

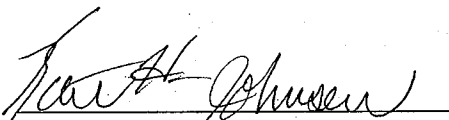
**Administrative Order on Consent for Cleanup of Portions of the Former Fort  
Ord**

**U.S. EPA Region 9  
CERCLA Docket No. 09-2007-03**

On December 29, 2006, EPA Region 9 published a notice in the Federal Register announcing the beginning of the 30 day public comment period for a proposed Administrative Order on Consent ("Agreement") concerning portions of the Fort Ord Superfund Site ("Site") in Monterey, California. The proposed Agreement concerns cleanup of approximately 3,500 acres of the Site pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9604, 9606 and 9622 ("CERCLA"). The Agreement was negotiated by Region 9, the United States Department of Justice ("DOJ"), the California Department of Toxic Substances Control ("DTSC") and the Fort Ord Reuse Authority ("FORA").

At the request of various environmental groups, EPA extended the public comment period for an additional 30 days. The public comment period ended on February 28, 2007. EPA received comments from various groups and individuals. A detailed Response to Comments follows this memorandum as attachment 1. A copy of all the comments and the responsiveness summary will be placed in the Fort Ord Administrative Record located at Building 4463 Gigling Road, Ord Military Community, CA 93944-5004 and online at [www.fortordcleanup.com](http://www.fortordcleanup.com). A copy will also be placed in the Region 9 Superfund Records Center located at 75 Hawthorne Street, San Francisco, California.

After careful consideration of all the comments received, EPA determined that the comments did not disclose facts or considerations which indicate that the proposed Agreement is inappropriate, improper or inadequate. The Proposed Agreement is therefore final upon the date of the signature of the delegated Regional Official below.



Kathleen Johnson  
Chief, Federal Facilities and Site Cleanup Branch  
U.S. Environmental Protection Agency  
Region 9

May 14, 2007  
Date

**Response to Comments**  
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The Army is also preparing a Finding of Suitability for Early Transfer ("FOSET"), which will be submitted to EPA Region 9 and the governor of the State of California for their approval following a public comment period. EPA and the State will review all the public comments and make a decision on whether the transfer should take place. If the FOSET is approved, the Army will transfer portions of the Site to FORA. The proposed Agreement would require FORA to prepare and perform removal actions, one or more remedial investigations and feasibility studies and one or more remedial designs and remedial actions for certain contaminants present on the transferred portions of the Site under the oversight of EPA and the State of California.

Thirteen letters were received during the public comment period. They are:

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The comments relevant to the AOC are summarized and grouped by content.

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**Response:** The objective of the public comment period is to provide an opportunity for the public to examine the specific language of the proposed AOC. The pending transfer and privatized cleanup have been discussed numerous times at the Fort Ord Reuse Authority (FORA) public meetings and the Army's Community Involvement Workshops in 2006. To provide an additional opportunity for the public to share its views, EPA staffed a booth at the February Fort Ord Cleanup Open House to explain the purpose of the AOC.

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**Response:** In response to the community's request, the comment period was extended for an additional thirty days.

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**Response:** The AOC provides for direct EPA cleanup oversight, in consultation with DTSC, as well as continued Army involvement in the remedy selection process. Under the AOC, DTSC and EPA will have the same level of enforcement authority in FORA's cleanup process that we would have at a private NPL site. The AOC and the Scope of Work specifies FORA's responsibilities including the requirement to pay stipulated penalties if it fails to comply with the directions of the regulatory agencies.

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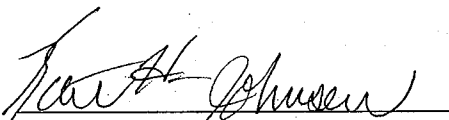
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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

IN THE MATTER OF  
THE FORMER FORT ORD  
Monterey County, California

FORT ORD REUSE AUTHORITY,  
  
Respondent

ADMINISTRATIVE ORDER ON  
CONSENT FOR CLEANUP OF  
PORTIONS OF THE FORMER FORT  
ORD

U.S. EPA Region 9  
CERCLA Docket No. R9-2007-03

Proceeding under Sections 104, 106 and 122  
of the Comprehensive Environmental  
Response, Compensation, and Liability Act,  
as amended, 42 U.S.C. §§9604, 9606, and  
9622.

## TABLE OF CONTENTS

I. JURISDICTION .....	1
II. PARTIES BOUND .....	2
III. STATEMENT OF PURPOSE .....	3
IV. DEFINITIONS .....	4
V. FINDINGS OF FACT .....	10
VI. CONCLUSIONS OF LAW AND DETERMINATIONS .....	11
VII. ORDER .....	12
VIII. GENERAL PROVISIONS.....	12
IX. PERFORMANCE OF THE WORK BY RESPONDENT .....	13
X. REMEDY REVIEW .....	21
XI. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS .....	22
XII. ACCESS AND INSTITUTIONAL CONTROLS .....	23
XIII. REPORTING REQUIREMENTS .....	25
XIV. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS .....	26
XV. PROJECT COORDINATORS .....	27
XVI. ASSURANCE OF ABILITY TO COMPLETE WORK .....	28
XVII. CERTIFICATION OF COMPLETION .....	28
XVIII. EMERGENCY RESPONSE .....	31
XIX. PAYMENTS FOR RESPONSE COSTS .....	31
XX. INDEMNIFICATION AND INSURANCE .....	34
XXI. FORCE MAJEURE .....	35
XXII. EPA AND DTSC DISPUTE PROCESS.....	37
XXIII. DISPUTE RESOLUTION .....	37
XXIV. STIPULATED PENALTIES .....	37
XXV. CERTIFICATION .....	38
XXVI. COVENANT NOT TO SUE BY EPA .....	41
XXVII. RESERVATION OF RIGHTS BY EPA .....	41
XXVIII. COVENANT NOT TO SUE BY DTSC .....	42
XXIX. RESERVATION OF RIGHTS BY DTSC .....	43
XXX. COVENANT BY RESPONDENT .....	44
XXXI. OTHER CLAIMS .....	45
XXXII. CONTRIBUTION .....	45
XXXIII. NONCOMPLIANCE, STOP WORK, AND DEFAULT DETERMINATIONS .....	46
XXXIV. ACCESS TO INFORMATION .....	47
XXXV. RETENTION OF RECORDS .....	48
XXXVI. NOTICES AND SUBMISSIONS .....	49
XXXVII. APPENDICES .....	51
XXXVIII. COMMUNITY RELATIONS .....	51
XXXIX. MODIFICATIONS .....	52
XXXX. PUBLIC COMMENT .....	52
XXXXI. EFFECTIVE DATE .....	52

## ADMINISTRATIVE ORDER ON CONSENT

# **FOR CLEANUP OF PORTIONS OF FORMER FORT ORD BY THE FORT ORD REUSE AUTHORITY**

## **I. JURISDICTION**

1. This Administrative Order on Consent ("AOC") is entered into voluntarily by the United States Environmental Protection Agency ("EPA"), the California Department of Toxic Substances Control ("DTSC"), and the Fort Ord Reuse Authority ("Respondent"). The AOC concerns the preparation and performance of potential removal actions, one or more remedial investigations and feasibility studies ("RI/FS") and one or more remedial designs and remedial actions ("RD/RA") for contaminants present on portions of the former Fort Ord located at Monterey, California ("Site") and the reimbursement for future response costs incurred by EPA and DTSC in connection with such CERCLA response actions.

2. This AOC is issued under the authority vested in the President of the United States by Sections 104, 106 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606 and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D. This authority was further redelegated by the Regional Administrator of EPA Region 9 to the Superfund Branch Chief by Regional Delegation R9 1290.15, dated September 29, 1997. DTSC signs this AOC pursuant to relevant provisions of CERCLA Section 120, 42 U.S.C. § 9620, regarding state participation in federal facility cleanups, and Section 121(f), 42 U.S.C. § 9621(f), applicable provisions of 40 C.F.R. Subpart F, and the California Health and Safety Code. The United States Department of Justice is approving and signing this AOC pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. EPA, DTSC, and Respondent recognize that this AOC has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this AOC do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this AOC, the validity of the Findings of Fact, Conclusions of Law and Determinations in Sections V and VI of this AOC. Respondent agrees to comply with and be bound by the terms of this AOC and further agrees that it will not contest the basis or validity of this AOC or its terms.

4. Respondent represents that it is a bona fide prospective purchaser ("BFPP") as defined by Section 101(40) of CERCLA, 42 U.S.C. §9601(40), that it has and will continue to comply with Section 101(40) during its ownership of the Site, and thus qualifies for the protection from liability under CERCLA set forth in Section 107(r)(1) of CERCLA, 42 U.S.C. §9607(r)(1), with respect to the Site. Respondent further represents that its obligations under the ESCA and the Work obligations it is assuming under this AOC are voluntarily undertaken, and such obligations are not predicated on any preexisting

obligation or enforcement action. In view, however, of the complex nature and significant extent of the Work to be performed by Respondent at the Site, and the risk of claims under CERCLA being asserted against Respondent notwithstanding Section 107(r)(1) as a consequence of Respondent's activities at the Site pursuant to this AOC, one of the purposes of this AOC is to resolve, subject to the reservations and limitations contained in Section XXVII (Reservations of Rights by EPA), any potential liability of Respondent under CERCLA for the Work and future response costs.

## **II. PARTIES BOUND**

5. This AOC applies to and is binding upon EPA, DTSC, and upon Respondent. Except as provided in this Paragraph, any change in Respondent's charter or corporate status including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this AOC. The Parties recognize that State law provides for Respondent's termination upon the occurrence of certain events or on June 30, 2014, whichever occurs first, and prior to such termination, for the orderly dissolution of Respondent and the selection of a suitable public successor (or successors). Accordingly, for the purpose of ensuring an orderly transition in the event of such a termination, Respondent shall provide EPA and DTSC no less than one hundred twenty (120) days written notice prior to the date of Respondent's anticipated termination. The notice shall identify the entity or entities that will succeed to Respondent's obligations under the AOC. Each successor to this AOC must be approved by EPA in consultation with DTSC. EPA will consider the following criteria in approving or disapproving any proposed successor(s): (i) the technical qualifications of the successor(s), or its proposed consultant, to perform remaining Work obligations; (ii) financial ability to perform such obligations; (iii) the successor's legal status and legal authority to sign the AOC; and (iv) the proposed successor's willingness to sign this AOC and perform Respondent's obligations hereunder. Upon EPA's approval, DTSC's concurrence, and the successor's signing of this AOC, the term "Respondent" as used in this AOC shall apply to the successor. If no successor is approved who agrees to perform the remaining Work, EPA may invoke the default provisions of Section XXXIII of this AOC.

6. Respondent shall be responsible for carrying out all activities required by this AOC in a timely manner and shall be subject to all stipulated penalties for failure to meet the terms and conditions of this AOC.

7. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this AOC and comply with this AOC. Respondent shall be responsible for any noncompliance with this AOC by its contractors, subcontractors and representatives.

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this AOC and to execute and legally bind Respondent to this AOC.

### **III. STATEMENT OF PURPOSE**

9. Respondent is taking title to approximately 3,484 acres of property from the former Fort Ord Superfund Site under the authority provided by Section 120(h)(3)(C) of CERCLA, 42 U.S.C. §9620(h)(3)(C), which property is defined herein as the Site and is more specifically depicted in Appendix A to this AOC. Additionally, Respondent has agreed with the Army to undertake the investigation and, if necessary, cleanup of the Site pursuant to the terms of an Environmental Services Cooperative Agreement ("ESCA"). This investigation and cleanup is currently being implemented by the Army pursuant to the terms of the Fort Ord Federal Facilities Agreement, dated July 23, 1990 ("FFA"). Under the ESCA, the Army retains responsibility for: (1) certain environmental conditions at the Site if found in the future and (2) for certain existing cleanup responsibilities on the Site (collectively referred to as Army Obligations), both of which are more specifically defined in this AOC. The FFA is being amended to reflect Respondent's assumption of the Army's cleanup responsibilities, other than Army Obligations. The FFA Amendment also provides that the Army and/or EPA will continue to be responsible for the selection of response actions for the Site in accordance with Section 120(e)(4)(A) of CERCLA, 42 U.S.C. § 9620(e)(4)(A). In the event that EPA, in consultation with DTSC, determines that Respondent is in Default, either for the entire Site or a portion thereof, as provided in Section XXXIII of this AOC, the responsibility for all response actions for the Site, or the relevant portion thereof, shall revert to the Army to be undertaken in accordance with the terms and conditions of the FFA and the FFA Amendment.

10. In entering into this AOC, the objectives of EPA, DTSC, and Respondent (in addition to the purpose identified in Paragraph 4 above) are: (a) to further determine, through the use of remedial investigations and possible removal actions to be performed by Respondent as more specifically set forth in the Statement of Work (SOW) attached as Appendix B to this AOC, the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, including MEC, and pollutants or contaminants at or from the Site; (b) to identify and evaluate remedial alternatives to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, including MEC, and pollutants or contaminants at or from the Site (excluding Army Obligations), by conducting Feasibility Studies as more specifically set forth in the SOW in Appendix B to this AOC; (c) to provide for procedures and a schedule for EPA to take action with respect to a request for EPA's concurrence with the Army's selection of Response Actions; (d) to provide for the State's participation in any RI/FS and ROD process to ensure consideration, consistent with CERCLA and the NCP, of DTSC's concerns with respect to the selection of any remedial action; (e) to provide for the design, construction, and implementation of Response Actions and Operation and Maintenance at the Site by Respondent necessary to remediate the Site (excluding Army Obligations), to achieve all applicable or relevant and appropriate requirements ("ARARs"), and other Performance Standards described in any ROD issued by the Army and/or EPA; (f) to provide for the payment of EPA and DTSC Response Costs; (g) and to memorialize the Parties' agreement that Respondent shall have no responsibility to perform Army Obligations.

11. All Work to be conducted under this AOC is subject to prior approval by EPA,

after consultation with DTSC, as more specifically discussed in Section XIV (EPA Approval of Plans and Other Submissions) below. For purposes of this AOC, consultation with DTSC shall include: but not be limited to, simultaneous receipt by and a reasonable opportunity to review and comment by DTSC of all documents and deliverables (the reasonable review time for each document/deliverable will be determined by EPA before or upon receipt of the document/deliverable) required to be submitted by Respondent under this AOC; opportunity to participate in all meetings concerning the Site held between or among Parties to this AOC; to participate in dispute resolution as provided by Sections XXII and XXIII of this AOC; to participate in dispute resolution on the primary documents and response selection decisions as provided in the FFA and FFA Amendment; and the opportunity to have its concerns addressed regarding remedy decisions made by the Army and/or EPA regarding the Site. If DTSC concurs with any remedy for the Site or any portion of the Site selected by the Army and EPA, DTSC may sign the Record of Decision to indicate its concurrence. Respondent shall provide all appropriate and necessary information to assess Site conditions and evaluate alternatives to the extent necessary to select one or more remedies that will be consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"). Respondent shall conduct all Work under this AOC in compliance with CERCLA, the NCP, and all applicable EPA guidance, policies, and procedures.

#### **IV. DEFINITIONS**

12. Unless otherwise expressly provided herein, terms used in this AOC which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this AOC or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"AOC" shall mean this Administrative Order on Consent for Cleanup of Portions of the Former Fort Ord, the SOW, all appendices attached hereto (listed in Section XXXVII), and all documents incorporated by reference into this document including without limitation EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the AOC upon approval by EPA. In the event of conflict, between this AOC and any appendix or other incorporated documents, this AOC shall control.

"Army Continuing Responsibilities" shall mean certain ongoing Army responsibilities identified by the Army, and listed below, that will continue after the transfer of the Site, and which are to be performed by the Army and for which the Respondent assumes no responsibility, except as provided herein:

a. **Endangered Species Act Consultation**

Prior to Certification of Completion of Remedial Action and if FORA is required seek a new biological opinion, the Army will conduct any consultation that may be necessary with the U.S. Fish and Wildlife Service. FORA will



provide, in timely fashion, pertinent information regarding its habitat management activities associated with the cleanup actions of the Site to the Army, in order for the Army to meet its site-wide reporting requirements under the Habitat Management Plan and the federal Endangered Species Act.

b. Parker Flats

The Army will complete the Remedial Investigation/Feasibility Study, Proposed Plan, and Record of Decision for the Parker Flats Munitions Response Area, as shown on the Site Map (See Appendix A).

c. Groundwater Contamination

The Army will address any and all groundwater contamination at, under, or migrated or migrating to or from the Site.

d. Other Settlement Agreement Obligations

Any and all requirements, obligations, duties, or costs associated with compliance, performance and implementation of all applicable agreements, obligations, promises and covenants previously imposed by any court, administrative or consent order, settlement or consent agreement, or other obligations or agreement of any kind (excluding those imposed by statute), imposed upon or agreed to by the Army or Department of Defense ("DOD") which affect the performance of the ESCA except those obligations imposed by the following two settlement agreements:

- (i) Settlement Agreement between Monterey Bay Unified Air Pollution Control District (the "District") and the United States Army ("Army") and DOD, dated May 22, 1998; and
- (ii) Settlement Agreement between Plaintiff's Curt Gandy, Patricia Huth, Richard Bailey, Michael Weaver, Edward Oberweiser, Linda Millerick, and the Ft. Ord Toxics Project and the Army and DOD, dated April 28, 2004.

e. Basewide Range Assessment

The Army shall address all environmental conditions arising from, associated with, or identified in the *Draft Final Comprehensive Basewide Range Assessment Report, Former Fort Ord California*, prepared by Mactec Engineering and Consulting Services, Inc., dated November 24, 2006, except to the extent that such environmental conditions involve MEC.

"Army Retained-Conditions" shall mean any of the following conditions, for which the Army has full responsibility and for which the Respondent assumes no responsibility, except as provided herein:

- a. Radiological Material;
- b. Chemical or biological warfare agents;

- c. Natural resource injuries or damages occurring as a result of contamination releases that have occurred due to Army ownership or activities on the Site except to the extent such injuries are a direct result of the Respondent activities on the Site;
- d. Unknown Uninsured Conditions;
- e. Perchlorate contamination in soil or groundwater;

The term shall not include any other environmental conditions, including any naturally occurring substance or derivatives of products used in accordance with the state and Federal regulations, on, at, under, or emanating from the Site in its unaltered form, or altered solely through natural occurring processes or phenomena.

“Army Obligations” shall mean “Army Retained Conditions” and “Army Continuing Responsibilities” as defined above.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

“Construction Support” shall mean assistance provided by qualified personnel during intrusive construction activities on property known or suspected to contain MEC to ensure the safety of workers, on-site personnel, or resources from any potential explosive hazards. Construction support may be either on-call or on-site depending upon the risk of potential MEC exposure and may also include MEC hazards education for construction workers and other users of the property as well procedures for ensuring that persons working at the Site are informed of who to contact regarding suspected MEC finds. The level of construction support will be specified in Decision Documents or approved workplans.

“Covenant Deferral Request” or “CDR” shall mean the document prepared in accordance with CERCLA Section 120(h)(3)(C) which provides the basis for the deferral by EPA with the concurrence of the State of the covenant required by Section 120(h)(3)(A)(ii), 42 U.S.C. § 9620(h)(3)(A)(ii), with respect to the early transfer of real property included within the Site.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, State or Federal holiday. In computing any period of time under this AOC, where the last day would fall on a Saturday, Sunday, State or Federal holiday, the period shall run until the close of business of the next working day.

“Decision Documents” shall mean any Record of Decision, Action Memorandum, Explanation of Significant Differences or ROD Amendment prepared and issued by the Army and/or EPA.

“DTSC” shall mean the Department of Toxic Substances Control and any successor departments or agencies of the State.

"DTSC Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that DTSC incurs in reviewing or developing plans, reports and other items pursuant to this AOC, verifying the Work, or otherwise implementing or overseeing this AOC including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, legal or enforcement costs, costs to secure or implement institutional controls or operation and maintenance, and costs incurred in connection with Dispute Resolution pursuant to Sections XXII and XXIII of this AOC.

"Effective Date" shall be the effective date of this AOC as provided in Section XXXXI.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"EPA Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the EPA incurs in reviewing or developing plans, reports and other items pursuant to this AOC, verifying the Work, or otherwise implementing, overseeing, or enforcing this AOC, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, costs of establishing and maintaining the administrative record, or participating in community relations meetings, the costs incurred pursuant to Section XII (Access and Institutional Controls), including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation, costs for emergency response, or the costs incurred by EPA in enforcing the terms of the AOC, including all costs incurred in connection with Dispute Resolution pursuant to Sections XXII. and XXIII of this AOC.

"ESCA" shall mean the agreement between the Army and FORA, pursuant to which Army will provide grant funds to Respondent in consideration of Respondent's agreement to complete all remedial action necessary to protect human health and the environment at the Site, excluding Army Obligations.

"FFA" shall mean the Fort Ord Federal Facilities Agreement, dated July 23, 1990.

"FFA Amendment" shall mean the agreement among between EPA, the Army, DTSC, and Regional Water Quality Control Board ("RWQB") supplementing and revising, solely with respect to the Site, the FFA.

"Fort Ord Special Account" shall mean the special account established at the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3) .

"Interest", shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. §9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

"Institutional Controls" shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination (including but not limited to MEC) and/or protect the

integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and covenants, zoning restrictions, Construction Support, special building permit requirements, and well drilling prohibitions.

“Land Use Controls” shall mean any restriction or administrative action, including engineering and Institutional Controls, arising from the need to limit exposure to contaminated media and/or areas to reduce risk to human health and the environment.

“Munitions and Explosives of Concern” or “MEC” shall mean those specific categories of military munitions that may pose unique explosives safety risks, including but not limited to: (A) Unexploded Ordnance (UXO), as defined in 10 U.S.C. 101 (e) (5); (B) Discarded military munitions (DMM), as defined in 10 U.S.C. 2710 (e) (2); or (C) Explosive munitions constituents (e.g., TNT, RDX), as defined in 10 U.S.C. 2710 (e) (3) present in high enough concentrations to pose an explosive hazard.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. §9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Operation and Maintenance” or “O & M” shall mean all activities required to maintain the effectiveness of the Remedial Action(s) as required under an Operation and Maintenance Plan approved or developed by EPA, in consultation with DTSC, pursuant to this AOC and the Statement of Work (SOW). Operation and Maintenance may include, but is not limited to, long-term review, monitoring, reporting, and implementing and maintaining Land Use Controls.

“Paragraph” shall mean a portion of this AOC identified by an arabic numeral or an upper case letter.

“Parties” shall mean the United States, DTSC, and the Respondent.

“Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of a Remedial Action to be implemented pursuant to this AOC, as set forth in the ROD for the Remedial Action.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

“Record of Decision: or “ROD” shall mean a Record of Decision for a Remedial Action to be implemented pursuant to this AOC that, after consultation with DTSC, has been signed by the Army and EPA, including all attachments thereto.

“Remedial Action” shall mean those activities, except for Operation and Maintenance, to be undertaken by Respondent to implement a ROD at the Site, in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA after consultation with DTSC. “Remedial Action” as used in this AOC shall in no event be construed to include Army Obligations.

“Remedial Action Work Plan” shall mean the document developed for each ROD pursuant to Paragraph 26 of this AOC and approved or modified by EPA after consultation with DTSC, and any amendments thereto.

“Remedial Design” shall mean those activities to be undertaken by Respondent to develop the final plans and specifications for a Remedial Action under this AOC pursuant to the Remedial Design Work Plan.

“Remedial Design Work Plan” shall mean the document developed for each ROD pursuant to Paragraph 27 of this AOC and approved or modified by EPA after consultation with DTSC, and any amendments thereto.

“Section” shall mean a portion of this AOC identified by a Roman numeral.

“Site” shall mean that portion of the Former Fort Ord Superfund Site which Respondent has or will acquire consistent with the requirements of Section 120(h)(3)(C) of CERCLA, 42 U.S.C. §9620(h)(3)(C) totaling approximately 3,484 acres, located at Monterey County, California, and depicted generally on the map attached as Appendix A. Site shall also mean any surrounding areas not acquired by Respondent but that may require response action to address releases of hazardous substances, pollutants or contaminants occurring in connection with Respondent’s performance of Work under this AOC.

“State” shall mean the State of California.

“State Land Use Covenant” shall mean the land use covenant entered into between the Army and the California Department of Toxic Substances Control pursuant to the provisions of California state law.

“State Interest” shall mean the interest rate applied to outstanding payments for costs billed pursuant to Health and Safety Code section 25360.1. The rate of interest is subject to change.

“Statement of Work” or “SOW” shall mean the statement of work for implementation of removals, Remedial Investigations, Feasibility Studies, Remedial Designs and Remedial Actions at the Site, as set forth in Appendix B to this AOC, and any modifications made to the SOW in accordance with this AOC.

“Supervising Contractor” shall mean the principal contractor retained by the Respondent to supervise and direct the implementation of the Work under this AOC.

“United States” shall mean the United States of America.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. §9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. §9601(33); [(3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. §6903(27); and (4) any “hazardous waste” under California Health and Safety Code section 25117, or “hazardous substance” under California Health and Safety Code section 25316.

“Work” shall mean all activities Respondent is required to perform under this AOC, except those required by Section XXXV (Retention of Records). “Work” as used in this AOC shall in no event be construed to include Army Obligations.

## **V. FINDINGS OF FACT**

13. a. The former Fort Ord is located near Monterey Bay in northwestern Monterey County, California, approximately 80 miles south of San Francisco. The base comprises approximately 28,000 acres adjacent to the cities of Seaside, Sand City, Monterey, and Del Rey Oaks to the south and Marina to the north. The Southern Pacific Railroad and Highway 1 pass through the western portion of the former Fort Ord, separating the beach from the rest of the base. Laguna Seca Recreation Area and Toro Regional Park border former Fort Ord to the south and southeast, respectively, as well as several small communities such as Toro Park Estates and San Benancio.

b. Beginning in 1917, portions of the former Fort Ord were used by cavalry, field artillery, and infantry units for maneuvers, target ranges, and other purposes. Ordnance and explosives were fired into, fired upon, used, or disposed of on the facility. The types of ordnance and explosives used or disposed of include artillery and mortar projectiles, rockets, guided missiles, rifle and hand grenades, land mines, pyrotechnics, bombs, and demolition materials. Discarded munitions, unexploded ordnance, and ordnance scrap present at the Site are being addressed under this AOC.

c. Contaminants that have been released or that have the potential to be released from the ordnance, explosives, and ordnance scrap found at the Site include, but are not be limited to, nitrocellulose, nitroglycerine, ethyl centralite, dibutylphthalate, dinitrotoluene, diphenylamine, lead styphnate, lead azide, potassium nitrate, PETN, Tetryl, TNT, RDX, HMX, antimony sulfide, tetracene, aluminum, copper, iron, lead, manganese, phosphorous, silicon, sulfur, zinc, barium stearate, calcium stearate, molybdenum, titanium, vanadium, boron, cadmium, nickel, bismuth, chromium, cobalt, methylene chloride, perchlorate, arsenic, mercury, ammonium, sodium chlorate, potassium chlorate, and sodium.

d. The former Fort Ord was listed on the National Priorities List in 1990.

e. On July 23, 1990, EPA, State of California Department of Health Services ("DHS"), RWQCB, and the Army entered into the FFA requiring the Army to identify, perform and complete all necessary response actions and Operation and Maintenance at the former Fort Ord under CERCLA.

f. The former Fort Ord was selected in 1991 for Base Realignment and Closure and was officially closed in September 1994. The Ord Military Community, located within the Main Garrison portion of the former Fort Ord, will be retained by the Army. Since 1994, some of the lands outside the Ord Military Community have been transferred, while other lands are expected to be transferred to local municipalities. Approximately 7,212 acres of the former Fort Ord lands were assigned to the Bureau of Land Management in 1996.

g. On April 11, 2000, the Army, EPA, and DTSC agreed that response to ordnance and explosives at the former Fort Ord would be conducted under the FFA.

h. Respondent is a body politic and corporation established pursuant to Title 7.85 of the California Government Code, Chapter 1 through 7, inclusive, commencing with Section 67650, *et. seq.*, and selected provisions of the California Redevelopment Law, including Division 24 of the California Health and Safety Code, Part 1, Section 33492, *et. seq.*, and Article 4, commencing with Section 33492.70, *et. seq.*

i. Respondent has requested an early transfer of the Site, which it will acquire upon EPA's approval of the Covenant Deferral Request and State of California's concurrence therein. To facilitate reuse of the Site by Respondent and its member local governments consistent with the Reuse Plan, dated June 13, 1999, the Army and Respondent will enter into an ESCA, pursuant to which Army will grant funds to Respondent, and Respondent will complete all response actions necessary to protect human health and the environment at the Site, excluding Army Obligations.

j. The Army will notify EPA and the Governor of California of its intention to seek early transfer of the Site before completing all remedial actions pursuant to CERCLA Section 120(h)(3)(C), 42 U.S.C. §9620(h)(3)(C). The Army is submitting a Covenant Deferral Request to the Regional Administrator of EPA Region 9 for approval with the concurrence of the State of the early transfer. EPA with the concurrence of the State will condition its approval of the early transfer, and the suspension of certain Army responsibilities under the FFA on Respondent's agreement to enter into an administrative order on consent providing for Respondent's performance of the Work.

## **VI. CONCLUSIONS OF LAW AND DETERMINATIONS**

14. Based on the Findings of Fact set forth above, and the administrative record supporting this AOC, EPA has determined that:

a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination, including MEC, found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). d. The conditions described in Paragraph 13 above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

e. The response actions required by this AOC are necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this AOC, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

## **VII. ORDER**

15. Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations and in consideration and exchange for the United States' Covenant Not to Sue in Section XXVI, it is hereby Ordered and Respondent agrees to comply with all provisions of this AOC, including, but not limited to, all appendices to this AOC and all documents incorporated by reference into this AOC.

### **VIII. GENERAL PROVISIONS**

#### **16. Commitments by Respondent**

Subject to provisions of Paragraph 17 below, Respondent shall perform the Work in accordance with the ESCA, this AOC, the SOW, any ROD, and any work plans or other plans, standards, specifications, and schedules set forth herein or developed by Respondent and approved by EPA, in consultation with DTSC, pursuant to this AOC. Respondent shall also reimburse EPA and DTSC Response Costs as provided in this AOC. Respondent shall have no responsibility for Army Obligations except that Respondent agrees, in the event of a dispute with the Army concerning whether a particular response action required by EPA is an Army Obligation, Respondent shall perform such response action as directed by EPA until Respondent and the Army resolve the matter under the dispute process contained in the ESCA.

#### **17. Specific Agreements Concerning Unavailability of Funding under the ESCA**

The Parties agree that the Army's failure or refusal to provide ESCA funds for performance of the Work shall constitute a Force Majeure event absent cause by or the fault of Respondent. Should the Army fail or refuse to provide all or any part of the ESCA funds to Respondent for performance of the Work, Respondent shall invoke the provisions of Section XXI, Force Majeure. Respondent's written Force Majeure notice pursuant to Paragraph 69 shall provide, in addition to any other information required by that Paragraph, Respondent's detailed evaluation of its ability to complete the Work or any part thereof in light of prior grants of ESCA funds, any insurance coverage available to fund the Work, any necessary and reasonable costs of demobilizing from the Site, and Respondent's efforts to obtain the Army's compliance with the ESCA. EPA, after consultation with DTSC, shall advise Respondent in accordance with Paragraph 69, of its agreement or disagreement with Respondent's Force Majeure notice, and its determination (if applicable) regarding what parts of the Work Respondent must complete based on ESCA grants previously provided by the Army or insurance coverage available, if any. If EPA agrees that Respondent's obligation to complete the Work has been prevented due to the Army's failure or refusal to provide ESCA funding and the unavailability of any insurance coverage, EPA, in consultation with DTSC, shall make a determination under Paragraph 109 that a Default has occurred. EPA's determination of such Default shall relieve Respondent of its obligation to continue performing the Work and to reimburse EPA and DTSC Response Costs relating to any part of the Work thus excused. The Default shall become effective upon Respondent's completion of those parts of the Work for which funding has been provided or for which insurance coverage is available, if any. Any



dispute regarding a Force Majeure event under this Paragraph shall be governed by Section XXIII, Dispute Resolution.

18. Compliance with Applicable Law

All activities undertaken by the Respondent pursuant to this AOC shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Respondent must also comply with all applicable or relevant and appropriate requirements of Federal and state environmental laws as set forth in any ROD and the SOW. The activities conducted pursuant to this AOC, if approved by EPA, shall be considered to be consistent with the NCP.

19. Permits

a. As provided in Section 121 (e) of CERCLA and Section 300.400 (e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on Site (i.e., within the aerial extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on site requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain all such permits and approvals.

b. The Respondent may seek relief under the provisions of Section XXI (Force Majeure) of this AOC for any delay in the performance of the Work resulting from a failure to obtain, or delay in obtaining, any permit required for the Work.

c. This AOC is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

**IX. PERFORMANCE OF THE WORK BY RESPONDENT**

20. Selection of Supervising Contractor

a. All aspects of the Work to be performed by Respondent pursuant to Sections IX (Performance of the Work by Respondent), X (Remedy Review), XI (Quality Assurance, Sampling and Data Analysis), and XVIII (Emergency Response) of this AOC shall be under the direction and supervision of the Supervising Contractor. Respondent has designated, and EPA has approved, LFR, Inc. as its Supervising Contractor.

b. If Respondent proposes to replace LFR, Inc., or any subsequently Supervising Contractor approved by EPA, Respondent shall notify EPA and DTSC in writing at least forty-five (45) days in advance of such change, and must obtain an authorization to proceed from EPA, after consultation with DTSC, before the new Supervising Contractor performs, directs, or supervises any Work under this AOC. Respondent must provide the name, title, and qualifications of any contractor proposed to

be the new Supervising Contractor. With respect to any contractor proposed to be the new Supervising Contractor, Respondent shall demonstrate that the new proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/241/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA, after consultation with DTSC, will issue a notice of disapproval or an authorization to proceed.

c. If EPA disapproves a proposed new Supervising Contractor, EPA will notify Respondent in writing. Respondent shall submit to EPA and DTSC a list of contractors, including the qualifications of each contractor that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor, previously proposed. EPA, after consultation with DTSC, will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Respondent may select any contractor from that list that is not disapproved and shall notify EPA and DTSC of the name of the contractor selected within 21 days of EPA's authorization to proceed.

d. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Respondent from meeting one or more deadlines in a plan approved by the EPA pursuant to this AOC, Respondent may seek relief under the provisions of Section XXI (Force Majeure).

## 21. Time-Critical Removal Actions

a. As directed by EPA after consultation with DTSC and the Army, Respondent shall perform such removal assessments/site investigations at one or more areas of the Site as are necessary to collect sufficient information to enable EPA to determine, after consultation with DTSC, whether any Time-Critical Removal Action ("TCRA") should be performed. At the time of signing this AOC, EPA and DTSC are not aware of the need for a TCRA. If an Action Memorandum for a Time-Critical Removal Action is issued, Respondent shall perform, at a minimum, all actions necessary to implement any such Action Memorandum; provided, however, that Respondent shall not be obligated to implement any Action Memorandum relating to Army Obligations.

b. Activities and Deliverables Within thirty (30) days after issuance of any Action Memorandum for a TCRA that Respondent is obligated to implement under this AOC, Respondent shall submit to EPA for approval, with a copy to DTSC, a TCRA Work Plan for performing the Removal Action described in any such Action Memorandum and attached SOW.

c. Nothing in this Paragraph or AOC prohibits or requires EPA's pre-approval of Respondent's performance or conduct either alone or in conjunction with the

Army in addressing an emergency response regarding an explosive device presenting immediate danger to workers or the community, commonly referred to as an EOD incident. However, Respondent shall provide notice to EPA of any EOD incident pursuant to Section XVIII (Emergency Response).

22. Non-Time-Critical Removal Actions - Engineering Evaluation/Cost Analyses

a. Respondent may elect to complete any unfinished response actions selected and described in any Action Memorandum issued by the Army prior to the ESCA, if such Action Memorandum was or is approved by EPA in consultation with DTSC. Respondent's election to initiate or complete response action under a pre-ESCA Action Memorandum shall be indicated in the RI/FS Work Plan to be provided in accordance the SOW. The schedule for performance of any such response shall be contained in the RI/FS Work Plan or Removal Action Work Plan to be provided in accordance with the SOW.

b. In the event an Engineering Evaluation/Cost Analyses ("EE/CA") Approval Memorandum is approved by EPA, after consultation with DTSC, relating to any area of the Site, (other than an area within the scope of an Army Obligation) Respondent shall perform an EE/CA as set forth in the relevant EE/CA Approval Memorandum and in accordance with CERCLA, the NCP, the SOW and relevant guidance. Unless otherwise directed by EPA, within forty-five (45) days after issuance of an EE/CA Approval Memorandum, Respondent shall submit to EPA and DTSC an EE/CA Work Plan for the performance of the EE/CA, including but not limited to: collection of all data necessary to characterize the area subject to the Non-Time-Critical Removal Action ("NTCRA"); an evaluation of risks at the removal action area(s); identification and analysis of Removal Action alternatives, and development of sufficient information to enable EPA to select appropriate NTCRAs for area(s) of the Site, after consultation with DTSC.

c. Activities and Deliverables Respondent shall conduct activities for the development of an EE/CA and submit EE/CA deliverables as provided in the SOW. All such activities shall be conducted in accordance with CERCLA, the NCP, and relevant guidance, including but not limited to the "Guidance on Conducting Non-Time-Critical Removal Actions under CERCLA" (OSWER Directive # 9360.0-32) and any guidance referenced in the SOW, as may be amended or modified by EPA. All EE/CA activities performed under this AOC shall be in accordance with the schedules established in the SOW, and in full accordance with the standards, specifications, and other requirements of the EE/CA Work Plan and Sampling and Analysis Plan, as initially approved or modified by EPA after consultation with DTSC, and as may be amended or modified by EPA from time to time, after consultation with DTSC. Respondent shall submit to EPA and DTSC copies of all EE/CA plans, reports, submittals and other deliverables required under this AOC, SOW, and the EE/CA Work Plan. Upon approval by EPA, all such deliverables shall be incorporated into and shall be requirements of this AOC.

23. Non-Time-Critical Removal Actions - Design

a. In the event that the Army issues, with EPA approval after consultation with DTSC, any Action Memorandum for a NTCRA, relating to any area of the Site following Respondent's performance of an EE/CA, Respondent shall perform the NTCRA Design in accordance with CERCLA, the NCP, the SOW, and relevant guidance. If approved by EPA, after consultation with DTSC, taking into account the complexity of the Site conditions and the Removal Action, Respondent may prepare a NTCRA Work Plan in lieu of the components of the NTCRA Design and NTCRA Design Work Plan. In such cases, the NTCRA Work Plan must meet the substantive requirements of the NTCRA Design Work Plan and the NTCRA Design as well as the requirements of a NTCRA Work Plan specified in Paragraph 24 below and the SOW. Within sixty (60) days after the issuance of such an Action Memorandum, Respondent shall submit to EPA and DTSC a work plan for the design of such NTCRA ("NTCRA Design Work Plan"). The NTCRA Design Work Plan shall provide for design of the NTCRA set forth in the Action Memorandum, and for the achievement of the Performance Standards and other requirements set forth in such Action Memorandum, this AOC, and the SOW. Upon approval by EPA, after consultation with DTSC, the NTCRA Design Work Plan shall be incorporated into and shall be a requirement of this AOC.

b. Activities and Deliverables Unless EPA determines otherwise, the NTCRA Design Work Plan shall include plans and schedules for implementation of all NTCRA design and pre-design tasks identified in the SOW.

24. Non-Time Critical Removal Actions - NTCRA Actions

a. In the event that EPA approves any NTCRA Design Work Plan submitted by Respondent for any area of the Site following Respondent's performance of an EE/CA relating to such area and EPA's issuance of an Action Memorandum for a NTCRA relating to such area, Respondent shall perform the NTCRA for such area in accordance with CERCLA, the NCP, the SOW and relevant guidance. Within thirty (30) days after EPA's approval of Respondent's NTCRA Design, Respondent shall submit to EPA and DTSC a work plan for implementing such NTCRA Work Plan. The NTCRA Work Plan shall provide for implementation of the NTCRA set forth in the Action Memorandum and the approved NTCRA Design, and for the achievement of the Performance Standards and other requirements set forth in such Action Memorandum, approved NTCRA Design Work Plan, this AOC, and the SOW. Within sixty (60) days after EPA approval of Respondent's NTCRA Work Plan for such area, Respondent shall commence performance of all activities detailed in the NTCRA Work Plan, as approved by EPA after consultation with DTSC. Upon approval by EPA, the NTCRA Work Plan shall be incorporated into and shall be a requirement of this AOC.

b. Activities and Deliverables Respondent shall conduct all activities in accordance with the schedule required by the NTCRA Work Plan and the SOW, including but not limited to (A) construction in accordance with specifications; (B) performance of Operation and Maintenance, if applicable; (C) performance of construction quality assurance project plans; (D) performance of sampling plans directed at measuring progress toward meeting performance standards; and (E) performance of contingency plans.

25. Remedial Investigations and Feasibility Studies

a. With respect to each RI and FS that Respondent performs under this AOC, the following requirements and timeframes shall apply unless otherwise approved by EPA after consultation with DTSC. Respondent shall perform the RI and FS to address all hazardous substances at the Site as directed by EPA after consultation with DTSC, in accordance with CERCLA, the NCP, the SOW and relevant guidance. For any investigation that the Army has completed and EPA, after consultation with DTSC, has approved, Respondent shall complete the remaining steps in the sequence and phasing of RI/FS activities as described in the SOW and the RI/FS Work Plan. As directed by EPA, Respondent shall submit to EPA and DTSC an RI/FS Work Plan for the implementation of the RI/FS, including but not limited to plans and schedules for the following activities: (A) collection of all data necessary to fully characterize conditions under investigation; (B) ecological and human health risk assessment; (C) development and screening of a range of final remedial alternatives; (D) detailed analysis of alternatives; and (E) development of sufficient information to enable the Army and/or EPA to select appropriate remedies for each parcel comprising the Site.

b. Activities and Deliverables Respondent shall conduct activities and submit RI/FS deliverables as provided by the SOW, for the development of the RI/FS. All such Work shall be conducted in accordance with CERCLA, the NCP, and relevant guidance, including but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3 01), "Guidance for Data Usability in Risk Assessment" OSWER Directive #9285.7-05), and guidance referenced therein, and guidance referenced in the SOW, as may be amended or modified by EPA. All RI/FS activities performed under this AOC shall be in accordance with the schedules established in the SOW, and in full accordance with the standards, specifications, and other requirements of the RI/FS Work Plan and Sampling and Analysis Plan, as initially approved or modified by EPA, after consultation with DTSC, and as may be amended or modified by EPA from time to time, after consultation with DTSC. Respondent shall submit to EPA and the DTSC copies of all RI/FS plans, schedules, reports, submittals and other deliverables required under this AOC, the SOW and the RI/FS Work Plan. Upon approval by EPA, after consultation with DTSC, all such deliverables shall be incorporated into and shall be requirements of this AOC.

26. Remedy Selection

a. Following approval of any RI/FS under this AOC and after consultation with DTSC, and after public comment on the Proposed Plan and response to comments, the Army and/or EPA shall select a remedial action in accordance with CERCLA, the NCP, and the FFA Amendment. Notwithstanding any other provision of this AOC, the selection of a remedial action by the Army and EPA, or EPA only, shall not be subject to dispute resolution under this AOC or judicial review by Respondent.

b. Within 21 days of the signature of a Record of Decision ("ROD"), Respondent shall provide EPA and DTSC with a schedule for implementation of

remedial design and remedial action ("RD/RA") for the selected remedy. If EPA and DTSC do not approve the schedule, Respondent shall be so advised within 30 days of its submittal and Respondent shall either revise the schedule or invoke the dispute resolution provisions of Section XXIII with respect to the schedule only, not the remedy selected.

27. Remedial Design

a. With respect to each ROD issued that Respondent is obligated to implement under this AOC, the following requirements and procedures related to Remedial Design shall apply. Within 30 days after issuance of the ROD pursuant to paragraph 26, Respondent shall submit to EPA and DTSC a work plan for the design of the Remedial Action (Remedial Design Work Plan or RD Work Plan). The RD Work Plan shall provide for design of the remedy set forth in the ROD, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the ROD, this AOC and/or the SOW. Upon its approval by EPA, after consultation with DTSC, the RD Work Plan shall be incorporated into and become enforceable under this AOC. The RD Work Plan shall include a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. §1910.120.

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW.

c. Upon approval of the RD Work Plan by EPA, after consultation with DTSC, and submittal of the Health and Safety Plan for all field activities to EPA and DTSC, Respondent shall implement the RD Work Plan. The Respondent shall submit to EPA and DTSC all plans, submittals and other deliverables required under the approved RD Work Plan in accordance with the approved schedule for review and approval pursuant to Section XIV (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Respondent shall not commence further Remedial Design activities prior to approval of the RD Work Plan.

d. The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of treatability studies; (3) results of additional field sampling and pre-design work; (4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

e. The intermediate design submittal, if required by EPA or if independently submitted by the Respondent, shall be a continuation and expansion of the preliminary design. Any value engineering proposals must be identified and evaluated during this review.

f. The pre-final/final design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan ("CQAPP"); (4) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (5) Contingency Plan. The CQAPP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA

Official”), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.

g. Respondent may request EPA approval that the RD Work Plan and Remedial Action Work Plan be combined. Nonetheless, any combined Work Plan shall include all information described in Paragraphs 26, 27, and 28 of this Section and the SOW unless omissions are approved by EPA after consultation with DTSC.

## 28. Remedial Action

a. With respect to each ROD issued that Respondent is obligated to implement under this AOC, the following requirements and procedures related to Remedial Action shall apply. Within thirty (30) days after the approval of the final design submittal as described above, Respondent shall submit to EPA and DTSC a work plan for the performance of the Remedial Action (“Remedial Action Work Plan”). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this AOC, the ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA after consultation with DTSC. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this AOC. At the same time it submits the Remedial Action Work Plan, Respondent shall submit to EPA and DTSC a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. §1910.120.

b. The Remedial Action Work Plan shall include the following, if applicable: (1) schedule for completion of the Remedial Action; (2) schedule for developing and submitting other required Remedial Action plans; (3) methods for satisfying permitting requirements; (4) methodology for implementation of the Operation and Maintenance Plan; (5) methodology for implementation of the Contingency Plan; (6) tentative formulation of the Remedial Action team; (7) construction quality control plan (by contractor); and (8) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include the methodology for implementation of the Construction Quality Assurance Plan, a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of the Respondent’s Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

c. Upon approval of the Remedial Action Work Plan by EPA, after consultation with DTSC, Respondent shall implement the activities required under the Remedial Action Work Plan. The Respondent shall submit to EPA and DTSC all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XIV (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Respondent shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

29. The Respondent shall continue to implement Remedial Action and O&M (excluding Army Obligations) until the Performance Standards are achieved and for so long thereafter as is otherwise required under this AOC or the ROD.

30. Respondent acknowledges and agrees that nothing in this AOC, the SOW, or the Remedial Design or Remedial Action Work Plan constitute a warranty or representation of any kind by EPA or DTSC that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

31. Out-of-State Waste Shipments

a. Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA and DTSC Project Coordinators of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments to out-of-state waste management facilities when the total volume of all such shipments will not exceed 10 cubic yards. Respondent shall comply with all applicable State waste management laws.

b. The Respondent shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

c. If the identity of the receiving facility and state will be determined by the Respondent following the award of the contract for Removal Action or Remedial Action construction, then the Respondent shall provide the information required by Paragraph 31.a. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

32. Off-site Waste Shipments Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. 300.440. If the off-site location is in California, Respondent shall obtain certification from DTSC that the proposed receiving facility is in substantive compliance with California laws. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.

## **X. REMEDY REVIEW**



33. Periodic Review

After the Effective Date of this AOC, Respondent shall conduct any studies and investigations as requested by EPA, after consultation with DTSC, in order to permit the Army and EPA to conduct the first two periodic reviews of whether any Remedial Action performed by Respondent is protective of human health and the environment. Periodic reviews will be conducted at the former Fort Ord Site at least every five years after the initiation of the initial Remedial Action at the Site as required by Section 121(c) of CERCLA and any applicable regulations. After the first two periodic reviews, the Army, rather than Respondent, shall be responsible for conducting studies and investigations needed to assess Remedial Actions performed by Respondent. In any event, Respondent shall not be responsible for the conduct of any studies or investigations for any periodic reviews relating to Army Obligations.

34. EPA Selection of Further Response Actions

If EPA determines at any time, after consultation with DTSC, that any Remedial Action performed or completed under this AOC is not protective of human health and the environment, the Army and EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

a. Opportunity to Comment Respondent and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

b. Respondent's Obligation to Perform Further Response Actions If EPA selects further response actions for the Site (other than for Army Obligations), the Respondent shall undertake such further response actions, subject to Respondent's right to dispute resolution in accordance with Section XXIII. Disputes pertaining to the whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved based on the administrative record supporting EPA's decision and will not be subject to judicial review.

c. Submission of Plans If Respondent is required to perform the further response actions pursuant to Paragraph 34.b., it shall submit a plan for such work to EPA for approval, after consultation with DTSC, in accordance with the procedures set forth in Section IX (Performance of the Work by Respondent) and shall implement the plan approved by EPA in accordance with the provisions of this AOC.

**XI. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS**

35. Respondent shall use quality assurance, quality control, and chain of custody procedures for all assessment, characterization, treatability, design, compliance and monitoring samples in accordance with "Uniform Federal Policy for Quality Assurance Project Plans (UFP-QAPP) (EPA/505/B-04-900A, March 2005)", "EPA Requirements for Quality Assurance Project Plans (QA/R5) (EPA/240/B-01/003, March 2001) Guidance for Quality Assurance Project Plans (QA/G-5) (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to Respondent of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this AOC, Respondent shall submit to EPA for approval, after consultation with DTSC, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and relevant guidance. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this AOC. Respondent shall ensure that EPA and DTSC personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this AOC. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA or DTSC pursuant to the QAPP for quality assurance monitoring. Respondent shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this AOC perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis and the Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this AOC; however, upon approval by EPA, after opportunity for review and comment by DTSC, the Respondent may use other analytical methods which are as stringent as or more stringent than the CLP-approved methods. Respondent shall ensure that all laboratories they use for analysis of samples taken pursuant to this AOC participate in an EPA or EPA-equivalent QA/QC program. Respondent shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)", (EPA/240/B-01/002, March 2001) as those protocols may be amended, or equivalent documentation as determined by EPA after consultation with DTSC. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this AOC will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

36. Upon request, the Respondent shall allow split or duplicate samples to be taken by EPA or DTSC or their authorized representatives. Respondent shall notify EPA and DTSC not less than 30 days in advance of any sample collection activity unless shorter notice is agreed to by EPA, after consultation with DTSC. In addition, EPA and DTSC shall have the right to take any additional samples that they deem necessary. Upon request, EPA shall allow the Respondent to take split or duplicate samples of any samples it takes as part of the EPA's oversight of the Respondent's implementation of the Work.

37. Respondent shall submit to EPA and DTSC two hard copies and one electronic format copy (e.g., compact disc), distributed as specified in Section XXXV. below, of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the Site and/or the implementation of this AOC unless EPA agrees otherwise, after consultation with DTSC.

38. Notwithstanding any provision of this AOC, the United States and the State hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

## **XII. ACCESS AND INSTITUTIONAL CONTROLS**

39. The CDR specifies that certain restrictions on land/soil and groundwater use are needed to assure protection of human health and the environment. These restrictions are contained in two places: 1) the State Land Use Covenant entered into by DTSC and the Army and 2) the Federal Deed transferring the property to Respondent. Respondent shall comply with all such restrictions and with any restrictions contained in any Record of Decision or any other Decision Document issued pursuant to this AOC. Upon issuance of any Certification of Completion of Remedial Action, if appropriate, DTSC shall modify the restrictions in the State Land Use Covenant and restrictions contained in the Federal Deed shall be modified or removed in accordance with the FFA Amendment to be consistent with long-term restrictions contained in the ROD.

40. If the Site or any other property where access and/or land/water use restrictions are needed to implement this AOC is owned or controlled by Respondent, as of the Effective Date of this AOC or upon taking ownership and control of the property, whichever occurs later, Respondent shall:

a. provide the United States, including EPA and Army, and the State, and their representatives and contractors with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this AOC including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to EPA, Army, or DTSC;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for planning or implementing response actions or additional response actions at or near the Site;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
- (7) Implementing Army Obligations, and any response

- action or the Work required by this AOC in the event of Default by Respondent;
- (8) Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Respondent or its agents, consistent with Section XXXIV (Access to Information);
  - (9) Assessing Respondent's compliance with this AOC; and
  - (10) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted by, or pursuant to this AOC.

41. Prior to Respondent's transfer by deed, lease, or other form of agreement of any portion of the Site, or any other property where access and/or land/water use restrictions or other Institutional Controls are needed to implement this AOC, Respondent shall use best efforts to secure from any such transferee:

a. an agreement to provide access thereto for Respondent, as well as for the United States on behalf of the Army and EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this AOC including, but not limited to, those activities listed in Paragraph 40 of this AOC;

b. an agreement, enforceable by the Respondent, DTSC, and United States, to refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this AOC. Such restrictions shall be those contained in the State Land Use Covenant and Federal Deed as those documents may be modified from time to time as the remedial process proceeds, as well as, other institutional controls that may be required by the ROD(s); and

c. an agreement that such transferee will perform the required level of Construction Support provided in any ROD for the property, if applicable, if Respondent or its approved successor will not perform such Work itself.

Respondent need not obtain such agreements required by this Paragraph from a party who takes a security interest in the Site or other property, and does not participate in the management of the Site or other property as defined in 42 U.S.C. § 9601(20)(E) and (F).

42. If EPA determines, after consultation with DTSC, that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in any ROD for the Site, to ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Respondent shall cooperate with EPA's efforts to secure such governmental controls.

43. Notwithstanding any provision of this AOC, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under

CERCLA, RCRA and any other applicable statutes or regulations.

### **XIII. REPORTING REQUIREMENTS**

44. In addition to any other requirement of this AOC, Respondent shall submit to EPA and DTSC two hard copies and one electronic format copy (e.g., Word document file by email) of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this AOC during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Respondent or its contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this AOC completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Respondent has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Respondent shall submit these progress reports to EPA and DTSC by the tenth day of every month following the effective date of this AOC until EPA provides Respondent with the Final Certification of Completion of Remedial Actions pursuant to Section XVII (Certification of Completion). If requested by EPA or DTSC, Respondent shall also provide briefings for EPA and DTSC to discuss the progress of the Work.

45. The Respondent shall notify EPA and DTSC of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

46. Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), Respondent shall within 24 hours of the onset of such event orally notify the EPA and DTSC Project Coordinators or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 9, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304. Within 20 days of the onset of such an event, Respondent shall furnish to EPA and DTSC a written report, signed by the Respondent's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Respondent shall submit a report setting forth all actions taken in response thereto.

47. Respondent shall submit two hard copies and one electronic format copy (e.g., compact disc), distributed as specified in Section XV below, of all plans, reports, and data required by the SOW, any Remedial Design Work Plan, any Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Respondent shall simultaneously submit two copies of all such plans, reports and data to DTSC. Upon request by EPA or DTSC, Respondent shall submit in electronic form all portions of any report or other deliverable Respondent is required to submit pursuant to the provisions of this AOC.

48. All reports and other documents submitted by Respondent to EPA and DTSC (other than the monthly progress reports referred to above) which purport to document Respondent's compliance with the terms of this AOC shall be signed by an authorized representative of the Respondent.

#### **XIV. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS**

49. EPA and DTSC will use their best efforts to review submissions by Respondent required by this AOC within 60 days following receipt. After review of any plan, report or other item which is required to be submitted for approval pursuant to this AOC or the SOW, EPA, after consultation with DTSC, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Respondent modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within thirty (30) days following receipt, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

50. In the event of approval, approval upon specified conditions, or modification by EPA, pursuant to Paragraph 49 (a), (b), or (c), Respondent shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to Respondent's right to invoke the Dispute Resolution procedures set forth in Section XXIII (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 49(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XXIV (Stipulated Penalties).

#### **51. Resubmission of Plans**

a. Upon receipt of a notice of disapproval pursuant to Paragraph 49(d), Respondent shall, within thirty (30) days or such longer time as specified by EPA in such notice,

correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXIV, shall accrue during the 30 day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 49 and 50.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 49, Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties under Section XXIV (Stipulated Penalties).

52. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, after consultation with DTSC, EPA may again require the Respondent to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Respondent shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XXIII (Dispute Resolution).

53. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Respondent invokes the dispute resolution procedures set forth in Section XXIII (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XXIII (Dispute Resolution) and Section XXIV (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXIV.

54. All plans, reports, and other items required to be submitted to EPA and DTSC under this AOC shall, upon approval or modification by EPA, be enforceable under this AOC. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this AOC, the approved or modified portion shall be enforceable under this AOC.

## **XV. PROJECT COORDINATORS**

55. Within 20 days of effective date this AOC, Respondent, DTSC, and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. Respondent's initial Project Coordinator is Ms. Kristie Reimer of LFR, Inc. Any change to Respondent's Project Coordinator shall be subject to disapproval by EPA, in consultation with DTSC. Any Project Coordinator proposed shall have the technical expertise sufficient

to adequately oversee all aspects of the Work. The Respondent's Project Coordinator shall not be an attorney for the Respondent in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

56. EPA and DTSC may designate other representatives, including, but not limited to, EPA and DTSC employees, and federal and state contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this AOC. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this AOC and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material. EPA's Project Coordinator, DTSC's Project Coordinator, and the Respondent's Project Coordinator will meet, at a minimum, on a monthly basis.

#### **XVI. ASSURANCE OF ABILITY TO COMPLETE WORK**

57. Respondent represents that it shall enter into an agreement with the Army pursuant to which the Army will pay to Respondent all funds under the ESCA, which are anticipated to be \$93,875,000.00. Respondent shall use all such funds received from the Army, less funds for certain administrative costs to be retained by Respondent, to finance and perform the Work under this Order. Respondent also represents that upon execution of the ESCA it has obtained or shall obtain the environmental insurance policies required by the ESCA. Such policies include a cleanup cost cap policy in the amount of \$139,122,255.00 and a pollution legal liability policy in the amount of \$15,000,000.00.

#### **XVII. CERTIFICATION OF COMPLETION**

##### **58. Completion of the Remedial Action**

a. Within 90 days after Respondent concludes that a Remedial Action under this AOC has been fully performed and the Performance Standards have been attained on an operable unit, Respondent may schedule and conduct a pre-certification inspection to be attended by Respondent, EPA and DTSC. If, after the pre-certification inspection, the Respondent still believes that the Remedial Action has been fully performed and the Performance Standards have been attained at the operable unit, it shall submit a written report requesting certification to EPA for approval, with a copy to DTSC, pursuant to Section XIV (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the written report, an appropriate professional and Respondent's Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this AOC. The appropriate professional shall be a professional engineer registered in the State of California if non-MEC work was required, and if MEC work was required, a Senior UXO Supervisor, and geophysicist registered in the State of



California if geophysical data are analyzed and interpreted. The written report shall include as-built drawings, if applicable, signed and stamped by a professional engineer registered in the State of California. The written report shall also include signed registered in the State of California. The written report shall also include signed certifications by the Senior UXO Supervisor and the geophysicist registered in the State of California, if geophysical data are analyzed and interpreted, that the Remedial Action met the MEC cleanup standards. The report shall contain the following statement, signed by a responsible corporate official of Respondent or the Respondent' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If after review of the written report, EPA, after reasonable opportunity to review and comment by DTSC, determines that the Remedial Action at the operable unit has not been completed in accordance with this AOC or that the Performance Standards have not been achieved, EPA will notify Respondent in writing of the activities that must be undertaken by Respondent pursuant to this AOC to complete the Remedial Action and achieve the Performance Standards at the operable unit, provided, however, that EPA may only require Respondent to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the scope of the remedy selected in the ROD for the operable unit. EPA will set forth in the notice a schedule for performance of such activities consistent with the AOC and the SOW or require the Respondent to submit a schedule to EPA and DTSC for approval pursuant to Section XIV (EPA Approval of Plans and Other Submissions). Respondent shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XXIII (Dispute Resolution).

b. Respondent, at its election, may seek the Certification of Completion of Remedial Action for more than one operable unit at the same time by complying with the procedures set forth in subparagraph a. above with respect to each separate operable unit where Respondent has concluded that the Remedial Actions under this AOC have been fully performed and the Performance Standards have been attained for each of the operable units that are the subject of the request. If Respondent concludes that all of the Remedial Actions under this AOC have been fully performed and the Performance Standards have been attained, Respondent shall, at the time it schedules the pre-certification inspection to be attended by Respondent, EPA, and DTSC, notify EPA and DTSC that it is seeking a Site-wide Certification of Completion of Remedial Action for the Site.

59. With respect to each operable unit, if EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and consultation with DTSC, that a Remedial Action has been performed in accordance with this AOC and that the Performance Standards have been achieved at the operable unit, EPA will so certify in writing to Respondent. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this AOC. Certification of Completion of the Remedial Action shall not affect Respondent's remaining obligations under this AOC. If

Respondent believes that all Remedial Action selected by the Army and/or EPA after consultation with DTSC for the Site has been completed, Respondent may request a Site-Wide Certification of Completion of Remedial Action. If, after consultation with DTSC, EPA concludes, based on the prior Certifications of Completion and any initial or subsequent reports that all Remedial Actions have been performed in accordance with this AOC and that the Performance Standards have been achieved at the Site, EPA will so certify in writing to Respondent. This certification shall constitute the Site-Wide Certification of Completion of the Remedial Action for purposes of this AOC.

60. Completion of the Work

a. Within 90 days after Respondent concludes that all phases of the Work (including O & M), have been fully performed, Respondent shall schedule and conduct a pre-certification inspection to be attended by Respondent, EPA and DTSC. If, after the pre-certification inspection, the Respondent still believe that the Work has been fully performed, Respondent shall submit a written report by a professional engineer registered in the State of California or, if only MEC cleanup was involved, a geophysicist registered in the State of California if geophysical data are analyzed and interpreted and the Senior UXO Supervisor stating that the Work has been completed in full satisfaction of the requirements of this AOC. The report shall contain the following statement, signed by a responsible corporate official of Respondent or the Respondent' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the DTSC, determines that any portion of the Work has not been completed in accordance with this AOC, EPA will notify Respondent in writing of the activities that must be undertaken by Respondent pursuant to this AOC to complete the Work, provided, however, that EPA may only require Respondent to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the scope of the remedy selected in the relevant ROD. EPA will set forth in the notice a schedule for performance of such activities consistent with the AOC and the SOW or require the Respondent to submit a schedule to EPA for approval pursuant to Section XIV (EPA Approval of Plans and Other Submissions). Respondent shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XXIII (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Respondent and after consultation with DTSC, that the Work has been performed in accordance with this AOC, EPA will so notify the Respondent in writing.

**XVIII. EMERGENCY RESPONSE**

61. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall, subject to Paragraph 21.c., immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's and DTSC's Project Coordinators. If EPA's Project Coordinator is unavailable, EPA's Alternate Project Coordinator must be notified. If these EPA persons are not available, the Respondent shall notify the EPA Emergency Response Unit, Region 9. Respondent shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Respondent fails to take appropriate response action as required by this Section and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XIX (Payments for Response Costs), provided, however, that Respondent shall in no event be liable for the costs of response action within the scope of Army Obligations.

62. Nothing in the preceding Paragraph or in this AOC shall be deemed to limit any authority of the United States or the State a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from a Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

### **XIX. PAYMENTS FOR RESPONSE COSTS**

63. Reimbursement of EPA Response Costs The total amount to be paid by Respondent, or an approved successor, pursuant to Subparagraph 63.a. shall be deposited in the Fort Ord Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Fort Ord Superfund Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

#### **a. Payments for EPA Response Costs**

(i). Respondent, or its successor, shall pay to EPA all EPA Response Costs not inconsistent with the National Contingency Plan. On a periodic basis EPA will send Respondent a bill requiring payment that includes a standard Regionally-prepared cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within 30 days of Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 63.b. Respondent shall make all payments required by this Paragraph by a certified or cashier's check or checks

made payable to "EPA Hazardous Substance Superfund, referencing the name and address of the party making the payment, EPA Site/Spill ID Number #Q6. Respondent shall send the check(s) to:

U.S. Environmental Protection Agency  
Attn: Region 9 Receivables  
P.O. Box 37109M  
Pittsburgh, PA 15262-0001

(ii). At the time of payment, Respondent shall send notice that payment has been made to EPA and to the Regional Financial Management Officer, in accordance with Section XXXVI (Notices and Submissions).

(b). Respondent may contest payment of any EPA Response Costs under Paragraph 63a if it determines that EPA has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the EPA pursuant to Section XXXVI (Notices and Submissions). Any such objection shall specifically identify the contested EPA Future Response Costs and the basis for objection. In the event of an objection, the Respondent shall within the 30-day period pay all uncontested EPA Future Response Costs to EPA in the manner described in Paragraph 63.a. Simultaneously, the Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of California and remit to that escrow account funds equivalent to the amount of the contested EPA Response Costs. The Respondent shall send to EPA, as provided in Section XXXVI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested EPA Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Respondent shall initiate the Dispute Resolution procedures in Section XXIII (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, the Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 63.a. If the Respondent prevails concerning any aspect of the contested costs, the Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 63.a.; Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XXIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Respondent's obligation to reimburse EPA for its EPA Response Costs.

(c). In the event that the payments required by Paragraph 63.a. are not made within 30 days of the Respondent's receipt of the bill, Respondent shall pay Interest on the unpaid balance. The Interest on EPA's Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Respondent's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies

or sanctions available to EPA by virtue of Respondent's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 79. The Respondent shall make all payments required by this Paragraph in the manner described in Paragraph 63.a.

64. Reimbursement of DTSC Response Costs

a. Respondent, or its successor, shall pay all response costs incurred by DTSC after the Effective Date as such costs are incurred. DTSC will bill Respondents quarterly for its response costs. Respondent shall pay DTSC within 60 days of the date of the invoice. Any billing not paid within 60 days is subject to State Interest calculated from the date of the invoice pursuant to Health and Safety Code section 25360.1. All payments made by Respondent pursuant to this AOC shall be by cashier's or certified check made payable to "DTSC," and shall bear on the face the project code of the Site (Site 201729-11) and the Docket number of this AOC. Payments shall be sent to:

Department of Toxic Substances Control  
Accounting/Cashier  
1001 I Street, 21<sup>st</sup> Floor  
P.O. Box 806  
Sacramento, California 95812-0806.

A photocopy of all payment checks shall also be sent to the person designated by DTSC to receive submittals under this Agreement.

b. If Respondent disputes a DTSC billing, or any part thereof, Respondent shall notify DTSC's assigned project manager and attempt to informally resolve the dispute with DTSC's project manager and branch chief. If Respondent desires to formally request dispute resolution with regard to the billing, Respondent shall file a request for dispute resolution in writing within 45 days of the date of the billing in dispute. The written request shall describe all issues in dispute and shall set forth the reasons for the dispute, both factual and legal. If the dispute pertains only to a portion of the costs included in the invoice, Respondent shall pay all costs which are undisputed in accordance with Subparagraph 64.a. The filing of a notice of dispute pursuant to this Section shall not stay the accrual of State Interest on any unpaid costs pending resolution of the dispute. The written request shall be sent to:

Special Assistant for Cost Recovery and Reimbursement Policy  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812-0806

A copy of the written request for dispute resolution shall also be sent to the person designated by DTSC to receive submittals under this AOC. A decision on the billing dispute will be rendered by the Special Assistant for Cost Recovery and Reimbursement Policy or other DTSC designee.

## **XX. INDEMNIFICATION AND INSURANCE**

### **65. Respondent's Indemnification of the United States and State of California**

a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Respondent as EPA's authorized representatives under Section 104(e) of CERCLA, if applicable. Subject to Section XXX., Paragraph 100 of this AOC, Respondent shall indemnify, save and hold harmless the United States and the State of California and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this AOC, including, but not limited to, any claims arising from any designation of Respondent as EPA's authorized representatives under Section 104(e) of CERCLA, if applicable. Further, the Respondent agrees to pay the United States and the State of California all costs they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Respondent, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this AOC. Neither the United States nor the State of California shall be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this AOC. Neither the Respondent nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State of California shall give Respondent written notice of any claim for which the United States or the State plan to seek indemnification pursuant to Paragraph 65.a. The United States and/or the State shall consult with Respondent and Respondent's legal counsel prior to settling each claim.

66. Subject to Paragraph 100 of this AOC, Respondent waives all claims against the United States and the State of California for damages or reimbursement or for set-off of any payments made or to be made to the United States or DTSC arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition and subject to Section XXXI, Paragraph 100 of this AOC, Respondent shall indemnify and hold harmless the United States and the State of California with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

67. No later than 15 days before commencing any on-Site Work, Respondent shall secure, and shall maintain until the first anniversary of EPA's final Certification of Completion of the Remedial Action pursuant to Section XVII (Certification of Completion) comprehensive general liability insurance with limits of five million dollars, combined single limit, and automobile liability insurance with limits of 1 million dollars, combined

single limit, naming the United States and the State of California as additional insureds. In addition, for the duration of this AOC, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this AOC. Prior to commencement of the Work under this AOC, Respondent shall provide to EPA and DTSC certificates of such insurance and a copy of each insurance policy. Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Respondent demonstrates by evidence satisfactory to EPA and DTSC that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondent need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

## **XXI. FORCE MAJEURE**

68. "Force Majeure", for purposes of this AOC is defined as any event arising from causes beyond the control of the Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this AOC despite Respondent's best efforts to fulfill the obligation. The requirement that the Respondent exercise best efforts to fulfill the obligation includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible.

a. Subject to Section VIII, Paragraph 17, the Army's failure or refusal to provide ESCA funds for performance of the Work shall constitute a force majeure. Additionally, the Army's failure or refusal to provide ESCA funds specifically for payment of EPA's or DTSC's Response Costs, absent cause by or the fault of Respondent, shall be considered a force majeure event. A court-ordered injunction or stop work order related to any Work required by this AOC may be considered a force majeure event with respect to that part of the Work affected by the injunction or stop work order.

b. "Force Majeure" does not include financial inability to complete the Work, or a failure to attain the Performance Standards. "Force Majeure" shall not include any delays caused by any disputes or litigation between the Army and Respondent or any successor in title to the Site or a portion of it.

69. If any event occurs or has occurred that may delay the performance of any obligation under this AOC, whether or not caused by a force majeure event, the Respondent shall notify orally EPA's Project Coordinator and DTSC's Project Coordinator or, in his or her absence, their Alternate Project Coordinators or, in the event both of EPA's designated representatives are unavailable, the Federal Facilities and Site Cleanup Chief, EPA Region 9 within 48 hours of when Respondent first knew that the event might cause a delay. Within 14 days thereafter, Respondent shall provide in writing to EPA and DTSC

an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Respondent's rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Respondent shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known.

70. If EPA, after consultation with DTSC, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this AOC that are affected by the force majeure event will be extended by EPA, after consultation with DTSC, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after consultation with DTSC, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Respondent in writing of its decision. If EPA, after consultation with DSTC, agrees that the delay is attributable to a force majeure event, EPA will notify the Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

71. If the Respondent elects to invoke the dispute resolution procedures set forth in Section XXIII (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 69 and 70, above. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this AOC identified to EPA.

## **XXII. EPA AND DTSC DISPUTE PROCESS**

72. If disagreements or disputes arise during the consultation process between



EPA and DTSC under this AOC, EPA and DTSC agree to use the process outlined in this Paragraph. Disputes DTSC may have concerning the approval of certain primary documents as defined in the FFA or the FFA Amendment and remedy selection decisions will be handled in accordance with the FFA Amendment. EPA and DTSC shall, whenever possible, make decisions by consensus at the Project Coordinator level. In the event a consensus decision cannot be reached by the EPA and DTSC Project Coordinators concerning the approval of a document or deliverable required by this AOC, a meeting or telephone conference shall be scheduled and held within five (5) days of DTSC raising the dispute among EPA and DTSC Project Coordinators and their supervisors/managers to reach a consensus decision. If consensus cannot be reached by the supervisors/managers, the dispute shall be immediately elevated to the EPA Region 9 Director of the Superfund Division and DTSC Deputy Director for Site Mitigation and Brownfields Resuse, who shall meet or confer by telephone within ten (10) days of the meeting or telephone conference discussed above in an attempt to resolve the dispute through consensus. If no consensus can be reached, the decision applicable to Respondent shall be the final decision made by the EPA Region 9 Director. By agreeing to this decision making process, DTSC does not waive any right or claim it may have for relief, and reserves any authority it may have under federal or state law to require hazardous waste cleanups compliant with such law.

### **XXIII. DISPUTE RESOLUTION**

73. Unless otherwise expressly provided for in this AOC, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this AOC. However, the procedures set forth in this Section shall not apply to actions by the EPA to enforce obligations of the Respondent that have not been disputed in accordance with this Section. Additionally, this Section shall not apply to disputes regarding DTSC's Future Response Costs; such disputes will be addressed in accordance with Paragraph 64 above.

74. Any dispute which arises under or with respect to an EPA decision under this AOC shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when Respondent sends the other parties a written Notice of Dispute. The written Notice of Dispute shall be transmitted to the other parties within fifteen (15) days of the time that the dispute arises, or the right to informal dispute resolution shall be considered waived. In the event that the parties cannot resolve a dispute informally, the position advanced by EPA shall be binding unless formal dispute resolution is invoked under Paragraph 75.

75. Statements of Position In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, within 14 days after the conclusion of the informal negotiation period, Respondent invokes the formal dispute resolution procedures of this Section by serving on the EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Respondent.

76. Within 21 days after receipt of Respondent's Statement of Position, EPA will serve on all other parties its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. Within 7 days after receipt of EPA's Statement of Position, Respondent may submit a Reply. DTSC may also file a Statement of Position on the disputed matter no later than 7 days from receipt of EPA's Statement of Position for EPA's consideration.

77. Following receipt of all statements to be submitted pursuant to Paragraph 76 the Director of the Superfund Division, EPA Region 9 will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on the Respondent.

78. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Respondent under this AOC, not directly in dispute, unless EPA, after consultation with DTSC, agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 84. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this AOC. In the event that the Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXIV (Stipulated Penalties).

#### **XXIV. STIPULATED PENALTIES**

79. Respondent shall be liable for stipulated penalties in the amounts set forth in Subparagraphs 79a and 79b to EPA and the State of California, with 50% of such penalties to be paid to EPA and 50% to DTSC, for failure to comply with the requirements of this AOC specified below, unless excused under Section XXI (Force Majeure). "Compliance" by Respondent shall include completion of the activities under this AOC or any work plan or other plan approved under this AOC identified below in accordance with all applicable requirements of law, this AOC, the SOW, and any plans or other documents approved by EPA pursuant to this AOC and within the specified time schedules established by and approved under this AOC.

a. Stipulated Penalty Amounts – Work, including Payment of EPA Response Costs.

The following stipulated penalties shall accrue per violation per day for any noncompliance as identified in Subparagraph (i):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1,500	15th through 30th day

\$15,000

31st day and beyond

i. Compliance Milestones.

- (1) Summary of Existing Data Report
- (2) RI/FS Workplan(s)
- (3) Remedial Investigation Report(s)
- (4) Quality Assurance Project/Sampling Plans
- (5) Feasibility Report(s)
- (6) Remedial Design Workplan(s)
- (7) Remedial Design Document(s)
- (8) Construction QA/QC Plan(s)
- (9) Remedial Action Workplan(s)
- (10) Remedial Action Completion Report(s)
- (11) Removal Action Workplan(s)
- (12) Removal Action Completion Reports (After action Reports)
- (13) Institutional Control Implementation Plan(s);
- (14) Late Payment of EPA and DTSC Response Costs;

b. Stipulated Penalty Amounts – Reports and Other Violations

The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents not listed in Subparagraph a. above, and any other violation of this AOC:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day
\$1,000	15th through 30th day
\$10,000	31st day and beyond

80. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XIV (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; (2) with respect to a decision by the Director of the

Superfund Division, EPA Region 9, under Paragraph 77 of Section XXIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Respondent's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this AOC.

81. Following EPA's determination that Respondent has failed to comply with a requirement of this AOC. EPA may give Respondent written notification of the same and describe the noncompliance. EPA may send the Respondent a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Respondent of a violation.

82. All penalties accruing under this Section shall be due and payable within 30 days of the Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section XXIII (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund" shall be mailed to U.S. Environmental Protection Agency Attn: Region 9 Receivables P.O. Box 37109M, Pittsburgh PA 15262-0001, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #Q6. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the EPA as provided in Section XXXIV (Notices and Submissions). All payments to DTSC under this Section shall be due and payable within 30 days of the Respondent's receipt from DTSC of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to DTSC under this section shall be paid by cashier's or certified check made payable to "DTSC," and shall bear on the face the Docket number of this Order. Payments shall be sent to:

Department of Toxic Substances Control  
Accounting/Cashier  
1001 I Street, 21<sup>st</sup> Floor  
P.O. Box 806  
Sacramento, CA 95812-0806

83. The payment of penalties shall not alter in any way Respondent's obligation to complete the performance of the Work required under this AOC.

84. Penalties shall continue to accrue as provided in Paragraph 80 during any dispute resolution period, but need not be paid until the following: If the dispute is resolved by agreement, or by a decision of EPA, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order.

85. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 82.

86. Nothing in this AOC shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this AOC or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 106(b) of CERCLA, 42 U.S.C. Section 9606(b) provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the AOC.

87. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this AOC.

#### **XXV. CERTIFICATION**

88. By entering into this AOC, Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to the United States all information known to it and all information in the possession or control of its officers, directors, employees, contractors and agents which relates to Respondent causing or contributing to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. Respondent also certifies to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at Site. If the United States discovers that Respondent may be a potentially responsible party for contamination at the Site, or that Respondent is not eligible for the covenants under Section 120(h)(3) of CERCLA, 42 U.S.C. § 9620(h)(3), within the sole discretion of EPA, this AOC shall be null and void and EPA reserves all rights it may have.

#### **XXVI. COVENANT NOT TO SUE BY EPA**

89. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this AOC, for so long as Respondent is in compliance with this AOC, and except as otherwise specifically provided in this AOC, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) for the Work performed under this AOC and for recovery of EPA's Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this AOC, including, but not limited to, payment of EPA Response Costs pursuant to Section XIX. This covenant not to sue extends only to Respondent and does not extend to any other person.

#### **XXVII. RESERVATION OF RIGHTS BY EPA**

90. Except as specifically provided in this AOC, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or

minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this AOC, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to Section X of this AOC, CERCLA or any other applicable law.

91. The covenant not to sue set forth in Section XXVI above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this AOC is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this AOC, other than a failure resulting from an innocent default as provided in Section XXXII of this AOC;
- b. liability based on Respondent's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in a ROD, this AOC, or otherwise ordered by EPA, after signature of this AOC by the Respondent;
- c. criminal liability;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site;
- f. liability for violations of federal, state, or local law or regulations which occur during or after implementation of Removal or Remedial Actions at the Site, and
- g. liability, prior to the Site-Wide Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards.

#### **XXVIII. COVENANT NOT TO SUE BY DTSC**

92. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this AOC, for so long as Respondent is in compliance with this AOC, and except as otherwise specifically provided in this AOC,

DTSC covenants not to sue or take administrative action against Respondent pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a) for the Work performed under this AOC and for recovery of DTSC's Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations upon the complete and satisfactory performance by Respondent of all obligations under this AOC, including, but not limited to, payment of DTSC's Response Costs pursuant to Section XIX. This covenant not to sue extends only to Respondent and does not extend to any other person.

#### **XXIX. RESERVATION OF RIGHTS BY DTSC**

93. DTSC's Reservations of Rights The covenant not to sue by DTSC set forth in Section XXVIII does not pertain to any matters other than those expressly identified therein. DTSC reserves, and this Order is without prejudice to, all rights against Respondent with respect to all other matters, including but not limited to:

- (a) claims based on a failure by Respondent to meet a requirement of this AOC, other than a failure resulting from an innocent default as provided in Section XXXII of this AOC;
- (b) liability for costs incurred or to be incurred by DTSC that are not reimbursed by Respondent pursuant to this Order;
- (c) liability based on Respondent's transportation, treatment, storage, or disposal or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in a ROD, this AOC, or otherwise ordered by EPA, after signature of this AOC by the Respondent;
- (d) criminal liability;
- (e) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- (f) liability arising from the past, present, or future disposal, release, or threat of release of hazardous substances outside of the Site; and
- (g) liability for violations of local, state or federal law or regulations which occur during or after implementation of Removal or Remedial Actions at the Site.

#### **XXX. COVENANT BY RESPONDENT**

94. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States and the State, or their contractors or employees, with respect to the Work, Response Costs, or this AOC, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. subject to Paragraph 100 of this AOC, any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Work required by this AOC and the ESCA, or
- c. subject to Paragraph 100 of this AOC, any claim arising out of the Work or arising out of the response actions for which the Response Costs have or will be incurred, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

95. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 91 (b), (c), (d), and (e),(f) - (g) , but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

96. Nothing in this AOC shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

97. The Respondent reserves, and this AOC is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. §2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Respondent's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

#### **XXXI. OTHER CLAIMS**

98. By issuance of this AOC, the United States, including EPA and the State, assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent.



99. No action or decision by EPA or DTSC pursuant to this AOC, including remedy selection by the Army and EPA, shall give rise to any right to judicial review, except in accordance with Paragraph 95 above. Respondent waives any right it may have to bring an action under Section 310 of CERCLA, 42 U.S.C. §9659, related to any response action to be performed under this AOC on the Site.

100. Nothing in this AOC limits, bars, waives or otherwise impairs any of Respondent's, including its contractors' or subcontractors', or the Army's rights, claims, or defenses under the ESCA. Except as specifically provided and agreed to in this AOC, including but not limited to: Respondent's commitment to perform the Work; meet all of its obligations under this AOC; and waive its right to challenge any remedy decision related to the Site, nothing in this AOC is intended to limit, bar, waive, or otherwise impair any of Respondent's rights, claims, or defenses against the Army related to Army Obligations, including any rights, claims, or defenses under CERCLA Sections, 107, 113, 120(h), or 310, 42 U.S.C. §§ 9607, 9613, 9620(h), or 9659, or Section 330 of the 1993 Defense Authorization Act related to the Site.

#### **XXXII. CONTRIBUTION**

101. Nothing in this Agreement precludes the United States, the State or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any person not a party to this AOC, including any claim Respondent may have pursuant to Section 107(a)(4)(B). Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

102. In the event of a suit or claim for contribution brought against Respondent, notwithstanding the provisions of Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to response costs related to the Site (including any claim based on the contention that Respondent is not a bona fide prospective purchaser, or has lost its status as a bona fide prospective purchaser), the Parties agree that this AOC shall then constitute an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondent would be entitled, from the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this AOC. The "matters addressed" in this AOC is the Work required under this AOC and all response costs incurred or to be incurred by the United States, DTSC, or by any other person with respect to contamination existing on the Site as of the Effective Date.

103. In the event Respondent were found, in connection with any action or claim it may assert to recover costs incurred or to be incurred with respect to the Site, not to be a BFPP, or to have lost its status as a BFPP, the Parties agree that this AOC shall then

constitute an administrative settlement within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has resolved its liability for the Work required under this AOC and all response costs incurred or to be incurred by the United States, DTSC, or by any other person with respect to contamination existing on the Site as of the Effective Date.

104. Respondent agrees that with respect to any suit or claim brought by it for matters related to this AOC it will notify the United States and the State in writing no later than 60 days prior to the initiation of such suit or claim.

105. Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this AOC it will notify in writing EPA and DTSC within 10 days of service of the complaint on it.

### **XXXIII. NONCOMPLIANCE, STOP WORK AND DEFAULT DETERMINATIONS**

106. Respondent shall perform and complete all necessary Response Actions at the Site (except for Army Obligations) in accordance with CERCLA, the NCP, ARARs not otherwise waived and relevant guidance.

107. Notices of Noncompliance and Stop Work Following EPA's determination, after consultation with DTSC, that Respondent has failed to comply with a requirement of this AOC, EPA may give Respondent written notification of the same, with a copy to DTSC, and describe the noncompliance ("Notice of Noncompliance"). EPA may also give Respondent written notification that Respondent should stop work on all or any portion of its Response Action activities at the Site until EPA determines that Respondent has remedied such noncompliance ("Notice to Stop Work"). Upon receipt of a Notice to Stop Work, Respondent shall immediately stop work on all or any portion of its Response Action activities at the Site as specified in such notice, and shall remedy the noncompliance. Respondent shall resume such Response Action activities only upon receipt of written notification from EPA, after consultation with DTSC that Respondent may proceed with such activities as specified in the notification.

108. a. Finding of Default EPA, after consultation with DTSC, may determine that a Default has occurred in one or more of the following situations: (i) EPA has issued to Respondent two or more Notices of Noncompliance for significant noncompliance, with or without accompanying Notices to Stop Work, pursuant to Paragraph 107; (ii) EPA determines that Respondent is implementing the Work in a manner that may cause endangerment to human health or the environment; (iii) EPA determines that Respondent effectively has ceased to perform all or a portion of the Work for any reason, including if EPA has determined that Respondent has a Force Majeure event in accordance with Section XXI such that Respondent cannot complete performance of its obligation under this AOC; (iv) Respondent misappropriates or misuses funds received under the ESCA; (v) Respondent is seriously deficient or late in its performance of the Work; or (vi) no

successor to Respondent is approved by EPA pursuant to Paragraph 5 of this AOC. Prior to issuance of a Finding of Default, EPA shall provide Respondent in writing (with copies to the Army and DTSC) with a Notice of Intent to Default and of the proposed basis for issuing a Finding of Default. Respondent may dispute the Notice of Intent to Default, in accordance with the process provided in Section XXIII (Dispute Resolution). In the event of an EPA determination that a Default has occurred, either without Respondent having invoked the Dispute Resolution process in Section XXIII, or following the conclusion of such Dispute Resolution process, EPA will send Respondent a written Finding of Default, with copies to the Army and DTSC. The Finding of Default will provide the basis for EPA's determination and will specify whether Respondent may continue to perform the Work while the Army prepares to resume Response Action activities under the FFA.

b. Innocent Default An innocent default may occur if the Army fails or refuses to provide ESCA funds under the conditions described in Section VIII, Paragraph 17, which includes failure or refusal to provide funds for EPA and DTSC Response Costs in the absence of cause by or fault of Respondent as determined under the ESCA. An innocent default occurs when Respondent seeks relief under Section XXI, Force Majeure, and EPA, after consultation with DTSC, determines there was a Force Majeure event. Such innocent default event may result in a Finding of Default and termination of this AOC in which event Respondent will not be in violation of the AOC or subject to enforcement of its terms.

109. Within thirty (30) days of Respondent's receipt of the Finding of Default, or such other time period specified by EPA, Respondent shall cease performance of the Work and the Army shall resume all Response Actions activities at the Site under the FFA and the FFA Amendment.

110. In the event that Army resumes performance of Response Action activities under the FFA, Respondent shall fully cooperate in the orderly transfer of responsibilities for performance of the Work to the Army.

#### **XXXIV. ACCESS TO INFORMATION**

111. Respondent shall provide to EPA and DTSC upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this AOC, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA and DTSC for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

a. Business Confidential and Privileged Documents

Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA and DTSC under this AOC to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42

U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b) and California law. Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and DTSC or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e) (7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

b. The Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent assert such a privilege in lieu of providing documents, they shall provide the EPA and DTSC with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of the AOC shall be withheld on the grounds that they are privileged.

c. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

#### **XXXV. RETENTION OF RECORDS**

112. Until 10 years after the Respondent's receipt of EPA's notification pursuant to Paragraph 57 of Section XVII (Certification of Completion of the Work), Respondent, or its successor, shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

113. At the conclusion of this document retention period, Respondent, or its successor, shall notify EPA and DTSC at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or DTSC, Respondent shall deliver any such records or documents to EPA and DTSC. The Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege

or any other privilege recognized by federal law. If the Respondent asserts such a privilege, they shall provide the EPA and DTSC with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of the AOC shall be withheld on the grounds that they are privileged.

#### **XXXVI. NOTICES AND SUBMISSIONS**

114. Whenever, under the terms of this AOC, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices, reports, or other documents required to be provided to EPA under this AOC, if the AOC does not specify a named agency official, shall be distributed to the EPA Project Coordinator, e.g., RPM. Respondent shall send one hard copy and one electronic format copy of the notice, report, or other document to the EPA RPM, and one hard copy to EPA's designated contractor. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the AOC with respect to EPA, DTSC, and the Respondent, respectively.

As to the EPA:

Kathleen Johnson, Chief  
Federal Facilities and Site Clean-up  
Branch  
U.S. Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Judy Huang

EPA Project Coordinator  
U.S. Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

David Wood  
Superfund Accounting (PMD)  
U.S. Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

As to the California Department of Toxic Substances:

Anthony J. Landis, P.E.  
Chief, Northern California Operations  
Office of Military Facilities  
Department of Toxic Substance  
8800 Cal Center Drive  
Sacramento, CA 98526-3200

Susan Goss  
Project Coordinator  
DTSC  
8800 Cal Center Drive  
Sacramento, CA 95746

As to the Respondent:

Kristy Reimer  
Respondent's Project Coordinator  
LFR Offices  
1900 Powell St., 12<sup>th</sup> Floor  
Emeryville, CA 94608

Michael A. Houlemard, Jr.  
Executive Officer  
Fort Ord Reuse Authority  
100 12<sup>th</sup> Street, Building 2880  
Marina, CA 93933

Barry P. Steinberg  
Kutak Rock LLP  
1101 Connecticut Ave. NW  
Suite 1000  
Washington, D.C. 20036

#### **XXXVII. APPENDICES**

115. The following appendices are attached to and incorporated into this AOC:

Appendix A – Site Map

Appendix B – Statement of Work

#### **XXXVIII. COMMUNITY RELATIONS**

116. Respondent shall propose to EPA its participation in the community relations plan to be developed by Army if such services are not specified in the ESCA. EPA, after consultation with DTSC, will determine the appropriate role for the Respondent under the Plan if Respondent's role is not specified in the ESCA. Respondent shall also cooperate with EPA and DTSC in providing information regarding the Work under this AOC to the public. As requested by EPA, Respondent shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA and/or DTSC to explain activities at or relating to the Site or the Work being conducted under this AOC.

#### **XXXVIX. MODIFICATIONS**

117. EPA, after consultation with DTSC, may determine that in addition to tasks defined in the SOW, or initial approved work plans, other additional work may be necessary to accomplish the objectives of any response action conducted under this AOC. EPA may request in writing Respondent to perform these response actions and Respondent shall confirm its willingness to perform the additional work, in writing, to EPA and DTSC within 14 days of receipt of EPA's request, or Respondent may invoke dispute resolution in accordance with Section XXIII. Subject to EPA resolution of any dispute, Respondent shall implement the additional tasks which EPA determines are necessary. Any other requirements of this AOC may be modified in writing by mutual agreement of the parties.

118. If Respondent seeks permission to deviate from any approved work plan or schedule or the Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA with a copy to DTSC for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving written approval from the EPA Project Coordinator, after consultation with the DTSC Project Coordinator.

119. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this AOC, or to comply with all requirements of this AOC, unless it is formally modified by consent of all parties.

#### **XXXVIXX. PUBLIC COMMENT**

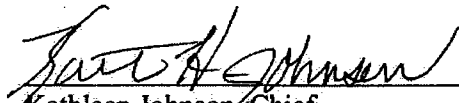
120. This AOC shall be subject to a thirty day public comment period. After close of the public comment and consideration of comments received, EPA may modify or withdraw its consent to this AOC if comments received disclose facts or considerations which indicate that this AOC is inappropriate, improper or inadequate. Likewise, DTSC may withdraw from the AOC if comments received indicate its participation in it is not appropriate.

#### **XXXXI. EFFECTIVE DATE**

121. This Order shall be effective when EPA issues written notice to Respondent that each of the following conditions to effectiveness have been met: a) expiration of the public notice and comment period on this AOC, and EPA's determination that comments received, if any, do not require EPA to modify or withdraw from this Order; b) completion of the public comment period on the FOSET and EPA's approval of the Covenant Deferral Request after concurrence by the State, and c) the execution and effectiveness of the ESCA, Covenant Deferral Request, and the FFA Amendment.

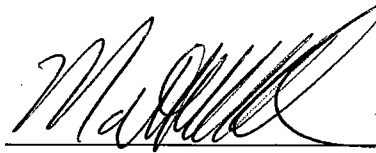


It is so Agreed this 4<sup>th</sup> day of January, 2007.



Kathleen Johnson, Chief  
Federal Facilities and Site Cleanup Branch  
U.S. Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

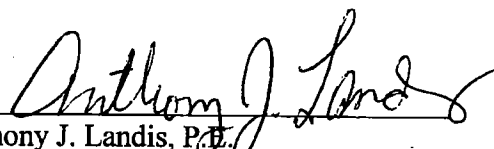
It is so Agreed this 18<sup>th</sup> day of April, 2007.

A handwritten signature in black ink, appearing to read 'M. J. McKeown', written over a horizontal line.

Matthew J. McKeown  
Acting Assistant Attorney General  
Environment and Natural Resources Section  
U.S. Department of Justice  
Washington, D.C. 20530

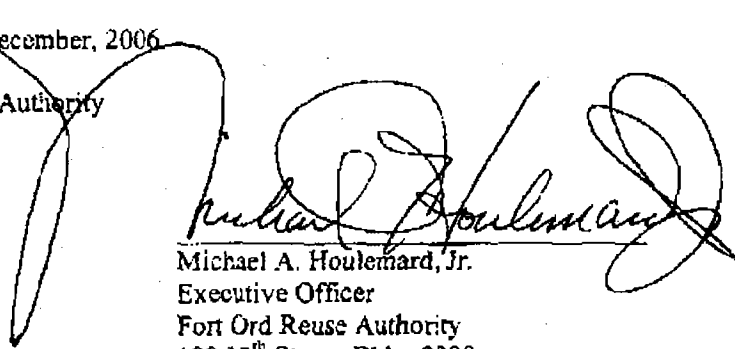
ADMINISTRATIVE ORDER ON CONSENT  
FOR CLEANUP OF PORTIONS OF THE FORMER FORT ORD

It is so Agreed this 4 day of January, 2007.

  
\_\_\_\_\_  
Anthony J. Landis, P.E.  
Chief, Northern California Operations  
Office of Military Facilities  
California Department of Toxic  
Substances  
8800 Cal Center Drive  
Sacramento, CA 95826-3200

It is so agreed this 20th day of December, 2006

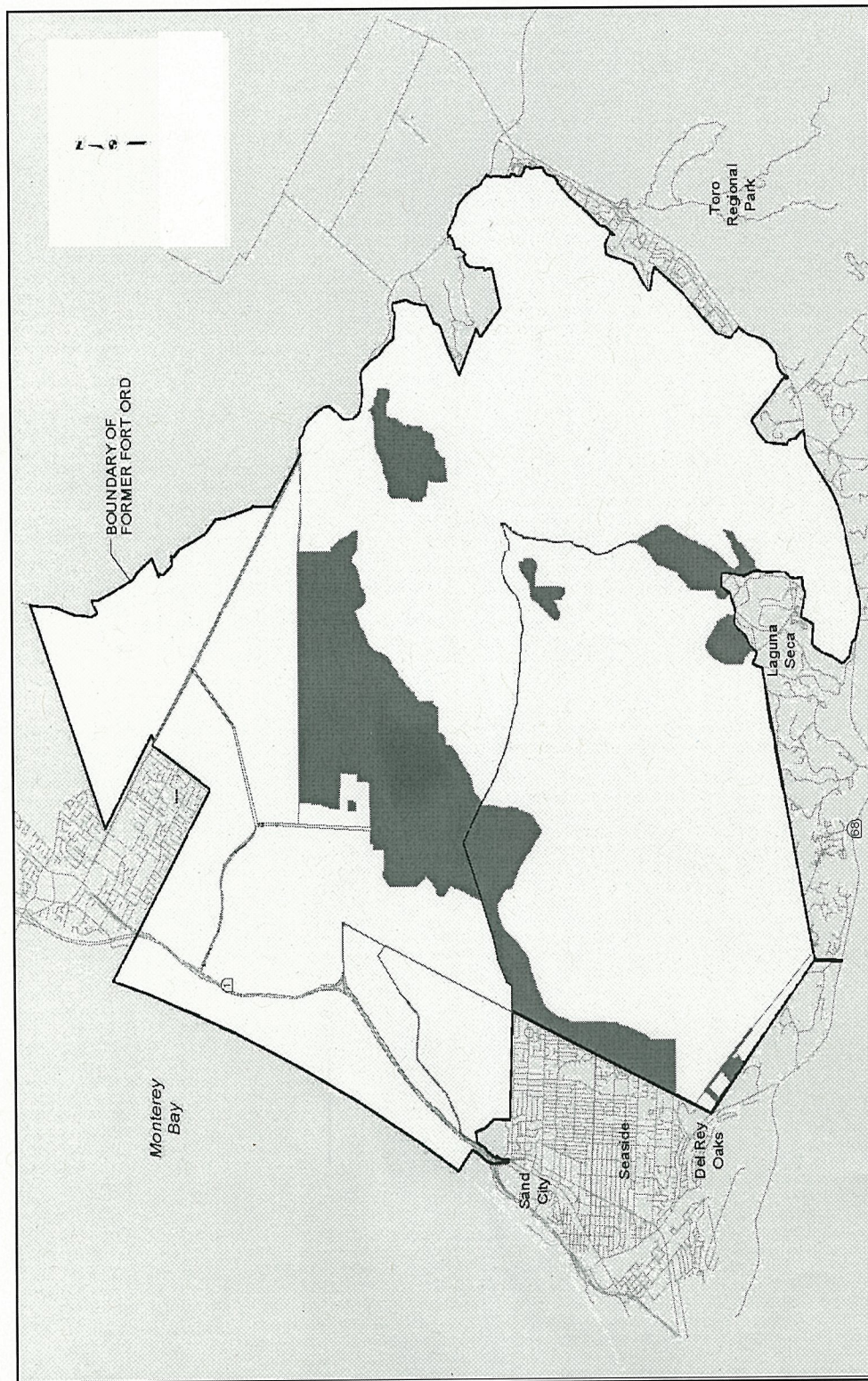
For Respondent Fort Ord Reuse Authority



Michael A. Houlemard, Jr.  
Executive Officer  
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## Appendix A

### Site Map Administrative Order on Consent for Cleanup of Portion of the Former Fort Ord



Area Subject to this Administrative Order on Consent

## **APPENDIX B**

### **STATEMENT OF WORK**

#### **ADMINISTRATIVE ORDER ON CONSENT FOR RI/FS AND RD/RA FOR CLEANUP OF PORTIONS OF THE FORMER FORT ORD**

##### **PURPOSE**

The primary purposes of this Statement of Work ("SOW") are: (1) to implement the Administrative Order on Consent for Cleanup of Portions of the Former Fort Ord ("AOC"), Docket No. R9-2007-003; (2) facilitate and expedite removal actions, if appropriate or necessary, and implementation of controls on munitions and explosives of concern; and (3) expedite the characterization, assessment of risks of explosive hazards, feasibility study, cleanup alternatives analysis, and performance of cleanup of hazardous substances, including but not limited to, Munitions and Explosives of Concern ("MEC"), which pose an unacceptable risk to human health and the environment at the Site, excluding Army Obligations.

The Parties acknowledge that, based on existing information, the primary contaminant of concern that is known or suspected of being released on the Site is MEC. However, should evidence of a release or a potential of a release of another hazardous substances be discovered or identified, Respondent shall investigate, characterize, assess the risks, and, if necessary, remediate such releases in accordance with the AOC and this SOW, unless the release involves contaminants and or media that the Army has retained responsibility for under the Environmental Services Cooperative Agreement ("ESCA") and Amendment No. 1 to the 1990 Federal Facility Agreement ("FFA Amendment"). The Work to be completed under this SOW shall include preparation, delivery, and implementation of the following:

- |               |   |   |
|---------------|---|---|
| <b>Task 1</b> | <b>Project Scoping Meeting</b>                | <b>14 days after effective date<br/>AOC</b> |
| <b>Task 2</b> | <b>Summary of Existing Data Report (SEDR)</b> | <b>60 days after scoping meeting</b>        |
- Sub Task 2.1 - Site overview**
  - Sub Task 2.2 - Site Characterization.**
  - Sub Task 2.2 - Data Evaluation**
  - Sub Task 2.3 - Identification of Data Gaps**
  - Sub Task 2.4 - Preliminary Assessment of Risk**
  - Sub Task 2.5 - Parcel Classification**



- Task 3 Remedial Investigation / Feasibility Study Workplan 60 days after approval of SEDR**
- Sub Task 3.1 Sampling and Analysis Plan, MEC primarily but shall provide for HTRW, if discovered or suspected (Quality Assurance/Quality Control Plan)
- Sub Task 3.2 Health and Safety Plan, including Occupational Hazard Assessment

- Task 4 Remedial Investigation Report (RI) 180 days after approval of RI/FS Workplan**
- Sub Task 4.1 - Nature and Extent of Contamination
- Sub Task 4.2 - Baseline Risk Assessment

- Task 5 Feasibility Study Report 120 days after Final RI**
- Sub Task 5.1 Development of Alternatives
- Sub Task 5.2 Refine & Document RAOs
- Sub Task 5.3 Preliminary Identification of ARARs
- Sub Task 5.4 Develop General Response Actions
- Sub Task 5.5 Detailed Analysis of Alternatives
- Sub Task 5.6 Scoping meeting to identify preferred alternative

**(Proposed Plan and Record of Decision (ROD) shall be prepared by the U.S. Army)**

- Task 6 Remedial Design/Remedial Action 60 days after ROD signed**
- Sub Task 6.1 Remedial Design Scoping Document
- Sub Task 6.2 Remedial Design Work Plan
- Sub Task 6.3 Remedial Action Work Plan(s)
- Sub Task 6.4 Remedial Action Progress Meetings
- Sub Task 6.5 Pre-final Construction Inspection
- Sub Task 6.6 Final Construction Inspection
- Task 7 Institutional Controls Implementation Plan 90 days after ROD signed**
- Task 8 Operation and Maintenance Plan 90 days after ROD signed**
- Task 9 Remedial Action Completion Report 90 days after determination that all Performance Standards achieved, etc.**

**Task 10 Removal Action Work Plans and Implementation, if requested.**

**(Action Memoranda shall be prepared by the U.S. Army)**

**Sub Task 10.1 Implementation of Existing Non-Time Critical Removal Actions (NTCRAs)**

**Sub Task 10.2 Development and Approval of Work Plan(s) for New Time Critical Removal Actions and/or NTCRAs**



**Task 1 Project Scoping Meeting (Due within 14 Days of the Effective Date of the AOC):** The Respondent shall attend a project scoping meeting with EPA and California Department of Toxic Substances Control (DTSC). The purpose of the meeting shall be for Respondent to describe its proposed approach to complying with the AOC, in particular, the Work to be Performed Section and this SOW. The following topics, at a minimum, should be addressed to initiate the Project Scoping (Task 1) process to determine the project objectives and associated data needs to reach project closeout: (i) developing Data Quality Objectives (DQOs); (ii) developing the initial Conceptual Site Model (CSM); (iii) evaluation of existing documentation to determine additional data needs for site characterization and subsequent remedial action decisions; (iv) how Removal Actions may be utilized for characterization; (v) whether Respondent intends to divide the Site into operable units or the RI and FS into more than one document; (vi) how Respondent shall prioritize tasks/parcels; (vii) Respondent's preliminary schedule for accomplishing the RI and FS at each parcel; (viii) scoping a Baseline Risk Assessment (BRA); and (ix) contingencies for stop work or reprioritization of tasks or parcels due to unanticipated events.

The EPA and DTSC acknowledge that the Respondent intends to organize the work into four Operable Units. Each Operable Unit (OU) will be comprised of a collection of geographic areas currently designated by the Army as Map areas. The Respondent will proceed with the CERCLA process as outlined in this SOW at each OU in a series or a parallel manner as set forth in the project schedule contained in the approved Summary of Existing Data Report (SEDR). The timing of submittal of the required CERCLA documents will be developed by the Respondent and approved by the EPA, in consultation with DTSC, as part of the Project Scoping Meeting and documented in the SEDR. The schedule outlined below establishes the relationship of each of the document submittals relative to each other within each respective OU.

All engineering and geologic work shall be conducted in accordance with all applicable state and federal laws. If work should at any time require a so-qualified professional engineer and/or geologist or certified geophysicist, Respondent will retain a qualified professional engineer and/or geologist or certified geophysicist and submit to the EPA and DTSC:

- a) the name and address of the project engineer/geologist chosen by the Respondent; and b) in order to demonstrate expertise in hazardous substance cleanup, the resume of the professional, and the statement of qualifications of the consulting firm responsible for the work. Respondent shall thereafter promptly notify the EPA and DTSC of any change in the identity of the Professional.

**Task 2 Summary of Existing Data Report (SEDR) (Due within 60 Days of the Scoping Meeting):** The Respondent shall provide EPA and DTSC a Draft

SEDR. The report shall summarize all HTW and MEC investigations, removal actions, After Action Reports, MEC incidents, and anticipated future uses of the ESCA parcels. This report will be used to focus the RI data gathering tasks and identify sites for potential Track 0, 1, 2, or 3 Records of Decision (If this is the approach Respondent proposes). The SEDR will provide a site overview, evaluation of existing data, identification of data gaps, preliminary assessment of risk, and parcel proposed future use.

Information in the SEDR will contain recommendations for further actions for the project. The SEDR Report shall be the basis for additional data gathering or response actions during the RI/FS.

Generally, the SEDR recommendations are:

- That no response action or no further response action is appropriate;
- That a response action is necessary;
- To collect additional data to fill data gaps; and/or
- To proceed with a Remedial Investigation (RI).

The SEDR should:

- Briefly describe the history and nature of waste handling and military munitions used;
- Describe known hazardous substances, including military munitions that are, or had been, suspected of being on particular parcels;
- Describe pathways of concern for MEC and other hazardous substances, and potential receptors;
- Briefly identify and describe current and future human population and environmental targets;
- Include the OU Specific Conceptual Site Models. The Respondent may group similar sites and provide a Conceptual Site Models for each group of sites.
- Evaluate whether any existing NTCRA may be applicable to its MEC removal scheme for the Site and/or each Operable
- Make a recommendation for next steps from list above, including any proposed NTCRA removal actions. In the event the Respondent proposes to organize the work into multiple OUs, the SEDR shall also include a discussion of the number of OUs proposed, the boundary of each OU, and the cleanup schedule of each OU.

**Task 3 RI/FS Workplan (Due within 60 days of approval of SEDR):** The Respondent shall submit a Draft RI/FS workplan (may be separated into RI and FS workplans) for the first OU or set of OUs to complete all work through the RI/FS as described in the Work to be Performed Section of the AOC and this SOW. The RI workplan shall propose a methodology to obtain the necessary information identified in the SEDR to characterize the nature and extent of MEC contamination in order to propose a preferred alternative at the Site

pursuant to CERCLA. The RI/FS workplan shall either 1) use the existing Fort Ord Ordnance and Explosive Risk Assessment Protocol or 2) propose a methodology to conduct an assessment of the explosive hazard(s) posed by the MEC through a CERCLA-like risk evaluation process (Explosives Safety Hazards Analysis (ESHA)). The ESHA model or the existing Fort ORD Ordnance and Explosive Risk Assessment protocol shall be used to evaluate explosive safety hazards to human health based on SEDR and RI data and future land use as identified in the Final Fort Ord Reuse Plan. **If applicable**, the RI/FS workplan shall include a process to evaluate potential risks to human health and environment from previously unproven chemical contamination, or at a minimum, the procedure to be followed in the event chemical contamination is discovered. The FS shall be used to evaluate potential alternatives to address HTRW and MEC risks and applicable and relevant and appropriate requirements ("ARARs"), pursuant to the CERCLA nine criteria.

The work plan shall comply with current EPA guidance for conducting an RI/FS under CERCLA. At a minimum it shall address the following areas:

- Physical characteristics of the property;
- Characteristics/classification of air, surface water, and groundwater;
- Characteristics of the military munitions (e.g., quantities, concentration, toxicity, hazard, persistence, mobility, depth, nature and extent, etc.);
- The extent to which the source(s) can be characterized;
- The best available detection technologies and discussion on the uncertainty of detection methods and equipment
- Actual and potential exposure pathways through environmental media;
- Actual and potential exposure routes (e.g., contact, inhalation and ingestion); and
- Other factors such as sensitive populations or behavior patterns that pertain to the characterization of the site or support the analysis of potential remedial action alternatives

### **Sub Task 3.1 Sampling & Analysis Plan** (RI/FS Guidance, Chap 2.3.2)

Respondent will prepare sampling and analysis plans and submit them to EPA and DTSC for review along with the RI/FS Workplan. Respondent will prepare a sampling & analysis plan (SAP) to ensure that data collection and analytical activities are conducted in accordance with best available technology protocols. The SAP provides a mechanism for planning field activities and consists of a field sampling plan (FSP) and a quality assurance project plan (QAPP). These documents may be combined.

Quality Assurance/Quality Control (QA/QC): *EPA Requirements for Quality Assurance Project Plans (QA/R-5)* (EPA 2001).

- Quality Assessment Program is to be used by Respondents Quality Assessors to obtain objective evidence about UXO clearance operations.
- To verify/validate or evaluate clearance data against prescribed measures.

- To assure that an audit trail of data is collected, documented and maintained.
- To retain and preserve the integrity of the Quality Assessment data gathered during the process.

The FSP will define in detail the sampling and data-gathering methods that will be used on the project, by parcel, or sub-parcel. The quality assurance project plan (QAPP), shall describe policy, organization and functional activities, as well as data quality objectives. The QAPP shall include Quality Assurance (QA) and Quality Control (QC). QA is an integrated system of management activities involving planning, implementation, assessment, reporting, and quality improvement to ensure that a process, item, or service is of the type and quality needed to meet project requirements defined in the RI/FS Workplan. QC is the overall system of technical activities that measures the attributes and performance of a process, item, or service against defined standards to verify that they meet the stated requirements established in the RI/FS Workplan; operational techniques and activities that are used to fulfill requirements for quality.

**Sub Task 3.2, Health and Safety Plan:** Respondent shall prepare a Site-Specific Health and Safety Plan.

#### **Task 4 RI Report (Due 180 days after approval of RI/FS Work Plan)**

**Sub Task 4.1 Describe the Nature & Extent of Contamination (RI/FS Guidance, Chap 3.2.4):** Respondent shall gather the information necessary to describe the nature and extent of contamination. Respondent shall implement sampling that will generate and record information and data on contaminant distributions. In addition, Respondent shall collect the information and data necessary to assess contaminant fate and transport. Subsequent sampling events may be required. This process is continued until sufficient information and data are known to characterize the nature and extent of contamination to complete the RI and to evaluate remedial alternatives. Respondents shall use the information on the nature and extent, and fate and transport of contamination in conjunction with baseline risk assessment(s), and ESHA, to determine the level of risk/hazard presented by the Site. Respondents will also use this information to help determine the appropriate remedial action alternatives to be evaluated.

**Sub Task 4.2 Baseline Risk Assessment.** A baseline risk assessment for MEC shall be conducted as part of the Remedial Investigation. The BRA shall incorporate the ESHA to assess the hazards posed by MEC for receptors based on future land use. (see Risk Assessment Guidance for Superfund, Volume 1

**Sub Task 4.3 Identification of Preliminary Remediation Goals (PRGs) and Remedial Action Objectives (RAOs).** PRG's and RAO's include potential statutory and regulatory requirements (ARARs), guidance and advisories (to-be-considered criteria, or TBCs), and risk-based concentrations of chemicals in environmental media that have been brought forward from the BRA conducted

for the project. Candidate PRGs should be developed during the RI and presented in the FS and ROD. In addition, the National Contingency Plan specifies that RAOs be developed which address: (1) contaminants of concern, (2) media of concern, (3) potential exposure pathways, and (4) remediation goals [40 CFR 300.430(e)(2)(i)].

Development of RAOs requires consideration of ARARs and the results of the BRA and should be presented in the FS. Remedial alternatives considered for selection should be able to attain RAOs.

## **Task 5 FS Report (Due 120 Days after the Approval of RI Report)**

**Sub Task 5.1 Development of Alternatives.** During the FS, remedial technologies, and their associated implementation, containment, treatment, or disposal requirements are identified, pre-screened, and then combined into alternatives. Information obtained during the RI is considered in developing the list of alternatives for evaluation. Some technologies, implementation, or property use restrictions may become apparent from this step or may become necessary regardless of which remedy is selected. Evaluation of alternatives should consider, at a minimum, the following:

- A no-action alternative.
- An alternative that reduces or eliminates the hazard, toxicity, mobility, or volume of contaminants that includes treatment
- An alternative that considers land use controls.\*
- An alternative that considers Unrestricted Use.\*
- Consideration of innovative technologies.

\*For any evaluation of response alternatives where a use restriction will be imposed, either as a stand-alone response alternative or as one component of a more complex action, the Respondent shall ensure that the evaluation of response alternatives includes an analysis of an alternative with a use restriction, as well as an analysis at the level of detail appropriate to the size and scope of a response not requiring a use restriction (e.g., implementation of a response that allows unrestricted use). This will allow consideration of restricted and unrestricted use alternatives in selecting the response action.

For any alternative proposed that includes the use of a use restriction or other institutional control, sufficient detail and analysis of the likely control mechanisms that would be used to achieve the objectives must be included in the FS to enable a determination of the long-term effectiveness and reliability of such control mechanisms. Additionally, cost estimates for the establishment, implementation, monitoring and reporting of the institutional controls must be included in the cost estimates for each alternative that includes such controls.

### **Sub Task 5.2 Refine & Document RAOs (RI/FS Guidance, Chap 4.2.1)**

Based on the BRA, and the results of the RI, Respondents will review and, if necessary, modify the Site-specific RAOs. The modified RAOs will be

documented in a technical memorandum, prior to the completion of the FS, that will be reviewed and approved by EPA, after consultation with DTSC. These modified RAOs will specify the contaminants and media of interest, exposure pathways and receptors, hazards, and an acceptable contaminant level or range of levels (at particular locations for each exposure route).

**Sub Task 5.3 Identification of Potential ARARs.** ARARs, in conjunction with risk-based levels developed in the BRA, are employed in directing response actions and establishing cleanup goals. ARARs are used as a “starting point” to determining the protectiveness of a site remedy. Additional guidance on ARARs is found in EPA/540/G-89/006.

**Sub Task 5.4 Develop General Response Actions (RI/FS Guidance, Chap 4.2.2)** Respondents will develop general response actions for each parcel defining implementation, containment, removal, or other actions, singly or in combination, as appropriate to satisfy the RAOs.

**Sub Task 5.5 Detailed Analysis of Alternatives (RI/FS Guidance, Chap 6.2):** The Respondents will conduct a detailed analysis of alternatives which will consist of an analysis of each option against the nine CERCLA evaluation criteria and a comparative analysis of all options using the same evaluation criteria. Respondents will apply the nine CERCLA evaluation criteria to the assembled remedial alternatives to ensure that the selected remedial alternative(s) will be protective of human health and the environment; will be in compliance with, or include a waiver of ARARs; will be cost-effective; will utilize permanent solutions and alternative treatment technologies, or resource recovery technologies, to the maximum extent practicable; and will address the statutory preference for treatment as a principal element. The evaluation criteria include: (1) overall protection of human health and the environment; (2) compliance with ARARs; (3) long-term effectiveness and permanence; (4) reduction in toxicity (for MEC consider hazard reduction), mobility, or volume through treatment; (5) short-term effectiveness; (6) implementability; (7) cost; (8) State (or support agency) acceptance; and (9) community acceptance. (Note: criteria 8 and 9 are considered after the RI/FS report has been released to the general public.) For each alternative, Respondents shall provide: (1) a description of the alternative that outlines the strategy involved and identifies the key ARARs associated with each alternative; and (2) a discussion of the assessment of each alternative against each of the nine criteria. If Respondents have direct input on criteria 8 (State or support agency acceptance) or 9 (community Acceptance) at this time, a preliminary assessment may be provided. In any case, the Army will address following the public comment period.

**Proposed Plan and Record of Decision Tasks:** The Army will prepare the draft and draft final of the: (1) Proposed Plan; (2), response to public comments; and (3) the Record of Decision

(Any remedy that requires institutional controls is a response action and requires, at a minimum, an Institutional Controls Implementation Plan and, potentially, an Operation and Maintenance Plan.)

**Task 6 Remedial Design/Remedial Action:** The Respondent shall design and implement the Remedial Action to meet the Performance Standards and Remedial Action Objectives (RAOs) set forth in the ROD. Performance Standards are requirements that are used to measure the achievement of the RAOs and include, but are not limited to, the remediation levels established in the ROD, the Statutory Determinations and ARARS in the ROD, and the monitoring of the remedial action identified in the ROD.

**Sub Task 6.1 Remedial Design Scoping Documents (Due 60 Days after Signing of the ROD):** The Respondent shall prepare a Remedial Design Scoping Document identifying their proposed conceptual plan for designing and implementing the Selected Remedy.

**Sub Task 6.2 Remedial Design Work Plan (Due 30 Days after EPA approval of the Remedial Design Scoping Document):** Within 30 days of EPA approval of the Scoping Document Respondent shall submit a Remedial Design Work Plan detailing the necessary documents necessary to design the remedial action. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design based on site-specific factors and shall include the following items: (1) design sampling and analysis plan (including, but not limited to, a Remedial Design Quality Assurance Project Plan (RD QAPP) in accordance with Section VIII (Quality Assurance, Sampling and Data Analysis)); and (2) a Construction Quality Assurance Plan; and may also include: (1) a treatability study; (2) a Pre-design Work Plan; (3) a preliminary design submittal; (4) an intermediate design submittal; and (5) a pre-final/final design submittal. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

**Sub Task 6.3 Remedial Action Work Plan(s):** If the selected remedy calls for physical remedial measures than the following areas shall be addressed in the Remedial Action Work Plans: Site Access, Air Monitoring, Habitat Monitoring, Operational Hazard Assessment, Health and Safety, Training, Instrument Calibration, Corrective Action, Document Control, Quality Assurance/Quality Control, Field Operations, Materials Storage, Equipment Maintenance, Habitat Restoration, Community Relations, Institutional Control.

**Sub Task 6.4 RA Progress Meetings.** The Respondents shall plan for quarterly progress meetings on the Remedial Action. Upon approval by EPA, these meetings may be reduced, eliminated, or replaced with written reports.

**Sub Task 6.5 Pre-final Construction Inspection:** If applicable, upon the Respondent's certification that the construction is complete, the Respondent

shall conduct an inspection to verify the remedy is operating and functional.

**Sub Task 6.6 Final Construction Inspection (if US EPA and DTSC determine it is necessary).** Upon certification that all items identified during the Pre-Final Construction Inspection have been addressed, Respondents, EPA, and DTSC, if they choose, shall conduct a final Construction Inspection. The purpose of the inspection is to verify that all construction has been completed and the remedy is operating and functional.

**Task 7 Institutional Controls Implementation Plan (Due 90 days after signature of the ROD)** The Respondent shall develop a plan for how necessary land, water, or resource use restrictions, including institutional controls and construction support, will be established, implemented, monitored and reported, and enforced. If certain land use controls are already established, the plan can include those controls, but must describe how they will continue to be maintained, monitored and enforced. The IC Plan shall, include, but not be limited to, a map describing all the real property which are subject to land/water/resource use restrictions, how the restrictions will be implemented, the type of control that will be used, if it's a deed or land restriction, where it will be or is recorded, who is responsible for ensuring the restriction is maintained and enforced, how long the control shall exist, and how the control is monitored. The IC Plan shall also provide a schedule for the establishment of all approved controls.

**Task 8 Operation and Maintenance Plan (Due 90 days after the signing of the ROD):** The Respondent shall document the Operation and Maintenance (O&M) requirements, including periodic inspection of the remediation site, necessary to maintain the remedy and assure it functions properly. The O&M Plan shall also address the necessary monitoring required for each component of the remedy and provide for a monitoring schedule and reporting format.

**Task 9 Remedial Action Completion (After Action Report):**

**Sub Task 9.1 Pre-certification Inspection (Due within 90 days after Respondent concludes that the Remedial Action has been fully performed and the Performance Standards have been attained at an OU):** The Respondent shall schedule and conduct a pre-certification inspection to be attended by Respondent, EPA and DTSC.

**Sub Task 9.2: Remedial Action Completion Report (RACR): (Due within 30 days after the pre-certification inspection, if appropriate).** If, after the pre-certification inspection, the Respondent still believes that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a Remedial Action Completion Report (RACR) requesting certification to EPA for approval, with a copy to DTSC, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the RACR, a professional geophysicist or engineer (as



appropriate based on the type of work performed) registered in the State of California, or if MEC cleanup is only involved, the a professional geophysicist, Senior UXO Supervisor, and Respondent's Project Coordinator shall certify that the Remedial Action has been completed in full satisfaction of the requirements of this AOC.. If appropriate, the written report shall also be stamped and signed by an appropriate professional engineer/geophysicist. The report shall contain the following statement, signed by a responsible corporate official of a Respondent or the Respondent' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Remedial Action Completion signifies the end of all response actions at the OU, by Respondent. In order to document the completion of response actions for an OU, a RACR shall be prepared when Respondent determines Performance Standards and other requirements of the ROD have been achieved. The RACR usually contains ten sections and these sections should be tailored to the site depending upon the type of remediation used. The RACR requires EPA approval The sections in the report are typically as follows:

- I. Introduction
- II. Operable Unit Background
- III. Construction Activities
- IV. Chronology of Events
- V. Performance Standards and Construction Quality Control
- VI. Final Inspection and Certifications
- VII. Operation and Maintenance
- VIII. Summary of Project Costs
- IX. Observations and Lessons Learned
- X. Operable Unit Contact Information

Appendix A. Remedial Action Report

Appendix B Cost and Performance Summary

The OU must meet, at a minimum, all the criteria below to be eligible for Remedial Action Completion:

- Performance Standards specified in all RODs or removals are met;
- Institutional controls are in place and effective;
- All RA Reports, On-Scene Coordinator Reports, and Pollution Reports have been completed;
- All RODs, ROD Amendments, and Explanation of Significant Differences have been completed;

- The site is protective of human health and the environment; and
- The only remaining activities at the site are operation and maintenance, including long-term institutional control implementation, monitoring/reporting, and enforcement, and construction support, if applicable.

If, after completion of the pre-certification inspection and the receipt and review of the RACR, EPA, after reasonable opportunity to review and comment by the DTSC, determines that the Remedial Action or any portion thereof has not been completed in accordance with this AOC or that the Performance Standards have not been achieved, EPA will notify Respondent in writing of the activities that must be undertaken by Respondent pursuant to this AOC to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require Respondent to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the scope of the remedy selected in the ROD. EPA will set forth in the notice a schedule for performance of such activities consistent with the AOC and the SOW or require the Respondent to submit a schedule to EPA and DTSC for approval pursuant to Section XIV (EPA Approval of Plans and Other Submissions).

If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and consultation with DTSC, that the Remedial Action has been performed in accordance with this AOC and that the Performance Standards have been achieved, EPA will so certify in writing to Respondent. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this AOC.

## **Task 10 Removal Action Work Plans and Implementation, if determined necessary.**

**Sub Task 10.1 Implementation of Existing NTCRAs:** Upon approval of US Army, EPA and DTSC, FORA shall implement existing NTCRAs as specified by the SEDR Report and/or subsequent approved deliverables.

**Sub Task 10.2 Development and Approval of Work Plan(s) for New TCRAs and/or NTCRAs:**

**Time-Critical Removal Actions:** In accordance with the AOC, within 30 days after issuance of any Action Memorandum for a Time-Critical Removal Action, Respondent shall submit to EPA for approval, with a copy to DTSC, a Time-Critical Removal Work Plan for performing the Removal Action described in any such Action Memorandum and this SOW. The Time-Critical Removal Work Plan shall provide a description of, and an expeditious schedule for, the actions required by such Action Memorandum. Except as otherwise indicated by EPA, Respondent shall prepare any adjustments to the QAPP and FSP as part of a Time-Critical Removal Work Plan. If EPA determines that it is

appropriate, the plan shall also include contingency planning. Once approved, the Time-Critical Removal Work Plan, the schedule, and any subsequent modifications shall be incorporated into and shall be a requirement of this AOC, and Respondent shall conduct the activities required by the approved Time-Critical Removal Work Plan. Respondent shall not commence implementation of the Time-Critical Removal Work Plan developed hereunder until receiving written EPA approval, in consultation with DTSC.

**Non-Time-Critical Removal Actions - Engineering Evaluation/Cost Analyses (EE/CA):** Unless otherwise directed by EPA, within forty-five (45) days after EPA approval that an NTCRA is warranted, Respondent shall submit to EPA and DTSC an EE/CA Work Plan for the implementation of any such EE/CA, including but not limited to: collection of all data necessary to characterize the area subject to the Non-Time-Critical Removal Action ("NTCRA"); an evaluation of risks; identification and analysis of Removal Action alternatives, and development of sufficient information to enable the selection of appropriate NTCRAs for area(s) of the Site, after consultation with EPA and DTSC. A schedule for development of the EE/CA shall be included in the EE/CA Work Plan, for EPA approval.

**Non-Time-Critical Removal Actions – Design:** In the event that the Army, with EPA approval, issues any Action Memoranda for NTCRAs relating to any area of the Site following Respondent's performance of an EE/CA relating to such area, Respondent shall perform the NTCRA Design in accordance with CERCLA, the NCP, this SOW, and relevant guidance. If approved by EPA, after consultation with DTSC, taking into account the complexity of the Site conditions and the Removal Action, Respondent may prepare a Removal Action Work Plan in lieu of the components of the NTCRA Design and NTCRA Design Work Plan. In such cases, the Removal Action Work Plan must meet the substantive requirements of the NTCRA Design Work Plan and the NTCRA Design. Within sixty (60) days after the Army's issuance of such an Action Memorandum that EPA approves, after consultation with DTSC, Respondent shall submit to EPA and the DTSC a work plan for the design of such NTCRA ("NTCRA Design Work Plan"). The NTCRA Design Work Plan shall provide for design of the NTCRA set forth in the Action Memorandum, and for the achievement of the Performance Standards and other requirements set forth in such Action Memorandum, this AOC, and the SOW. Upon approval by EPA, after consultation with DTSC, the NTCRA Design Work Plan shall be incorporated into and shall be a requirement of this AOC.

Unless EPA determines otherwise, the NTCRA Design Work Plan shall include plans and schedules for implementation of all NTCRA design and pre-design tasks identified in this SOW, including but not limited to plans and schedules for the completion of (A) a design sampling and analysis plan (including but not limited to a NTCRA Design QAPP) in accordance with Section VII (Quality Assurance, Sampling and Data Analysis)); (B) a Health and Safety Plan for field design activities; and (C) a Construction Quality Assurance Plan. The NTCRA

Design Work Plan may also include (D) a treatability study; (E) a Pre-design Work Plan; (F) a preliminary design submittal; (G) an intermediate design submittal; and (H) a pre-final/final design submittal. Upon approval of the NTCRA Design Work Plan by EPA, after consultation with DTSC, and acceptance of the Health and Safety Plan for all field activities, Respondent shall implement the NTCRA Design Work Plan. Respondent shall submit to EPA and the DTSC all schedules, plans, submittals and other deliverables required under the approved NTCRA Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Respondent shall not commence further NTCRA Design activities at the area subject to the NTCRA prior to approval of the NTCRA Design Work Plan.

Respondent shall perform the NTCRA for such area in accordance with CERCLA, the NCP, this SOW, and relevant guidance. Within thirty (30) days after EPA's approval of Respondent's NTCRA Design, Respondent shall submit to EPA and the DTSC a NTCRA Workplan. The NTCRA Workplan shall provide for implementation of the NTCRA set forth in the Action Memorandum and the approved NTCRA Design, and for the achievement of the Performance Standards and other requirements set forth in such Action Memorandum, approved NTCRA Design Workplan, this AOC, and the SOW. Within sixty (60) days after EPA approval of Respondent's NTCRA Workplan for such area, Respondent shall commence performance of all activities detailed in the NTCRA Workplan.

Respondent shall conduct all activities in accordance with the schedule required by the NTCRA Work Plan and this SOW, including but not limited to (A) construction in accordance with specifications; (B) performance of Operation and Maintenance, if applicable; (C) performance of construction quality assurance project plans; (D) performance of sampling plans directed at measuring progress toward meeting performance standards; and (E) performance of contingency plans.

**Pollution Reports (POLREPS):** The Respondent shall prepare and submit Pollution Reports on each TCRA and NTCRA. Guidance for the content of POLREPS is available in Directive 9360.3-03, Superfund Removal Procedures, Removal Response Reporting: POLREP and OSC Reports, June 1994.

**Removal Action Activity Report:** The Report is similar to an On-Scene Coordinator Report and shall include a concise summaries of activities undertaken under CERCLA Response authority (Section 300.165 of the NCP). Within 90 days from completion of any removal action, Respondent shall prepare and submit a final report on each TCRA and NTCRA which summarizes the Removal activities undertaken, effectiveness of the removal activity, problems encountered and lessons learned. Guidance for writing OSC Reports is available in Directive 9360.3-03, Superfund Removal Procedures, Removal Response Reporting: POLREP and OSC Reports, June 1994.

Respondent shall follow the following outline in preparing the Removal Action Activity Report:

Title Page

Executive Summary

I. Summary of Events

A. Site Conditions and Background

1. Initial situation
2. Location of hazardous substance(s)
3. Cause of release or discharge

B. Organization of the Response

C. Injury/Possible Injury to Natural Resources

1. Content and time of notice to natural resource trustee
2. Trustee damage assessment and restoration activities

D. Chronological Narrative of Response Actions

1. Threat abatement actions taken
2. Treatment, disposal/alternative technology approaches pursued
3. Public information and community relations activities
4. Offsite Disposal of Hazardous Substances

II. Effectiveness of Removal Actions

A. Actions Taken by Respondent

B. Actions Taken by State and Local Forces

C. Actions Taken by Federal Agencies and Special Teams (Explosive Ordnance Detachment)

III. Difficulties Encountered

A. Items that Affected the Response

B. Issues of Intergovernmental Coordination