADEC shall either approve, approve with modifications, or reject the risk assessment. The Army shall notify ADEC in writing within ten (10) work days of its dispute of any modification or rejection by ADEC. If the ADEC and the Army cannot reach agreement on the disputed rejection or modification of the risk assessment within ten (10) work days after receipt by the ADEC of the Army's notice of objection, either party may invoke dispute resolution.

#### Remedial Action Plans

27. Time frames for starting remedial action will follow schedules in Attachment B. The Army shall submit to ADEC for its approval remedial action plans for source areas with documented releases of petroleum or hazardous substances. Each remedial action plan will address, where applicable, Free Product Recovery and Soil Remediation as detailed in paragraphs 30-33, and Groundwater Remediation and Monitoring as detailed in paragraphs 34-36.

28. Each Remedial Action Plan shall include individual source area plans for: cleanup, restoration, and for long-range monitoring of soil and waters identified as being contaminated.

29. Remedial Action will be conducted by a qualified person, as defined in 18 AAC 78.995.

#### Free Product Recovery and Soil Remediation

30. The remedial action plan for free product recovery, at source areas with free product, and the cleanup, removal, treatment and disposal of all contaminated soil above levels set out in paragraphs 24-26 will address the following parameters:

A. Free product recovery and soil remediation plans shall contain the following information: a schedule for implementation, support for choice of remedial technology, engineered system plans (where applicable), available equipment and skilled personnel, efficiency, reliability (life and difficulty of maintenance, costs and other associated impacts), compatibility of proposed actions with other reasonably foreseeable requirements, need for an on-site pilot scale study, third-party field supervision of remedial actions, procedures for equipment monitoring during remediation, contaminant media analysis to ensure remediation is progressing, and provisions for work documentation. Each plan shall reference the QAPP that will be followed and shall address any source area specific modifications necessary to conduct field work.

31. The Army shall complete free product recovery and soil remediation, pursuant to each approved plan.

32. Following completion of soil remediation, the Army shall submit a final remedial action report for each source area as required by 18 AAC 78.340.

33. The Army shall comply with all applicable local, state, and federal laws when removing, treating or disposing of contaminated materials. The Army shall receive ADEC approval prior to treatment or disposal of cleanup materials.

#### Groundwater Remediation and/or Monitoring

34. Remedial Action Plans for each source area with groundwater contamination shall contain the following information: a schedule for implementation, support for choice of remedial technology, engineered system plans (where applicable), available equipment and skilled personnel, efficiency, reliability (life and difficulty of maintenance, costs and other associated impacts), compatibility of proposed actions with other reasonably foreseeable requirements, need for an on-site pilot scale study, qualified third-party field supervision of remedial actions in accordance with 18 AAC 78.995(70), procedures for equipment monitoring during remediation, contaminant media analysis to ensure remediation is progressing, and provisions for work documentation. Each plan shall reference a Quality Assurance/Quality Control plan addressing all reasonably foreseeable planned activities and shall address any source area specific modifications necessary to conduct field work.

35. The Army shall complete groundwater remediation and/or monitoring pursuant to each approved plan.

36. Following completion of groundwater remediation, the Army shall submit a final remedial action report for each source area (report may be submitted in conjunction with the remedial action report for soil remediation).

#### Requests for Additional Plans or Information

37. If at any time after reviewing information submitted under this agreement the ADEC determines a threat to public safety, health or the environment exists, the ADEC may request submittal of additional information; or a remedial action plan.

#### Plan Incorporation

38. When the written plans described in this Agreement are approved by the ADEC, including any modifications approved by the ADEC, the plans will be automatically incorporated into this Agreement and will be fully enforceable as if they were part of the original Agreement. If no satisfactory plan is submitted and approved by the ADEC pursuant to this Agreement, and the parties are unable to reach an informal accommodation, either party may invoke the dispute resolution procedures in paragraphs 39-41.

### Dispute Resolution

39. The parties agree to make reasonable efforts to informally resolve all disputes at the Project Manager level. If the dispute is still unable to be resolved, the Southcentral Region Contaminated Site Programs Supervisor of ADEC and the Chief, Environmental Resources Division, Director of Public Works, Ft. Richardson will meet to resolve the dispute. If the dispute is still unable to be resolved, representatives of the Army and the ADEC will meet with the Regional Administrator of ADEC and the Director of Public Works.

40. The Regional Administrator of ADEC will issue a final determination in writing. The written decision will be final for purposes of judicial review pursuant to Alaska Rule of Appellate Procedure 602(a)(2). The Army will proceed with implementing the final determination within 21 days of ADEC's final determination subject to the reserved right of the Army to pursue any legal remedy at its disposal. The Regional Administrator's determination will remain in effect pending resolution of any judicial appeal unless a stay is sought and granted by the court on appeal; absent a stay the Army will implement the determination consistent with the ADEC's final decision.

41. The pendency of any individual dispute shall not affect the Army's responsibility for timely performance of undisputed work required by this Agreement. All elements of the work required by this Agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable schedule.

### Progress Reports

42. At the written request of the ADEC and within 30 days of such request, the Army shall prepare and submit to the ADEC written progress reports describing the status of activities conducted under this Agreement. In no event shall written requests be requested more frequently than 6 times per 12 month period. Each report at a minimum shall contain the following information:

- A. A description of work performed at the source area;
- B. Problems encountered along with remedial actions implemented;
- C. Projected and/or scheduled work for the next reporting period;
- D. Copies of laboratory/monitoring data.

### Periodic Briefings

43. ADEC and the Army shall meet quarterly, in accordance with the schedule outlined in Attachment B, to provide updates and briefings concerning the status of activities conducted pursuant to this Agreement.

### Annual Reports

44. The Army shall prepare and submit to the ADEC an annual report summarizing the progress at each source area until remediation and/or monitoring is complete. The schedule for these annual reports may be staggered so as not to require submission of all reports simultaneously. The schedule for submission of annual report(s) will be set forth in Attachment B.

45. The annual reports shall contain, if applicable, water level measurements and inferred groundwater flow direction, groundwater quality data, analytical results from samples of vapor extraction system (VES) emissions and air stripper emissions, influent and effluent water quality data for groundwater treatment systems, operational data such as air flow rates from vapor extraction or sparging systems and pump rates for groundwater treatment, results from ambient air monitoring in the area of potential receptors of discharged vapors, any problems encountered during field work, periods of shutdown, plans for the next year and other pertinent information.

### Project Managers

46. ADEC and the Army shall each designate a Project Manager and Alternate (jointly referred to as Project Manager) to oversee the implementation of this Agreement. Within five days of the effective date of this Agreement, each Party shall provide the other Party with the name and address of its Project Manager. Any party may change its designated Project Manager by notifying the other Party, in writing, within five (5) days of the change. Any party may designate different project managers for different source areas addressed pursuant to this Agreement. Communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Managers as set forth in paragraphs 58-59 of this Agreement. Each Project Manager shall be responsible for assuring that all communications from the other Project Manager are appropriately disseminated and processed by their respective Agencies.

47. Project Managers shall have the authority to: (1) take samples, request split samples, and to ensure work is properly performed and in accordance with the terms of any final Plan; (2) observe all activities performed pursuant to this Agreement, take photographs, and make other such reports on the progress of the work as the Project Managers think appropriate; (3) review records, files, and documents relevant to this Agreement; (4) recommend and request minor field modifications to the work performed pursuant to this Agreement, or in techniques, procedures, or designs utilized in carrying out this Agreement; and (5) redefine the source areas

covered by this agreement; (6) act in accordance with paragraph 87 (Modification); and (7) exercise the authorities granted to them in this part.

48. Each Project Manager shall be, or rely on, a qualified person as defined in 18 AAC 78.995. The project manager will be competent in site investigations and remedial action and have the skills necessary to implement this agreement.

49. The Project Managers may, in accordance with paragraph 47 of this Agreement, make modifications to the work performed under this Agreement, or in techniques, procedures, or designs utilized in carrying out this Agreement. Any modification proposed pursuant to this paragraph by any party approved orally, must be reduced to writing and within 10 days be signed by both Project Managers. 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 contained 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.

50. The Project Manager for the Army shall be responsible for day-to-day activities at the source areas. The Project Manager for Army shall be physically present at Ft. Richardson, or reasonably available to supervise work, during all hours of work performed at Ft. Richardson pursuant to this Agreement.

51. The Project Managers shall be reasonably available to consult on work performed pursuant to this Agreement and shall make themselves available to each other for the pendency of this Agreement. The absence of Army or ADEC Project Managers from Ft. Richardson shall not be a cause for work stoppage or delay.

#### Access

52. Without limitation on any authority conferred on them by law, ADEC and its authorized representatives shall have authority to enter Ft. Richardson at all reasonable times with notice to the project managers 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 Project Manager thinks necessary; and (4) verifying the data submitted to ADEC by the Army. The Army shall honor all requests for such access by ADEC, subject only to any statutory or regulatory requirement as may be necessary to protect national security or mission-essential activities. If access requested by ADEC is denied by the Army, the Army shall, within forty-eight (48) hours, provide a written explanation of the reason for the denial, including reference to the applicable regulations, and, upon request, a copy of such regulations. The Army shall not restrict the access rights of ADEC to any greater extent than the Army restricts the access rights of its contractors performing work pursuant to this Agreement.

53. To the extent that this Agreement requires access to property not owned and controlled by the Army, the Army shall make every reasonable effort to facilitate access Agreements for itself, its contractors, agents, and ADEC, and provide ADEC with copies of such agreements. With respect to 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 and ADEC 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.

#### Sampling and Data/Document Availability

54. 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 the submittal of samples 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 and twenty (120) days after the submittal of samples to the laboratory. These periods can be extended upon mutual agreement among the Project Managers.

55. At the request of the ADEC Project Manager, the Army shall allow split or duplicate samples to be taken by ADEC during sample collection conducted during the implementation of this Agreement. The Army's Project Manager shall notify the ADEC Project Manager not less than fourteen (14) days in advance of any well drilling, sample collection, remedial action or other monitoring activity, conducted pursuant to this Agreement. The fourteen (14) day notification can be waived upon mutual agreement among the Project Managers.

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

57. Laboratory reports shall be made available at Ft. Richardson for the review of the Parties immediately upon receipt.

#### Notice to Parties

58. All Parties shall expeditiously transmit all documents and notices required herein. Time limitations shall commence upon receipt.

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

A. For the Army:

Directorate of Public Works  
6th Infantry Light and US Army Garrison  
APVR-PW-ENV  
Fort Richardson, AK 99505-5500  
(907) 384-3000

B. For ADEC:

Southcentral Regional Office  
Alaska Department of Environmental  
Conservation  
3601 "C" Street, Suite 1334  
Anchorage, Alaska 99503  
(907) 563-6529

Permits

60. Nothing in this Agreement relieves the Army from obtaining an applicable permit or other authorization when conducting work pursuant to this Agreement.

Breach

61. Time is of essence in this Agreement. The Army understands that any deviation from the terms or deadlines set forth herein, other than short term violations or violations caused by Force Majeure, may at ADEC's option be deemed a breach of this Agreement and may result in prompt legal action to enforce the terms and deadlines of this Agreement as well as all other applicable legal and regulatory requirements.

Existing or Future Obligations

62. Nothing in this Agreement shall be construed as altering the Army's existing or future obligations to monitor, record, or report information required under applicable environmental laws, statutes, regulations or permits, or to allow ADEC access to such information. Nothing in this Agreement shall alter ADEC's authority to request and receive any relevant information under applicable environmental laws or in administrative or judicial proceedings.

Extensions/Force Majeure

63. Either a deadline or a schedule shall be extended upon receipt of a timely request for extension and good cause exists for the requested extension. Any request for an extension by a Party shall be submitted to the Project Managers and shall specify:

- a. The deadline or the schedule that is sought to be extended;
- b. The length of the extension;
- c. The good cause(s) for the extension; and
- d. Any related deadline that would be affected if the extension were granted.

Good cause exists for an extension when sought in regard to:

- a. An event of Force Majeure;
- b. A delay caused by another Party's failure to meet any requirement of this Agreement;
- c. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
- d. A delay caused, or that is likely to be caused by the grant of an extension in regard to another deadline or schedule; and
- e. Any other event or series of events mutually agreed to by the Parties as constituting good cause.

64. Absent agreement of the Parties with respect to the existence of good cause, the requesting Party may seek and obtain a determination through the dispute resolution process that good cause exists.

65. Within seven (7) days of receipt of a request for an extension of a deadline or a schedule, the other Party shall advise the requesting party, in writing, of its position on the request. Any failure by the other Party to respond within fourteen (14) days shall be deemed to constitute concurrence in the request for an extension. If a Party does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

66. If there is agreement between the Parties that the requested extension is warranted, the affected deadline or schedule shall be extended. If there is not agreement between

the Parties as to whether all or part of the requested extension is warranted, the deadline or schedule shall not be extended except in accordance with a determination resulting from the dispute resolution process.

67. Within seven (7) days of receipt of a statement of nonconcurrence with the requested extension, the requesting Party may invoke dispute resolution.

68. An act of Force Majeure shall mean any event arising from causes beyond the control of Army that causes a delay in or prevents the performance of any obligation under this Agreement, including, but not limited to, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment, or lines or pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at a reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority other than Army; delays caused by compliance with applicable statutes or regulations governing contracting, procurement, or acquisition procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriated funds, if Army shall have made timely request for such funds as part of the budgetary process as set forth in paragraphs 69-72 of this Agreement. A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of response actions, whether or not anticipated at the time such response actions were initiated.

### Funding

69. It is the expectation of the Parties to this Agreement that all obligations of the Army arising under this Agreement will be fully funded. Ft. Richardson shall request, through the Department of the Army and the Department of Defense, all funds and/or authorizations necessary to meet the conditions of this Agreement.

70. Although failure to obtain approval of authorization and/or appropriations from Congress may alter the established timetable and schedules in accordance with paragraph 68 (Force Majeure), it does not release the Army from its obligations of compliance with state environmental requirements. If sufficient funds are not appropriated by Congress as requested and existing funds are not available to achieve compliance with the schedules provided in this Agreement, and the Army reports the lack of funds in accordance with paragraph 71, then the compliance schedule shall be revised as necessary. If appropriated funds are not available to fulfill the Army's obligations under this Agreement, ADEC reserves the right to initiate any action against any other person, or to take any response action, which would be appropriate absent this Agreement. In the event that the Army's obligations under this Agreement are not fulfilled for 12 consecutive months, ADEC shall have the option of terminating the provisions of this Agreement affecting its rights and obligations, and ADEC may thereafter seek any

appropriate relief. However, in no case would ADEC terminate the Agreement without providing ten (10) days notice of the intention to terminate to the Army.

71. Ft. Richardson shall keep ADEC apprised of significant budget events related to this Agreement so that the Project Managers may assist in developing estimates of the resources needed to carry out this Agreement. Ft. Richardson shall notify ADEC on or about April 1 and November 1 of the availability for review of budget submittal documents. The budget documents shall clearly establish that the Army has requested all necessary funds to carry out its obligations under this Agreement for the applicable budget year. The Army shall honor all reasonable requests by ADEC to obtain review of additional documentation or information regarding the budget, and shall respond to such requests within 15 days of the request. All budget documents related to this Agreement shall be retained and shall, upon request, be provided to ADEC in the event of an extension request, Force Majeure, or other event based upon a funding limitation

72. No provision in this document shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. If payment or obligation of funds hereunder would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

#### Recovery of Expenses

73. The Army and ADEC agree to use the Defense/State Memorandum of Agreement signed on June 1, 1990, for the reimbursement of services provided in direct support of the Army activities pursuant to this Agreement.

#### Stipulated Penalties

74. The Army contends that the Federal Water Pollution Control Act does not waive the United States' sovereign immunity such that states may assess fines or penalties against the United States or the Army for the violation of state statutes, regulations or administrative orders involving water pollution. ADEC disagrees. In order to resolve this dispute, the parties agree that in the event of:

- 1) a United States Supreme Court opinion holding that the above Act waives the United States' sovereign immunity for the purposes of the assessment against it and the collection from it of penalties for the violation of state laws, regulations, or administrative orders governing water pollution; or
- (2) a future amendment of the above Act subjects the United States or the Army to such penalties for the violation of state statutes, regulations or administrative order;

the stipulated penalty provisions of paragraphs 75-78 will apply to this Agreement.

75. If determined by ADEC to be appropriate, Army shall pay to ADEC a stipulated penalty of two thousand dollars (\$2,000) for the first week (or portion thereof), and three thousand dollars (\$3,000) for each additional week (or portion thereof) in the event that the Army fails to meet any deadline relating to a Release Investigation Workplan, Release Investigation Report, or Corrective Action Plan. If the Army pays stipulated penalties pursuant to this agreement, ADEC may not pursue any additional monetary penalties which may be available to ADEC for the deadline violation.

76. Upon determining that the Army has failed in a manner set forth in paragraph 75, ADEC shall so notify Army in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Army shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did, in fact, occur. The Army shall not be liable for the stipulated penalty assessed by ADEC if the failure is determined, through the dispute resolution process, not to have occurred or is otherwise resolved through dispute resolution. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

77. Stipulated penalties assessed pursuant to paragraph 75 shall be payable to the State of Alaska Oil and Hazardous Substance Release Mitigation Account only in the manner and to the extent provided for in Acts authorizing funds for, and appropriations to, the U.S. Department of Defense.

78. Nothing in this Agreement shall be construed to render any officer or employee of the Army personally liable for the payment of any stipulated penalty assessed pursuant to paragraph 75.

79. Nothing herein shall be construed as consent by the Army that Congress has waived its sovereign immunity from penalties assessed by the State of Alaska under this Agreement. Nothing herein shall act to bar Alaska from raising in any forum, whether administrative or judicial, any legal position regarding its authority to assess penalties.

#### Reservation of Rights

80. The execution of this Agreement is not an admission of liability of the Army on any issue dealt with in this Agreement. In signing this Agreement, the Army and ADEC do not admit, and reserve the right to controvert in any subsequent proceedings, the validity of or responsibility for any of the factual or legal determinations made herein; provided, however, that Army shall not controvert or challenge, in any subsequent proceedings initiated by

the State of Alaska, the validity of this Agreement or the authority of ADEC to issue and enforce this Agreement.

81. ADEC expressly reserves the right to initiate administrative or legal proceedings related to any violation not described in this Agreement. In addition, ADEC and the Department of Law expressly reserve the right to initiate administrative or legal proceedings related to violations described in this Agreement if the Army breaches this Agreement or if, in ADEC's opinion, subsequently discovered events or conditions constitute an immediate threat to public health, public safety, or the environment whether or not ADEC may have been able to discover the event or conditions prior to entering into the Agreement. The State expressly reserves the right to initiate administrative or legal proceedings if the Army does not comply with the provisions set forth herein to the satisfaction of ADEC. The Parties agree to exhaust their rights under dispute resolution prior to exercising any rights to judicial review that they may have. Nothing in this paragraph precludes the ADEC from invoking the provisions of AS 46.03.820.

#### ADEC Order

82. The Army acknowledges and agrees that this Agreement constitutes an order of ADEC for the purposes of AS 46.03.765, AS 46.03.850 and for all other purposes.

#### Parties Bound

83. This Agreement shall apply and be binding upon ADEC and the Army, their agents, successors, and assigns and upon all persons, contractors, and consultants acting on behalf of ADEC or the Army.

#### State Not a Party to Contracts

84. The State of Alaska shall not be held as a party to any contract entered into by the Army related to activities conducted pursuant to this Agreement.

#### Effective Date

85. The effective date of this Agreement shall be the date the Agreement is executed by both the Army and ADEC and will continue in effect until a ADEC decision on the Army's application for no further action is rendered. All final actions for source areas under this Agreement shall be included in Records of Decision under the companion Ft. Richardson FFA.

### Modification

86. Except as provided by paragraph 87 and elsewhere in this Agreement, the terms of this Agreement may only be modified by the written agreement of the Parties.

87. Modifications, extensions, and/or actions taken pursuant to paragraphs 8 (Schedule of Actions); 9-16 (Review and Comment on Documents); 17 (Subsequent Modification); 42 (Progress Reports); 54-57 (Sampling and Data/Document Availability); 63-68 (Extensions/Force Majeure) and Attachment B may be effected by the agreement of the Project Managers. Any modification approved orally under this paragraph must be reduced to writing within 10 days.

### Property Transfer

88. If the Army transfers, sells, or leases the property described in Section 4 to another party (including another agency or department of the United States Government) prior to the Army's fulfillment of the provisions of this Agreement, the Army shall incorporate a copy of this Agreement into the documents of transfer or lease, and shall provide in those documents that the new owner(s) or lessee(s) shall take or lease subject to the provisions of this Agreement.

### Copies

89. Upon retention, the Army shall provide a copy of this Agreement to all contractors, sub-contractors, and consultants retained to conduct any portion of the work performed pursuant to this Agreement.

### Severability

90. It is the intent of the parties hereto that the clauses of this Agreement are severable and should any part of it be declared by a court of law to be invalid and unenforceable, the other clauses shall remain in full force and effect.

### Waiver

91. A failure to enforce any provision of this Agreement in no way implies a waiver of ADEC's right to insist upon strict performance of the same or other provisions in the future.

### Definitions

92. Unless specified, the terms used in this agreement shall have the meaning specified in Alaska Statutes Title 46 and Alaska Administrative Code Title 18.

93. "ADEC" shall mean the Alaska Department of Environmental Conservation, its employees, and authorized representatives.

94. "Agreement" shall mean this document and shall contain all Attachments to this document. All such Attachments shall be incorporated by reference and are in integral and enforceable part of this document.

95. "Ft. Richardson" shall mean the physical boundaries (fence-to-fence) of Fort Richardson, excluding the Alaska Department of Military and Veterans Affairs and Army National Guard facilities

96. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA").

97. "Containment and cleanup" shall have the meaning in AS 46.04.900 and AS 46.09.900.

98. "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.

99. "Hazardous substance" shall have the meaning in AS 46.03.826.

100. "Oil" shall have the meaning in AS 46.03.826.

101. "Paragraph" shall mean a numbered paragraph of this Agreement, designated by an Arabic numeral.

102. "Parties" shall mean the Army and ADEC.

103. "Petroleum" shall mean crude oil or any fraction of crude oil that is liquid at 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute; "petroleum" includes petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

104. "RCRA" shall mean the Resource Conservation and Recovery Act as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA").

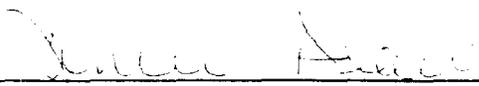
105. "Release" shall have the meaning in AS 46.03.826.

106. "Site assessment" shall mean the investigation of suspected contamination resulting from an unpermitted release of oil or hazardous substance as further defined in 18 AAC 78.090.

107. "Source area" shall mean a distinct area of contamination or potential contamination.

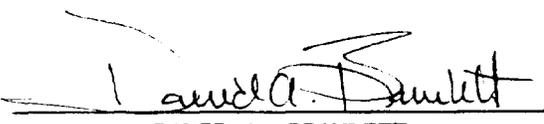
108. "U.S. Army" shall mean the United States Army Ft. Richardson Alaska and, to the extent necessary to effectuate the terms of this Agreement (including appropriations and congressional reporting requirements), its employees, agents, successors, assigns, and authorized representatives.

STATE OF ALASKA  
DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION

  
BY: JANICE ADAIR  
Regional Administrator  
Southcentral Regional Office

Dated: 4/28/94

FOR THE UNITED STATES ARMY  
FORT RICHARDSON ALASKA

  
BY: DAVID A. BRAMLETT  
Title/Rank: MAJOR GENERAL, COMMANDING GENERAL  
6th Infantry Division (Light)

Date: 28 June 94

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**FORT RICHARDSON-STATE ENVIRONMENTAL RESTORATION AGREEMENT POTENTIAL SOURCE AREAS  
ATTACHMENT A**

SITE #	BLDG/ LOC.	SITE FUNCTION	UNIT/ ACTIVITY	POTENTIAL CONTAMINANTS	REL	UBT	STATUS	1990 RFA SWMU	NOTES & REFS.
RO57	755	AUTO & CRAFT SHOP	DPCA	WASTE PAINTS, GREASE, MINERAL SPIRITS, OIL	F	T	RCRA CLOSURE	27, 72	1990 RFA
NO96	794	CANNIBILIZATION YARD	DOL		F	F			DRAFT ECAR, DEC 93
WO02	45590	MOTOR POOL	CENTRAL TEXAS COLLEGE	WASTE OIL, LUBRICANTS, ANTIFREEZE, ACID, SOLV.	F	T	RCRA CLOSURE	83	USATHAMA 1991 PROPERTY REPORT AND 1990 RFA
WO21	47431	AIRCRAFT MAINTENANCE FACILITY	B/123 AVN CD	DRYCLEAN SOLV, GREASE, HYDRAULIC FLUID, METHYL ETHYL KETONE, NAPHTHA, WASTE FUELS/OIL	T	F		67	USATHAMA 1991 PROPERTY REPORT
WO48	BLDG 39800 (UPPER SITE SUMMIT), & LOWER SITE SUMMIT	FORMER NIKE MISSILE SITE	PW	WATER W/RESIDUAL SOLV, FUELS, RADIOACTIVE MATERIAL, ASBESTOS	F	F			USATHAMA 1991 PROPERTY REPORT

**SCHEDULE OF ACTIVITIES  
ATTACHMENT B**

The following activities represent the general requirements for the assessment, investigation, and development of corrective action for potential petroleum-contaminated source areas listed in Attachment A. The inclusive start and finish dates for corrective action plans will be determined as the various sources are further developed.

<u><b>ACTION</b></u>	<u><b>SCHEDULED START</b></u>	<u><b>SCHEDULED FINISH</b></u>
Site Assessment Plans	7 Oct 94	3 Feb 95
Submit Draft Work Plans (HSP, QAAP, FSP)	7 Oct 94	
Agency Review of Draft Work Plans	7 Oct 94	4 Nov 94
Submit Final Work Plans	13 Jan 95	
Final Work Plan Review/Approval	13 Jan 95	10 Feb 95
Site Assessment Field Work	13 Mar 95	1 Oct 95
Conduct Field Work	13 Mar 95	12 May 95
Submit Draft Work Report	14 Jul 95	
Agency Review of Draft Work Report	14 Jul 95	11 Aug 95
Submit Final Work Report	13 Oct 95	
Corrective Action Plans	<b>TBD</b>	
Submit Draft CA Work Plans		
Agency Review of Draft Work Plans		
Submit Final Work Plans		
Agency Review of Final Work Plans		
Corrective Action/Reports	<b>TBD</b>	
Corrective Action		