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5 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 10
6 AND THE
7 ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
8 AND THE
9 UNITED STATES DEPARTMENT OF THE ARMY

10 IN THE MATTER OF:)
11 U.S. Department of the Army) FEDERAL FACILITY AGREEMENT
12 Fort Richardson) UNDER CERCLA SECTION 120
13 Anchorage, Alaska) Administrative Docket Number:
14) 1093-05-02-120
15)

16 TABLE OF CONTENTS

17 Page
18 I. Jurisdiction 3
19 II. Definitions 4
20 III. Purpose 10
21 IV. Parties Bound. 12
22 V. RCRA-CERCLA Integration. 13
23 VI. Findings of Fact 15
24 VII. Regulatory Determinations. 16
25 VIII. Scope of Agreement 17
26 A. Work to be Performed. 17
27 B. Preliminary Source Evaluation 18
28 C. Interim Remedial Actions. 18
29 D. Remedial Investigations 18
30 E. Feasibility Studies 19
31 F. Remedial Actions 19
32 G. Technical Review Committee. 19
33 H. Compliance with the Off-Site Rule 20
34 IX. Project Managers 20
35 X. Access 23
36 XI. Sampling and Data/Document Availability. 26
37 XII. Quality Assurance. 27
38 XIII. Reporting. 28
39 XIV. Notice to the Parties. 29
40 XV. Permits. 30
41 XVI. Retention of Records 30
42 XVII. Public Participation and Administrative Record 31

1	XVIII.	Creation of Danger/Emergency Action.	32
	XIX.	Five Year Review	33
2	XX.	Consultation with U.S. EPA and ADEC.	34
	A.	Applicability	34
3	B.	General Process for RI/FS and RD/RA Documents	35
	C.	Primary Documents	36
4	D.	Secondary Documents	37
	E.	Meetings of the Project Managers on Development of Documents.	38
5	F.	Identification and Determination of Potential ARARs	38
6	G.	Review and Comment on Draft Documents	39
7	H.	Availability of Dispute Resolution for Draft Final Primary Documents	41
8	I.	Finalization of Documents	42
	J.	Subsequent Modifications.	42
9	XXI.	Resolution of Disputes	44
	XXII.	Enforceability	49
10	XXIII.	Stipulated Penalties	50
	XXIV.	Deadlines.	52
11	XXV.	Extensions	53
	XXVI.	Force Majeure.	56
12	XXVII.	Funding.	57
	XXVIII.	Recovery of Expenses	59
13	XXIX.	Other Claims	59
	XXX.	Other Applicable Laws.	60
14	XXXI.	Confidential Information	61
	XXXII.	Transfer of Property	61
15	XXXIII.	Modification/Amendment of Agreement.	61
	XXXIV.	Severability	62
16	XXXV.	Termination and Satisfaction	62
	XXXVI.	Reservation of Rights.	63
17	XXXVII.	Effective Date	64

18 ATTACHMENT 1

19

20 Based on the information available to the Parties on the

21 effective date of this Federal Facility Agreement ("Agreement"),

22 and without trial or adjudication of any issues of fact or law, the

23 Parties agree as follows:

1 I. JURISDICTION

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

4 1.1 The United States Environmental Protection
5 Agency ("U.S. EPA"), Region 10, enters into those portions of this
6 Agreement that relate to the Remedial Investigation/Feasibility
7 Study ("RI/FS") pursuant to Section 120(e)(1) of the Comprehensive
8 Environmental Response, Compensation, and Liability Act ("CERCLA"),
9 42 U.S.C. § 9620(e)(1), as amended by the Superfund Amendments and
10 Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499 (hereinafter
11 jointly referred to as "CERCLA"); Sections 3004(u) and (v),
12 3008(h), and 6001 of the Resource Conservation and Recovery Act
13 ("RCRA"), 42 U.S.C. §§ 6924(u) and (v), 6928(h), and 6961, as
14 amended by the Hazardous and Solid Waste Amendments of 1984
15 ("HSWA") (hereinafter jointly referred to as "RCRA"); and Executive
16 Order 12580;

17 1.2 U.S. EPA, Region 10, enters into those
18 portions of this Agreement that relate to interim actions and final
19 remedial actions pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C.
20 § 9620(e)(2); Sections 3004(u) and (v), 3008(h), and 6001 of RCRA,
21 42 U.S.C. §§ 6924(u) and (v), 6928(h), and 6961; and Executive
22 Order 12580;

23 1.3 The Army enters into those portions of this
24 Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of
25 CERCLA, 42 U.S.C. § 9620(e)(1); Sections 3004(u) and (v), 3008(h),
26 and 6001 of RCRA, 42 U.S.C. §§ 6924(u) and (v), 6928, and 6961;

1 Executive Order 12580; the National Environmental Policy Act,
2 42 U.S.C. § 4321, and the Defense Environmental Restoration Program
3 ("DERP"), 10 U.S.C. § 2701 et seq.;

4 1.4 The Army enters into those portions of this
5 Agreement that relate to interim actions and final remedial actions
6 pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C. § 9620(e)(2);
7 Sections 3004(u) and (v), 3008(h), and 6001 of RCRA, 42 U.S.C.
8 §§ 6924(u) and (v), 6928(h), and 6961; Executive Order 12580; and
9 the DERP.

10 1.5 The State of Alaska Department of
11 Environmental Conservation ("ADEC") enters into this Agreement
12 pursuant to Sections 107, 120(e), 120(f), and 121(f) of CERCLA,
13 42 U.S.C. §§ 9607, 9620(e), 9620(f), and 9621(f); Alaska Statutes
14 46.03, 46.04, 46.08, 46.09; and 18 Alaska Administrative Code
15 ("AAC") 60, 18 AAC 62, 18 AAC 70, 18 AAC 75, 18 AAC 78, and
16 18 AAC 80.

17 II. DEFINITIONS

18 2.1 The terms used in this Agreement shall have
19 the same meaning as defined in Section 101 of CERCLA, 42 U.S.C.
20 § 9601; the NCP, 40 CFR 300.5; and Section 1004 of RCRA, 42 U.S.C.
21 § 6903. In addition:

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

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

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

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

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

9 (e) "CERCLA" shall mean the Comprehensive
10 Environmental Response, Compensation, and Liability Act of 1980,
11 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments
12 and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499;

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

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

25 (h) "Interim Remedial Actions" or "IRAs" are
26 discussed in the Preamble to 40 CFR 300.430(a)(1), 55 Fed. Reg.

1 8703-8706 (March 8, 1990), and shall mean all discrete actions
2 implemented under remedial authority that are taken to prevent or
3 minimize the release of hazardous substances, pollutants, or
4 contaminants so that they do not endanger human health or the
5 environment. Interim actions shall neither be inconsistent with
6 nor preclude implementation of the final expected Site remedy and
7 shall be undertaken in accordance with the NCP, 40 CFR Part 300, as
8 amended, and with the requirements of CERCLA;

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

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

17 (k) "Operable Unit" or "OU" means a discrete
18 action that comprises an incremental step toward comprehensively
19 addressing Site problems. This discrete portion of a remedial
20 response manages migration, or eliminates or mitigates a release,
21 threat of a release, or pathway of exposure. The cleanup of a site
22 can be divided into a number of operable units, depending on the
23 complexity of the problems associated with the site. Operable
24 units may address geographical portions of a site, specific site
25 problems, or initial phases of an action, or may consist of any set
26

1 of actions performed over time or any actions that are concurrent
2 but located in different parts of a site;

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

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

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

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

18 (p) "RCRA" shall mean the Resource Conservation
19 and Recovery Act, 42 U.S.C. § 6901 et seq., as amended by the
20 Hazardous and Solid Waste Amendments of 1984 ("HSWA"), Pub. L.
21 98-616;

22 (q) "Record of Decision" or "ROD" is discussed at
23 40 CFR 300.430 and shall mean the document that summarizes the
24 selection of an interim remedial action or a final remedial action,
25 and all facts, analyses of facts, and source-specific policy
26

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

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

9 (s) "Removal" is defined by Section 311(a)(8) of
10 the Clean Water Act ("CWA"), 33 U.S.C. 1321(a)(8), and shall mean
11 the removal of oil or hazardous substances from the water and
12 shorelines or the taking of such other actions as may be necessary
13 to minimize or mitigate damage to the public health, welfare, or to
14 the environment. As defined by Section 101(23) of CERCLA,
15 42 U.S.C. § 9601(23), removal shall mean the cleanup or removal of
16 released hazardous substances from the environment; such actions as
17 may be necessary in the event of the threat of release of hazardous
18 substances into the environment; such actions as may be necessary
19 to monitor, assess, and evaluate the release or threat of release
20 of hazardous substances; the disposal of removed material; or the
21 taking of such other actions as may be necessary to prevent,
22 minimize, or mitigate damage to the public health or welfare or to
23 the environment that may otherwise result from a release or threat
24 of release. The term includes, in addition, without being limited
25 to, security fencing or other measures to limit access, provision
26 of alternative water supplies, temporary evacuation and housing of

1 threatened individuals not otherwise provided for, action taken
2 under Section 104(b) of CERCLA, 42 U.S.C. § 9604(b), post-removal
3 site control, where appropriate, and any emergency assistance that
4 may be provided under the Disaster Relief Act of 1974. For the
5 purpose of the NCP, the term also includes enforcement activities
6 related thereto;

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

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

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

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

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

1
2 III. PURPOSE

3 3.1 The general purposes of this Agreement are to:

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

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

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

16 3.2 Specifically, the purposes of this Agreement are
17 to:

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

21 (b) Identify removal and Interim Remedial Actions
22 ("IRA") alternatives that are appropriate at the Site prior to the
23 implementation of final remedial action(s) for the Site. IRA
24 alternatives shall be identified and proposed to the Parties as
25 early as possible prior to formal proposal of IRA(s) to U.S. EPA
26 and ADEC pursuant to CERCLA and applicable state law. This process.

1 is designed to promote cooperation among the Parties in identifying
2 IRA alternatives prior to selection of final IRA(s);

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

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

19 (e) Implement the selected interim and final remedial
20 action(s) in accordance with CERCLA and applicable state law, and
21 meet the requirements of Section 120(e)(2) of CERCLA, 42 U.S.C.
22 § 9620(e)(2), for an interagency agreement among the Parties;

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

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

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

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

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

14 IV. PARTIES BOUND

15 4.1 This Agreement shall apply to and be binding
16 upon the Army, U.S. EPA, and ADEC. This Agreement shall also apply
17 to subsequent owners and operators of any portion of the Site. The
18 Army agrees to include notice of this Agreement in any document
19 transferring ownership of property owned by the United States to
20 any subsequent owners and operators of any portion of the Site in
21 accordance with Section 120(h) of CERCLA, 42 U.S.C. § 9620(h),
22 40 CFR §§ 264.119 and 264.120, and Part XXXII of this Agreement.
23 The requirement for such notice shall apply to real property sold
24 or transferred between agencies of the United States, between the
25 United States and private Parties, and between the United States
26 and state and local governments.

1 4.2 The Army will notify U.S. EPA and ADEC of the
2 identity of its contractors and subcontractors performing work
3 under this Agreement. The Army shall provide copies of this
4 Agreement to all contractors and subcontractors performing work
5 under this Agreement. The Army shall ensure that all contractors
6 and subcontractors performing work under this agreement have
7 sufficient experience to deal with the relevant remedial activities
8 at the Site.

9 4.3 Each undersigned representative of a Party
10 certifies that he or she is fully authorized to enter into the
11 terms and conditions of this Agreement and to legally bind such
12 Party to this Agreement.

13 V. RCRA-CERCLA INTEGRATION

14 5.1 The Parties intend to integrate the Army's
15 CERCLA response obligations and RCRA corrective action obligations
16 that relate to the release(s) of hazardous substances, hazardous
17 wastes, hazardous constituents, pollutants, or contaminants covered
18 by this Agreement into this comprehensive Agreement. Therefore,
19 the Parties intend that activities covered by this Agreement will
20 achieve compliance with CERCLA, 42 U.S.C. § 9601 et seq.; satisfy
21 the corrective action requirements of Sections 3004(u) and (v) of
22 RCRA, 42 U.S.C. § 6924(u) and (v), for a RCRA permit, and Section
23 3008(h), 42 U.S.C. § 6928(h), for interim status facilities; and
24 meet or exceed all applicable or relevant and appropriate federal
25 and state laws and regulations, to the extent required by Section
26 121 of CERCLA, 42 U.S.C. § 9621, and applicable state law.

1 5.2 Based upon the foregoing, the Parties intend
2 that any remedial action selected, implemented, and completed under
3 this Agreement will be protective of human health and the
4 environment such that remediation of releases covered by this
5 Agreement shall obviate the need for further corrective action
6 under RCRA (i.e., no further corrective action shall be required).
7 The Parties agree that with respect to releases of hazardous waste
8 or hazardous constituents covered by this Agreement, RCRA shall be
9 considered an ARAR pursuant to Section 121 of CERCLA, 42 U.S.C.
10 § 9621. Releases or other hazardous waste activities not covered
11 by this Agreement remain subject to all applicable state and
12 federal environmental requirements.

13 5.3 The Parties recognize that the requirement to
14 obtain permits for response actions undertaken pursuant to this
15 Agreement shall be as provided for in CERCLA and the NCP. The
16 Parties further recognize that ongoing hazardous waste management
17 activities at Fort Richardson may require the issuance of permits
18 under federal and state laws. This Agreement does not affect the
19 requirements, if any, to obtain such permits. However, if a permit
20 is issued to the Army for ongoing hazardous waste management
21 activities at the Site, U.S. EPA or ADEC shall reference and
22 incorporate any appropriate provisions, including appropriate
23 schedules (and the provision for extension of such schedules), of
24 this Agreement into such permit. With respect to those portions of
25 this Agreement incorporated by reference into permits, the Parties
26 intend that judicial review of the incorporated portions shall, to

1 the extent authorized by law, be reviewed only under the provisions
2 of CERCLA.

3 5.4. Nothing in this Agreement shall alter any
4 Party's rights with respect to removal actions conducted pursuant
5 to Section 104 of CERCLA, 42 U.S.C. § 9604. Any removal actions
6 conducted at the Site shall be conducted in a manner consistent
7 with this Agreement, CERCLA, the NCP, and Executive Order 12580.

8
9 VI. FINDINGS OF FACT

10 6.1 For purposes of this Agreement, the following
11 constitutes a summary of the facts upon which this Agreement is
12 based. None of the facts related herein are admissions nor are
13 they legally binding upon any Party with respect to any unrelated
14 claims of persons not a Party to this Agreement.

15 6.2 Fort Richardson encompasses approximately
16 25,000 acres near Anchorage, Alaska. Included in this is an
17 ordinance impact area, an airfield, a manoeuver area, a cantonement
18 area, and housing for Fort Richardson personnel.

19 6.3 Major sources of contamination at Fort
20 Richardson include areas of white phosphorus at Eagle River Flats,
21 PCB contamination at the Roosevelt Road transmitter site, volatile
22 organic compounds at the Poleline Road disposal area, and the fire
23 training pits.

24 6.4 Fort Richardson was proposed for inclusion on
25 the CERCLA National Priorities List ("NPL") in June 1993. 58 Fed.
26 Reg. 34018 (June 23, 1993).

1 6.5 The Parties enter this Agreement with the
2 expectation that Fort Richardson will list final on the NPL. Upon
3 final listing, the Project Managers shall, in writing, modify
4 Paragraph 6.4 of this Agreement to include the appropriate Federal
5 Registry citation. If Fort Richardson fails to list final on the
6 NPL, any Party may void this Agreement by providing written notice
7 to the other Parties.

8
9 VII. REGULATORY DETERMINATIONS

10 7.1 For purposes of this Agreement, the following
11 constitutes a summary of the Regulatory Determinations upon which
12 this Agreement is based. None of the Regulatory Determinations
13 related herein are admissions nor are they legally binding upon any
14 Party with respect to any unrelated claims of person(s) not a Party
15 to this Agreement.

16 7.2 Fort Richardson, collectively, is a Site
17 within the meaning of Section 101(9) of CERCLA, 42 U.S.C.
18 § 9601(9);

19 7.3 Hazardous substances, pollutants, or
20 contaminants within the meaning of Sections 101(14) and 104(a)(2)
21 of CERCLA, 42 U.S.C. §§ 9601(14) and 9604(a)(2), have been disposed
22 of at the Site;

23 7.4 There have been releases of hazardous
24 substances, pollutants, or contaminants into the environment within
25 the meaning of Sections 101(22), 104, 106, and 107 of CERCLA,
26 42 U.S.C. §§ 9601(22), 9604, 9606, and 9607, at and from the Site;

1 7.5 With respect to those releases, the Army is an
2 owner and/or operator within the meaning of Section 107 of CERCLA,
3 42 U.S.C. § 9607;

4 7.6 The actions to be taken pursuant to this
5 Agreement are reasonable and necessary to protect human health and
6 the environment; and

7 7.7 A reasonable time for beginning and/or
8 completing the actions has been, or will be, provided.

9
10 VIII. SCOPE OF AGREEMENT

11 A. Work to be Performed

12 8.1 The Parties intend that work done and data
13 generated prior to the effective date of this Agreement be retained
14 and utilized to the maximum extent technically feasible in
15 accordance with applicable law.

16 8.2 The Army will conduct and finance the cost of
17 each RI/FS or other consultant studies in accordance with each
18 RI/FS Management Plan or Work Plan and implement the RD/RA at the
19 Site in accordance with the appropriate RD and the RA Work Plan,
20 and all relevant statutes and regulations.

21 8.3 All work performed pursuant to this Agreement
22 shall be under the direction and supervision, or in consultation
23 with, a qualified engineer, geologist, or equivalent expert with
24 expertise in hazardous substances remedial investigation and/or
25 remediation.

1 8.4 The Army shall perform the tasks and submit
2 plans, reports, and other documents as required by the Plans.

3 8.5 These matters are set forth in more detail
4 below and in the subsequent RI/FS Management Plans, PSE Work Plans,
5 and RA Work Plans. This Agreement fully incorporates the
6 provisions of these Plans that relate to the implementation of this
7 Agreement, including, but not limited to, definitions and
8 procedures for submission, review, and approval of documents. In
9 the event of any inconsistency between this Agreement and the
10 Plans, this Agreement shall govern unless and until duly amended
11 pursuant to Part XXXIII of this Agreement.

12 B. Preliminary Source Evaluation

13 8.6 The Army shall evaluate known and potential
14 sources of contamination under the PSE process pursuant to
15 Attachment I.

16 C. Interim Remedial Actions

17 8.7 The Army shall, where appropriate, develop and
18 implement Interim Remedial Actions ("IRAs"). The IRA(s) shall be
19 consistent with the purposes set forth in Part III of this
20 Agreement.

21 D. Remedial Investigations

22 8.8 The Army shall develop, implement, and report
23 upon remedial investigations of the Site. These investigations
24 shall comply with applicable requirements of CERCLA; the NCP; and,
25 to the extent set forth in this Agreement, pertinent written
26 national guidance and U.S. EPA national policy.

1 E. Feasibility Studies

2 8.9 The Army shall design, propose, undertake, and
3 report upon feasibility studies for the Site. These studies shall
4 comply with applicable requirements of CERCLA; the NCP; and, to the
5 extent set forth in this Agreement, pertinent written national
6 guidance and U.S. EPA national policy.

7
8 F. Remedial Actions

9 8.10 The Army shall develop and submit its proposed
10 RA alternative. ADEC may recommend to U.S. EPA the RA alternative
11 it deems appropriate. U.S. EPA and the Army, in consultation with
12 ADEC, shall make final selection of the RA(s) for each OU. In the
13 event of disagreement, U.S. EPA shall make final selection of the
14 RA(s). The selection of RA(s) by the U.S. EPA Regional
15 Administrator shall be final, subject to Part XXXVI.

16
17 G. Technical Review Committee

18 8.11 Pursuant to 10 U.S.C. § 2705(c), the Army
19 shall establish a technical review committee ("TRC") and, in
20 consultation with the Parties, shall provide for representatives
21 from the following organizations to serve as members of the TRC:

- 22 a. A representative from the Army;
23 b. A representative from the ADEC;
24 c. A representative from the U.S. EPA;
25 d. A representative from the municipality of
26 Anchorage; and

1 e. Other designated representatives from the local
2 communities, such as the Eagle River community
3 council and other such representatives.

4 8.12 The purpose of the TRC is to afford a forum
5 for cooperation between the Army and concerned local officials and
6 citizens and to provide a meaningful opportunity for the members of
7 the TRC to become informed and to express their opinion about
8 significant aspects of the RI/FS or the RD/RA process.

9 8.13 The Army Base Commander or delegate shall
10 serve as the Chair of the TRC meetings. The Chair shall schedule
11 regular meetings of the TRC as necessary and appropriate. Regular
12 meetings of the TRC shall be for the purpose of reviewing progress
13 under the RI/FS or the RD/RA and discussing other matters of
14 interest to the TRC. Special meetings of the TRC may be held at
15 the request of members.

16 H. Compliance with the Off-Site Rule

17 8.14 Any hazardous substance, pollutant or
18 contaminant transferred or otherwise managed off-site as a result
19 of this Agreement must be taken to a facility acceptable under U.S.
20 EPA's Off-Site Rule (58 Fed. Reg. 49200) (September 22, 1993),
21 codified at 40 C.F.R. § 300.440, in accordance with Section
22 121(d)(3) of CERCLA, as amended, 42 U.S.C. § 9621(d)(3).

23 IX. PROJECT MANAGERS

24 9.1 U.S. EPA, ADEC, and the Army shall each
25 designate a Project Manager and Alternate (hereinafter jointly
26 referred to as Project Manager) for the purpose of overseeing the

1 implementation of this Agreement. Within five (5) days of the
2 effective date of this Agreement, each Party shall notify the other
3 Parties of the name and address of its Project Manager. Any Party
4 may change its designated Project Manager by notifying the other
5 Parties, in writing, within five (5) days of the change.
6 Communications between the Parties concerning the terms and
7 conditions of this Agreement shall be directed through the Project
8 Managers as set forth in Part XIV of this Agreement. Each Project
9 Manager shall be responsible for assuring that all communications
10 from the other Project Managers are appropriately disseminated and
11 processed by their respective Agencies.

12 9.2 Project Managers shall have the authority to:

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

25 9.3 Each Project Manager shall be, or rely on, a
26 qualified and competent person with experience in hazardous

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

3 9.4 The Project Managers may, in accordance with
4 Part XX(J) of this Agreement, make minor field modifications to the
5 work to be performed pursuant to this Agreement, or in techniques,
6 procedures, or designs utilized in carrying out this Agreement,
7 including approval of the addition or redefinition of operable
8 units/hazardous waste areas, without resort to Part XXXIII of this
9 Agreement. Any such modification proposed by any Party pursuant to
10 this Part must be approved orally by all Parties' Project Managers
11 to be effective. The Army Project Manager shall make a
12 contemporaneous record of such modification and approval in a
13 written log, and a summary of the log entry will be included in the
14 next progress report. Even after approval of the proposed
15 modification, no Project Manager will require implementation by a
16 government contractor without approval of the appropriate
17 Government Contracting Officer.

18 9.5 The Project Manager for the Army shall be
19 responsible for day-to-day field activities at the Site, and shall
20 have all the authority vested in the On-Scene Coordinator and
21 Remedial Project Manager by the NCP, 40 C.F.R. Part 300. The
22 Project Manager for the Army shall be physically present at the
23 Site, or reasonably available to supervise work, during all hours
24 of work performed at the Site pursuant to this Agreement.

25 9.6 The Project Managers shall be reasonably
26 available to consult on work performed pursuant to this Agreement

1 regulatory requirement as may be necessary to protect national
2 security or mission-essential activities.

3 10.2 The Army shall provide an escort whenever U.S.
4 EPA or ADEC require access to areas designated as restricted in
5 accordance with relevant Army Policy. U.S. EPA and ADEC will seek
6 permission from this escort prior to using any camera, sound
7 recording, or other recording device in such restricted areas. The
8 Parties agree that the provision of an escort will not unreasonably
9 delay access or unreasonably restrict use of recording devices. To
10 the extent possible, U.S. EPA and ADEC shall provide reasonable
11 notice to the Army Project Manager to request necessary escorts.

12 10.3 All Parties with access to the Site pursuant
13 to this Part shall comply with all applicable health and safety
14 plans.

15 10.4 The Army shall promptly provide EPA or ADEC
16 with a full verbal explanation of the reason(s) for denying any
17 access requested by either U.S. EPA or ADEC. In addition, the Army
18 shall, within two days, provide a written explanation of the
19 reason(s) for the denial to the Project Managers, including
20 reference to the applicable regulations, and, upon request, a copy
21 of such regulations. The Army shall, as expeditiously as possible,
22 make alternative arrangements for accommodating the requested
23 access. The Army shall not restrict the access rights of U.S. EPA
24 or ADEC to any greater extent than the Army restricts the access
25 rights of its contractors performing work pursuant to this
26 Agreement.

1 10.5

2 To the extent that this Agreement requires
3 access to property not owned and controlled by the Army, the Army
4 shall exercise its authorities to obtain access pursuant to Section
5 104(e) of CERCLA, 42 U.S.C. § 9604(e), and will use its best
6 efforts to obtain signed access agreements for itself, its
7 contractors, agents, U.S. EPA, and ADEC, and provide U.S. EPA and
8 ADEC with copies of such agreements. The Army may request the
9 assistance of ADEC in obtaining such access, and, upon such
10 request, ADEC will use their best efforts to obtain the required
11 access. With respect to the non-Army property upon which
12 monitoring wells, pumping wells, treatment facilities, or other
13 response actions are to be located, the access agreements should
14 provide that no conveyance of title, easement, or other interest in
15 the property shall be consummated without provisions for the
16 continued operation of such wells, treatment facilities, or other
17 response actions on the property. The access agreements should
18 also provide to the extent practicable that the owners of any
19 property where monitoring wells, pumping wells, treatment
20 facilities, or other response actions are located shall notify the
21 Army, ADEC, and the U.S. EPA by certified mail, at least thirty
22 (30) days prior to any conveyance, of the property owner's intent
23 to convey any interest in the property and of the provisions made
24 for the continued operation of the monitoring wells, treatment
25 facilities, or other response actions installed pursuant to this
26 Agreement. The requirement for such notice shall apply to real
27 property sold or transferred between agencies of the United States,

1 between the United States and private Parties, and between the
2 United States and state and local governments.

3 10.6 Nothing in this Part shall be construed to
4 limit the discretion of the Army to exercise the authority of the
5 President under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), as
6 delegated by Executive Order 12580.

7
8 XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

9 11.1 Pursuant to the RI/FS management plan, the
10 Parties shall make available to each other quality-assured results
11 of sampling, tests, or other data generated by or on behalf of any
12 Party under this Agreement within sixty (60) days of field testing
13 or the submittal of data to the laboratory. If quality assurance
14 is not completed within sixty (60) days, preliminary data or
15 results shall be made available within the sixty (60) day period
16 and quality assured data or results shall be submitted as they
17 become available but in no event later than one hundred (100) days
18 after testing or the submittal of data to the laboratory. These
19 periods can be extended upon mutual agreement among the Project
20 Managers.

21 11.2 At the written request of either the ADEC or
22 U.S. EPA Project Manager, the Army shall allow split or duplicate
23 samples to be taken by ADEC or U.S. EPA during sample collection
24 conducted during the implementation of this Agreement. The Army's
25 Project Manager shall notify the U.S. EPA and ADEC Project Managers
26 not less than fourteen (14) business days in advance of any

1 scheduled well drilling, sample collection, or other monitoring
2 activity, conducted pursuant to this Agreement. The Project
3 Managers will be notified prior to any unscheduled sampling event.
4 The fourteen (14) day notification can be waived upon mutual
5 agreement among the Project Managers.

6 11.3 If preliminary analysis indicates a potential
7 imminent and substantial endangerment to the public health, all
8 Project Managers shall be immediately notified.

9 11.4 Laboratory reports shall be made available at
10 the Site for the review of the Parties immediately upon completion
11 of laboratory analysis.

12 XII. QUALITY ASSURANCE

13 12.1 Throughout all sample collection,
14 transportation, and analyses activities conducted in connection
15 with this Agreement, the Army shall use procedures for quality
16 assurance, for quality control, and for chain-of-custody in
17 accordance with approved U.S. EPA methods, including "Interim
18 Guidelines and Specifications for Preparing Quality Assurance
19 Project Plans," QAMS-005/80, "Data Quality Objective Guidance,"
20 U.S. EPA 1540/687/003 and 004, and subsequent amendments to such
21 guidelines. The Army shall require each laboratory it uses to
22 perform any analysis according to approved U.S. EPA methods and to
23 demonstrate a quality assurance/quality control program consistent
24 with that followed by U.S. EPA and consistent with U.S. EPA
25 document QAMS-005/80.

1 XIII. REPORTING

2 13.1 The Army shall submit to the other Parties
3 quarterly written progress reports. The reports will include, but
4 not be limited to, the following information:

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

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

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

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

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

24 13.2 The quarterly written progress reports shall
25 be submitted on the twentieth (20th) day of each calendar quarter
26 following the effective date of this Agreement.

1 13.3 In addition to the requirements of this Part,
2 the Army shall notify the Parties promptly upon learning that any
3 CPM milestone may be or has been missed. CPM milestones include
4 milestones that affect or potentially affect the timely delivery of
5 a primary or secondary document, and any other milestone identified
6 by mutual agreement of the Project Managers.

7
8 XIV. NOTICE TO THE PARTIES

9 14.1 All Parties shall expeditiously transmit
10 primary and secondary documents, and all notices required herein.
11 Time limitations shall commence upon receipt.

12 14.2 Unless otherwise provided, notice to the
13 individual Parties shall be provided under this Agreement to the
14 following addresses:

15 (A) For the Army:

16 Cristal Fosbrook, Project Manager
17 6th ID(L) & USAG, AK
18 Public Works
19 Attn: APVR-PW
20 Fort Richardson, Alaska 99505
21 (Ph.) (907) 384-3044
22 (Fax) (907) 384-3047

23 and

24 Col. Robert Wrentmore
25 Director, Public Works
26 Attn: APVR-PW
27 HQ, 6th Infantry Division
28 Fort Richardson, Alaska 99505

1 (B) For U.S. EPA:

2 U.S. Environmental Protection Agency
3 Region 10
4 Superfund Federal Facility Branch
5 1200 Sixth Avenue, HW-124
6 Seattle, Washington 98101
7 Attn: R. Matthew Wilkening, Project
8 Manager
9 (Ph.) 206-553-1284
10 (Fax) 206-553-0957

11 (C) For the State of Alaska:

12 Alaska State Department of
13 Environmental Conservation
14 Southcentral Regional Office
15 Contaminated Site Program
16 3601 "C" Street, Suite 1334
17 Anchorage, AK 99503
18 Attn: Jennifer Roberts, Project Manager
19 (Ph.) 907-563-6529
20 (Fax) 907-273-4331

21 XV. PERMITS

22 15.1 Nothing in this Agreement relieves the Army
23 from the requirement of obtaining an otherwise applicable permit or
24 other authorization whenever it proposes a response action
25 involving the shipment or movement off-Site of a hazardous
26 substance, or undertakes any activities not directly related to
27 response actions at the Site.

28 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

1 wastes and constituents, hazardous substances, pollutants, and
2 contaminants at the Site or to the implementation of this
3 Agreement, despite any document retention policy to the contrary.
4 After this ten (10) year period, the Army shall notify the other
5 Parties at least forty-five (45) days prior to destruction or
6 disposal of any such documents or records. Upon request by any
7 Party, the Army shall make available such records or documents, or
8 true copies. Documents may be converted to permanent electronic or
9 optical media and paper originals disposed of after forty-five (45)
10 days notification to the other Parties.

11
12 XVII. PUBLIC PARTICIPATION AND ADMINISTRATIVE RECORD

13 17.1 The Parties agree that this Agreement and any
14 subsequent plan(s) for remedial action at the Site arising out of
15 this Agreement shall comply with the administrative record and
16 public participation requirements of CERCLA, including Sections
17 113(k) and 117 of CERCLA, 42 U.S.C. §§ 9613(k) and 9617, the NCP,
18 and U.S. EPA national guidance on public participation and
19 administrative records.

20 17.2 The Army shall develop and implement a
21 Community Relations Plan ("CRP") that responds to the need for an
22 interactive relationship with all interested community elements,
23 both on- and off-Site, regarding activities and elements of work
24 undertaken by the Army. The Army agrees to develop and implement
25 the CRP in a manner consistent with Section 117 of CERCLA,
26 42 U.S.C. § 9617, the NCP, and U.S. EPA national guidance.

1 17.3 The Army shall establish and maintain a
2 certified copy of the administrative record at or near Fort
3 Richardson in accordance with Section 113(k) of CERCLA, 42 U.S.C.
4 § 9613(k). The administrative record shall be established and
5 maintained in accordance with U.S. EPA national policy and
6 guidelines. Army shall provide to U.S. EPA and ADEC a copy of the
7 Administrative Record Index, with updates as changes occur. In
8 addition, the Army shall promptly provide copies of any document
9 included in the Administrative Record to U.S. EPA and/or ADEC, upon
10 request.

11 XVIII. CREATION OF DANGER/EMERGENCY ACTION

12 18.1 In the event U.S. EPA or ADEC determine that
13 activities conducted pursuant to this Agreement, or any other
14 circumstances or activities, are creating an imminent and
15 substantial endangerment to the health or welfare of the people on
16 the Site or in the surrounding area or to the environment, U.S. EPA
17 or ADEC may require or order the Army to stop further
18 implementation of this Agreement for such period of time as needed
19 to abate the danger. Any unilateral work stoppage for longer than
20 twenty-four (24) hours requires the concurrence of the U.S. EPA
21 Division Director, in accordance with Paragraph 21.9.

22 18.2 In the event the Army determines that
23 activities undertaken in furtherance of this Agreement or any other
24 circumstances or activities at the Site are creating an imminent
25 and substantial endangerment to the health or welfare of the people
26 on the Site or in the surrounding area or to the environment, the

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

12 18.3 If U.S. EPA concurs in the work stoppage by
13 the Army, or if U.S. EPA or ADEC require or order a work stoppage,
14 the Army's obligations shall be suspended and the time periods for
15 performance of that work, as well as the time period for any other
16 work dependent upon the work that was stopped, shall be extended,
17 pursuant to Part XXV of this Agreement. Any disagreements pursuant
18 to this Part shall be resolved through the dispute resolution
19 procedures in Part XXI of the Agreement by referral directly to the
20 DRC.

21 XIX. FIVE YEAR REVIEW

22 19.1 If a remedial action is selected that results
23 in any hazardous substances, pollutants, or contaminants remaining
24 at the Site, the Parties shall review such remedial action no less
25 often than each five (5) years after the initiation of such
26 remedial action to assure that human health and the environment are

1 being protected by the remedial action being implemented. The
2 U.S. EPA Project Manager and the ADEC Project Manager shall advise
3 the Army Project Manager of their findings in this regard. If any
4 Party determines that additional action is required, the Agreement
5 may be amended pursuant to Part XXXIII. If the Parties are unable
6 to agree on the need to amend this Agreement, dispute resolution
7 under Part XXI shall be available to any Party.

8 XX. CONSULTATION WITH U.S. EPA AND ADEC

9 A. Applicability

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

21 20.2 The designation of a document as "draft" or
22 "final" is solely for purposes of consultation with U.S. EPA and
23 ADEC in accordance with this Part. Such designation does not
24 affect the obligation of the Parties to issue documents, which may
25 be referred to herein as "final," to the public for review and
26 comment as appropriate and as required by law.

1 B. General Process for RI/FS and RD/RA Documents

2 20.3 Primary documents include those documents that
3 are major, discrete portions of RI/FS or RD/RA activities. Primary
4 documents are initially issued by the Army in draft subject to
5 review and comment by U.S. EPA and ADEC. Following receipt of
6 comments on a particular draft primary document, the Army will
7 respond to the comments received and issue a draft final primary
8 document subject to dispute resolution. The draft final primary
9 document will become the final primary document either thirty (30)
10 days after the submittal of a draft final document if dispute
11 resolution is not invoked, unless otherwise agreed as provided in
12 Paragraph 20.18, or as modified by decision of the dispute
13 resolution process. U.S. EPA and ADEC shall, within the first
14 fifteen (15) days of this thirty (30) day period for finalization
15 of draft final primary documents, identify to the Army any issues
16 or comments in order to provide sufficient time for review,
17 discussion, and modification of draft final documents as necessary
18 to resolve potential disputes.

19 20.4 Secondary documents include those documents
20 that are discrete portions of the primary documents and are
21 typically input or feeder documents. Secondary documents are
22 issued by the Army in draft subject to review and comment by
23 U.S. EPA and ADEC. Although the Army will respond to comments
24 received, the draft secondary documents may be finalized in the
25 context of the corresponding primary documents. A secondary
26 document may be disputed only at the time the corresponding draft

1 final primary document is issued. However, RD/RA SOWs may be
2 disputed as if they were a primary document.

3 C. Primary Documents

4 20.5 The Army shall complete and transmit draft
5 documents for the following primary documents to U.S. EPA and ADEC
6 for review and comment in accordance with the provisions of this
7 Part:

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

24 20.6 Only the draft final documents for the primary
25 documents identified above shall be subject to dispute resolution.
26 The Army shall complete and transmit draft primary documents in

1 accordance with the schedules and deadlines established pursuant to
2 Part XXIV of this Agreement. Primary documents may include
3 secondary document target dates as provided for in Paragraph 20.8.
4 The purpose of target dates is to assist the Army in meeting
5 deadlines, but target dates do not become enforceable by their
6 inclusion in the primary documents and are not subject to Parts
7 XXII, XXIII, XXIV, and/or XXV.

8 D. Secondary Documents

9 20.7 The Army shall complete and transmit draft
10 documents for the following secondary documents to U.S. EPA and
11 ADEC for review and comment in accordance with the provisions of
12 this Part:

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

1 20.8 U.S. EPA and ADEC will comment on the draft
2 documents for the secondary documents listed above. Such documents
3 shall not be subject to dispute resolution except as provided by
4 Paragraph 20.4. Target dates shall be established pursuant to Part
5 XXIV of this Agreement for the completion and transmission of draft
6 secondary documents.

7 E. Meetings of the Project Managers on Development of Documents

8 20.9 The Project Managers shall meet or confer at least
9 every thirty (30) days, except as otherwise agreed by the Parties,
10 to review and discuss the progress of work being performed at the
11 Site on the primary and secondary documents. Prior to preparing
12 any draft document specified in Paragraphs 20.5 and 20.7 above, the
13 Project Managers shall meet to discuss the document results in an
14 effort to reach a common understanding, to the maximum extent
15 practicable, with respect to the results to be presented in the
16 draft document. Prior to the development of either a Statement of
17 Work, Management Plan, or Sampling and Analysis Plan, the Project
18 Managers shall meet to develop a Scope of Work that will be used
19 when preparing a Sampling and Analysis Plan or Management Plan for
20 a remedial site inspection or investigation.

21 F. Identification and Determination of Potential ARARs

22 20.10 For those primary or secondary documents that
23 consist of or include ARAR determinations, prior to the issuance of
24 a draft document the Project Managers shall meet to identify and
25 propose, to the best of their ability, all potential ARARs
26 pertinent to the document being addressed. ADEC shall identify all

1 potential state ARARs as early in the remedial process as possible
2 consistent with the requirements of Section 121 of CERCLA,
3 42 U.S.C. § 9621, and the NCP. The Army shall consider any
4 official written interpretations of ARARs provided by ADEC. Draft
5 ARAR determinations shall be prepared by the Army in accordance
6 with Section 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), the NCP,
7 and pertinent written national guidance issued by U.S. EPA and
8 ADEC, which is not inconsistent with CERCLA and the NCP.

9 20.11 In identifying potential ARARs, the Parties
10 recognize that actual ARARs can be identified only on a
11 source-specific basis and that ARARs depend on the specific
12 hazardous substances, pollutants, and contaminants at a source, the
13 particular actions proposed as a remedy, and the characteristics of
14 a source. The Parties recognize that ARAR identification is
15 necessarily an iterative process and that potential ARARs must be
16 re-examined throughout the RI/FS process until a ROD is issued.

17 G. Review and Comment on Draft Documents

18 20.12 The Army shall complete and transmit each draft
19 primary document to U.S. EPA and ADEC on or before the
20 corresponding deadline established for the issuance of the
21 document. The Army shall complete and transmit the draft secondary
22 document in accordance with the target dates established for the
23 issuance of such documents.

24 20.13 Unless the Parties mutually agree to another time
25 period, all draft documents shall be subject to a thirty (30) day
26 period for review and comment. Review of any document by U.S. EPA

1 or ADEC may concern all aspects of the document (including
2 completeness) and should include, but is not limited to, technical
3 evaluation of any aspect of the document, and consistency with
4 CERCLA, the NCP, applicable state laws, and any pertinent national
5 guidance or policy issued by U.S. EPA or ADEC. Comments by U.S.
6 EPA and ADEC shall be provided with adequate specificity so that
7 the Army may respond to the comments and, if appropriate, make
8 changes to the draft document. Comments shall refer to any
9 pertinent sources of authority or references upon which the
10 comments are based, and, upon request of the Army, U.S. EPA or ADEC
11 shall provide a copy of the cited authority or reference. In cases
12 involving complex or unusually lengthy reports, U.S. EPA or ADEC
13 may extend the thirty (30) day comment period for an additional
14 twenty (20) days by written notice to the Army prior to the end of
15 the thirty (30) day period. On or before the close of the comment
16 period, U.S. EPA and ADEC shall transmit by next day mail their
17 written comments to the Army.

18 20.14 Representatives of the Army shall make themselves
19 readily available to U.S. EPA and ADEC during the comment period
20 for purposes of informally responding to questions and comments on
21 draft documents. Oral comments made during such discussions need
22 not be the subject of a written response by the Army on the close
23 of the comment period.

24 20.15 In commenting on a draft document that contains a
25 proposed ARAR determination, U.S. EPA and ADEC shall include a
26 reasoned statement of whether they object to any portion of the

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

5 20.16 Following the close of the comment period for a
6 draft document, the Army shall give full consideration to all
7 written comments on the draft document submitted during the comment
8 period. Within thirty (30) days of the close of the comment period
9 on a draft secondary document, the Army shall transmit to U.S. EPA
10 and ADEC its written response to comments received within the
11 comment period. Within thirty (30) days of the close of the
12 comment period on a draft primary document, the Army shall transmit
13 to U.S. EPA and ADEC a draft final primary document that shall
14 include the Army's response to all written comments received within
15 the comment period. While the resulting draft final document shall
16 be the responsibility of the Army, it shall be the product of
17 consensus to the maximum extent possible.

18 20.17 The Army may extend the thirty (30) day period for
19 either responding to comments on a draft document or for issuing
20 the draft final primary document for an additional twenty (20) days
21 by providing notice to U.S. EPA and ADEC. In appropriate
22 circumstances, this time period may be further extended in
23 accordance with Part XXV.

24 H. Availability of Dispute Resolution for
25 Draft Final Primary Documents

26 20.18 Project Managers may agree to extend by fifteen
27 (15) days the period for finalization of the draft final primary

1 documents provided in Paragraph 20.3 for discussion and
2 modification of draft final primary documents as necessary to
3 resolve potential disputes.

4 20.19 Dispute resolution shall be available to the
5 Parties for draft final primary documents as set forth in
6 Part XXI.

7 20.20 When dispute resolution is invoked on a draft
8 final primary document, work may be stopped in accordance with the
9 procedures set forth in Part XXI (Dispute Resolution).

10 I. Finalization of Documents

11 20.21 The draft final primary document shall serve
12 as the final primary document if no Party invokes dispute
13 resolution regarding the document or, if invoked, at completion of
14 the dispute resolution process should the Army's position be
15 sustained. If the Army's determination is not sustained in the
16 dispute resolution process, the Army shall prepare, within not more
17 than thirty-five (35) days, a revision of the draft final document
18 that conforms to the results of dispute resolution. In appropriate
19 circumstances, the time period for this revision process may be
20 extended in accordance with Part XXV hereof.

21 J. Subsequent Modifications

22 20.22 Following finalization of any primary document
23 pursuant to Paragraph 20.21 above, any Party may seek to modify the
24 document, including seeking additional field work, pilot studies,
25 computer modeling, or other supporting technical work, only as
26 provided in Paragraphs 20.23 and 20.24.

1 20.23 A Party may seek to modify a document after
2 finalization if it determines, based on new information (i.e.,
3 information that became available, or conditions that became known,
4 after the document was finalized) that the requested modification
5 is necessary. A Party may seek such a modification by submitting
6 a concise written request to the Project Managers of the other
7 Parties. The request shall specify the nature of the requested
8 modification and how the request is based on new information.

9 20.24 In the event that a consensus among the
10 Parties is reached, the modification shall be incorporated by
11 reference and become fully enforceable under the Agreement. In the
12 event that a consensus is not reached by the Project Managers on
13 the need for a modification, any Party may invoke dispute
14 resolution as provided in Part XXI to determine if such
15 modification shall be made. Modification of a document shall be
16 required only upon a showing that: (1) the requested modification
17 is based on significant new information, and (2) the requested
18 modification could be of significant assistance in evaluating
19 effects on human health or the environment, in evaluating the
20 selection of remedial alternatives, or in protecting human health
21 or the environment.

22 20.25 Nothing in this Part shall alter U.S. EPA's or
23 ADEC's ability to request the performance of additional work that
24 was not contemplated by this Agreement. The Army's obligation to
25 perform such work must be established by either a modification of
26 a document or by amendment to this Agreement.

1 XXI. RESOLUTION OF DISPUTES

2 21.1 Except as specifically set forth elsewhere in
3 this Agreement, if a dispute arises under this Agreement, the
4 procedures of this Part shall apply. All Parties to this Agreement
5 shall use their best efforts to informally resolve disputes at the
6 Project Manager level. If the Project Managers cannot resolve the
7 issue, the Project Managers shall elevate the informal dispute to
8 their immediate supervisors through written notification to each
9 such supervisor no later than five (5) days before the thirty (30)
10 day time period specified in Paragraph 21.3 is set to expire. The
11 immediate supervisors shall have five (5) days from the date the
12 supervisors were notified in writing by the Project Managers to
13 resolve the informal dispute. If the dispute still cannot be
14 resolved informally, the following procedures of this Part shall be
15 implemented to resolve a dispute.

16 21.2 It is the intent of the Parties to this
17 Agreement that all formal disputes brought under this Part be
18 resolved by the DRC or the SEC. This Agreement provides that the
19 Army and ADEC may elevate a formal dispute to the Administrator of
20 U.S. EPA for final resolution. However, the Army and ADEC intend
21 that generally only those disputes which are determined to have
22 significant national policy implications will be so elevated.

23 21.3 Within thirty (30) days after: (1) the
24 issuance of a draft final primary document pursuant to this
25 Agreement, or (2) any action that leads to or generates a dispute,
26 the disputing Party shall submit to the Dispute Resolution

1 Committee ("DRC") a written statement of dispute setting forth the
2 nature of the dispute, the work affected by the dispute, the
3 disputing Party's position with respect to the dispute, and the
4 information the disputing Party is relying upon to support its
5 position.

6 21.4 Prior to any Party's issuance of a written
7 statement of dispute, the disputing Party shall engage the other
8 Parties in informal dispute resolution among the Project Managers
9 and/or their immediate supervisors. During this informal dispute
10 resolution period the Parties shall meet as many times as are
11 necessary to discuss and attempt resolution of the dispute.

12 21.5 The DRC will serve as a forum for resolution
13 of disputes for which agreement has not been reached through
14 informal dispute resolution. The Parties shall each designate one
15 individual and an alternate to serve on the DRC. The individuals
16 designated to serve on the DRC shall be employed at the policy
17 level (SES or equivalent) or be delegated the authority to
18 participate on the DRC for the purposes of dispute resolution under
19 this Agreement. The U.S. EPA representative on the DRC is the
20 Hazardous Waste Division Director ("Division Director") of
21 U.S. EPA's Region 10. The Army's designated member is the Garrison
22 Commander for Fort Richardson. ADEC's designated member is the
23 South Central Regional Administrator of ADEC. Written notice of
24 any delegation of authority from a Party's designated
25 representative on the DRC shall be provided to all other Parties.
26
27

1 21.6 Following elevation of a dispute to the DRC,
2 the DRC shall have twenty-one (21) days to unanimously resolve the
3 dispute and issue a written decision. The DRC members shall, as
4 appropriate, confer, meet, and exert their best efforts to resolve
5 the dispute and issue a written decision signed by all Parties. If
6 the DRC is unable to unanimously resolve the dispute within this
7 21-day period, the written statement of dispute shall be forwarded
8 by the disputing party to the Senior Executive Committee ("SEC")
9 for resolution within seven (7) days after the close of the twenty-
10 one (21) day resolution period.

11 21.7 The SEC will serve as the forum for resolution
12 of disputes for which agreement has not been reached by the DRC.
13 EPA's representative on the SEC is the Regional Administrator of
14 EPA Region 10. ADEC's representative on the SEC is the Division
15 Director of Spill, Prevention and Response. Army's representative
16 on the SEC is the Deputy Assistant Secretary of the Army
17 (Environment, Safety and Occupational Health). The SEC members
18 shall, as appropriate, confer, meet and exert their best efforts to
19 resolve the dispute.

20 21.8 Following elevation of a dispute to the SEC,
21 the SEC shall have twenty-one (21) days to unanimously resolve the
22 dispute and issue a written decision signed by all Parties. If the
23 SEC is unable to resolve the dispute within this 21-day period,
24 then the Regional Administrator of U.S. EPA shall issue a final
25 written position on the dispute within fourteen (14) days. The
26 time for issuing such a decision may be extended by EPA for an

1 additional seven (7) days upon notice to other Parties. This
2 authority cannot be delegated.

3 21.9 Within fourteen (14) days of receipt of the
4 EPA Region 10 Regional Administrator's final written position on
5 the dispute, the Army or ADEC may request that the Administrator of
6 EPA resolve the dispute. The request must be in writing, and must
7 identify the basis for the dispute by the Secretary of the Army or
8 the Commissioner of ADEC and whether the dispute has significant
9 national policy implications. If no such request is made within
10 the fourteen (14) day period, the Army and ADEC shall be deemed to
11 have agreed with the EPA Region 10 Regional Administrator's written
12 position. If such a request is made, the EPA Administrator will
13 review and resolve the dispute in accordance with applicable law
14 and regulations within twenty-one (21) days. Upon request and
15 prior to resolving the dispute, the Administrator shall meet and
16 confer with all the Parties to discuss the issues under dispute.
17 The Administrator shall provide five (5) days advance notice of
18 such a meeting to all Parties in order to afford the Parties the
19 opportunity to attend. Upon resolution, the Administrator shall
20 provide the Parties with a written final decision setting forth
21 resolution of the dispute. The duties of the EPA Administrator set
22 forth in this Part shall not be delegated.

23 21.10 The pendency of any dispute under this Part
24 shall not affect the Army's responsibility for timely performance
25 of the work required by this Agreement, except that the time period
26 for completion of work affected by such dispute shall be extended

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

6 21.11 When dispute resolution is in progress, work
7 affected by the dispute will immediately be discontinued if the
8 Hazardous Waste Division Director for U.S. EPA's Region 10 or the
9 Director of ADEC request, in writing, that work related to the
10 dispute be stopped because, in U.S. EPA's or ADEC's opinion, such
11 work is inadequate or defective, and such inadequacy or defect is
12 likely to yield an adverse effect on human health or the
13 environment, or is likely to have a substantial adverse effect on
14 the remedy selection or implementation process. To the extent
15 possible, U.S. EPA and ADEC shall consult with all Parties prior to
16 initiating a work stoppage request. After stoppage of work, if any
17 Party believes that the work stoppage is inappropriate or may have
18 potential significant adverse impacts, that Party may meet with the
19 other Parties to discuss the work stoppage. Following this
20 meeting, and further consideration of the issues, the U.S. EPA
21 Region 10 Hazardous Waste Division Director will issue, in writing,
22 a final decision with respect to the work stoppage. The final
23 written decision of the U.S. EPA Region 10 Hazardous Waste Division
24 Director may immediately be subjected to formal dispute resolution.
25 Such dispute may be brought directly to either the DRC or the SEC,
26 at the discretion of the Party requesting dispute resolution.

1 21.12 Within twenty-one (21) days of resolution of
2 a dispute pursuant to the procedures specified in this Part, the
3 Army shall incorporate the resolution and final determination into
4 the appropriate plan, schedule, or procedures and proceed to
5 implement this Agreement according to the amended plan, schedule,
6 or procedures.

7 21.13 Resolution of a dispute pursuant to this Part
8 of the Agreement constitutes a final resolution of that dispute
9 arising under this Agreement. All Parties shall abide by all terms
10 and conditions of any final resolution of dispute obtained pursuant
11 to this Part of this Agreement.

12 XXII. ENFORCEABILITY

13 22.1 The Parties agree that:

14 (a) Upon the effective date of this Agreement, any
15 standard, regulation, condition, requirement, or order which has
16 become effective under CERCLA and is incorporated into this
17 Agreement is enforceable by any person pursuant to Section 310 of
18 CERCLA, 42 U.S.C. § 9659, and any violation of such standard,
19 regulation, condition, requirement, or order will be subject to
20 civil penalties under Sections 109 and 310(c) of CERCLA, 42 U.S.C.
21 §§ 9609 and 9659(c);

22 (b) All deadlines associated with the RI/FS shall
23 be enforceable by any person pursuant to Section 310 of CERCLA,
24 42 U.S.C. § 9659, and any violation of such deadlines will be
25 subject to civil penalties under Sections 109 and 310(c) of CERCLA,
26 42 U.S.C. §§ 9609 and 9659(c);

1 (c) All terms and conditions of this Agreement
2 that relate to interim or final remedial actions, including
3 corresponding schedules and deadlines, and all work associated with
4 the interim or final remedial actions, shall be enforceable by any
5 person pursuant to Section 310(c) of CERCLA, 42 U.S.C. § 9659(c),
6 and any violation of such terms or conditions will be subject to
7 civil penalties under Sections 109 and 310(c) of CERCLA, 42 U.S.C.
8 §§ 9609 and 9659(c); and

9 (d) Any final resolution of a dispute pursuant to
10 Part XXI of this Agreement that establishes a term, condition,
11 schedule, or deadline shall be enforceable by any person pursuant
12 to Section 310(c) of CERCLA, 42 U.S.C. § 9659(c), and any violation
13 of such term, condition, schedule, or deadline will be subject to
14 civil penalties under Sections 109 and 310(c) of CERCLA, 42 U.S.C.
15 §§ 9609 and 9659(c).

16 22.2 The Parties agree that all Parties shall have
17 the right to enforce the terms of this Agreement.
18

19 XXIII. STIPULATED PENALTIES

20 23.1 In the event that the Army fails to submit a
21 primary document to U.S. EPA and ADEC pursuant to the appropriate
22 timetable or deadline in accordance with the requirements of this
23 Agreement, or fails to comply with a term or condition of this
24 Agreement that relates to an interim or final remedial action, U.S.
25 EPA may assess a stipulated penalty against the Army. A stipulated
26 penalty may be assessed in an amount not to exceed five thousand
27