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I hereby certify that this is a true copy of the original thereof.

Cassidy J. Blum
of Attorneys for U.S. EPA.

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

IN THE MATTER OF:

The U.S. Department of Defense,
Elmendorf Air Force Base
Anchorage, Alaska

)
) FEDERAL FACILITY AGREEMENT
) UNDER CERCLA SECTION 120

) Administrative Docket Number:
)
) 1089-07-19-120

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FEDERAL FACILITY AGREEMENT

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21 ATTACHMENT 1--Generic Schedules and Source Distribution

22 Based on the information available to the Parties on

23 the effective date of this Federal Facility Agreement

24 ("Agreement"), and without trial or adjudication of any issues of

25 fact or law, the Parties agree as follows:

1 I. JURISDICTION

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

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

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

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

1 and 6961; Executive Order 12580; the National Environmental
2 Policy Act, 42 U.S.C. § 4321, and the Defense Environmental
3 Restoration Program ("DERP"), 10 U.S.C. § 2701 et seq.;

4 1.4 USAF enters into those portions of this
5 Agreement that relate to interim actions and final remedial
6 actions pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C.
7 § 9620(e)(2); Sections 3004(u) and (v), 3008(h), and 6001 of
8 RCRA, 42 U.S.C. §§ 6934(u) and (v), 6938(h), and 6961; Executive
9 Order 12580; and the DERP.

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

16 17 II. DEFINITIONS

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

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

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

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

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

7 (d) "Authorized representative" may include a
8 Party's contractors or any other designee;

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

13 (f) "Community Relations" is defined in 40 CFR
14 300.5 and shall mean U.S. EPA's program to inform and encourage
15 public participation in the Superfund process and to respond to
16 community concerns. The term "public" includes citizens directly
17 affected by the Site, other interested citizens or parties,
18 organized groups, elected officials, and potentially responsible
19 parties;

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

24 (h) "Feasibility Study" or "FS" is defined in
25 40 CFR 300.5 and shall mean a study undertaken by the lead agency
26 to develop and evaluate options for remedial action. The FS
27

1 emphasizes data analysis and is generally performed concurrently
2 and in an interactive fashion with the Remedial Investigation
3 ("RI"), using data gathered during the RI. The RI data are used
4 to define the objectives of the response action, to develop
5 remedial action alternatives, and to undertake an initial
6 screening and detailed analysis of the alternatives. The term
7 also refers to a report that describes the results of the study;

8 (i) "Interim Actions" or "IAs" are discussed in
9 the Preamble to 40 CFR 300.430(a)(1), 55 Fed. Reg. 8703-8706
10 (March 8, 1990), and shall mean all discrete actions implemented
11 under remedial authority that are taken to prevent or minimize
12 the release of hazardous substances, pollutants, or contaminants
13 so that they do not endanger human health or the environment.

14 Interim actions shall neither be inconsistent with nor preclude
15 implementation of the final expected Site remedy and shall be
16 undertaken in accordance with the NCP, 40 CFR Part 300, as
17 amended, and with the requirements of CERCLA;

18 (j) "Limited Field Investigation" or "LFI" shall
19 mean screening investigations of potential source areas with
20 inadequate data to determine whether these areas pose an
21 unacceptable risk to human health or the environment;

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

25 (l) "Operable Unit" or "OU" is defined in 40 CFR
26 300.5 and is a subdivision of the Site. The cleanup of the Site

1 can be divided into a number of operable units, depending on the
2 complexity of the problems associated with the Site;

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

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

8 (o) "Parties" shall mean USAF, U.S. EPA, and
9 ADEC;

10 (p) "RCRA" shall mean the Resource Conservation
11 and Recovery Act, 42 U.S.C. § 6901 et seq., as amended by the
12 Hazardous and Solid Waste Amendments of 1984 ("HSWA"), Pub. L.
13 98-616;

14 (q) "Record of Decision" or "ROD" is discussed
15 at 40 CFR 300.430 and shall mean the document that summarizes the
16 selection of an interim action or a final remedial action, all
17 facts, analyses of facts, and source-specific policy
18 determinations considered in the course of carrying out
19 activities at the Site;

20 (r) "Remedial Action" or "RA" is defined in
21 40 CFR 300.5 and shall mean those actions consistent with
22 permanent remedy taken instead of, or in addition to, a removal
23 action in the event of a release or threatened release of a
24 hazardous substance into the environment, to prevent or minimize
25 the release of hazardous substances so that they do not migrate
26 to cause substantial danger to present or future public health or

welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative water supplies, any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment and, where appropriate, post-removal site control activities. The term includes the costs of permanent relocation of residents and businesses and community facilities, including the cost of providing "alternative land of equivalent value" to an Indian tribe pursuant to Section 126(b) of CERCLA, 42 U.S.C. § 9626(b), where U.S. EPA determines that, alone or in combination with other measures, such relocation is more cost-effective than, and environmentally preferable to, the transportation, storage, treatment, destruction, or secure disposition off-site of such hazardous substances, or may otherwise be necessary to protect the public health or welfare; the term includes off-site transport and off-site storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials. For the purpose of the NCP, the term also includes enforcement activities related thereto;

(s) "Remedial Design" or "RD" is defined in 40 CFR 300.5 and shall mean the technical analysis and procedures that follow the selection of remedy for a Site and precede implementation of the Remedial Action ("RA");

(t) "Remedial Investigation" or "RI" shall mean a process undertaken by the lead agency to determine the nature and extent of the problem presented by the release. The RI emphasizes data collection and site characterization, and is generally performed concurrently and in an interactive fashion with the Feasibility Study ("FS"). The RI includes sampling and monitoring, as necessary, and includes the gathering of sufficient information to determine the necessity for remedial action and to support the evaluation of remedial alternatives;

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

(v) "Removal" is defined by Section 311(a)(8) of the Clean Water Act ("CWA"), 33 U.S.C. 1321(a)(8), and shall mean the removal of oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health, welfare, or to the environment. As defined by Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), removal shall mean the cleanup or

1 removal of released hazardous substances from the environment;
2 such actions as may be necessary in the event of the threat of
3 release of hazardous substances into the environment; such
4 actions as may be necessary to monitor, assess, and evaluate the
5 release or threat of release of hazardous substances; the
6 disposal of removed material; or the taking of such other actions
7 as may be necessary to prevent, minimize, or mitigate damage to
8 the public health or welfare or to the environment that may
9 otherwise result from a release or threat of release. The term
10 includes, in addition, without being limited to, security fencing
11 or other measures to limit access, provision of alternative water
12 supplies, temporary evacuation and housing of threatened
13 individuals not otherwise provided for, action taken under
14 Section 104(b) of CERCLA, 42 U.S.C. § 9604(b), post-removal site
15 control, where appropriate, and any emergency assistance that may
16 be provided under the Disaster Relief Act of 1974. For the
17 purpose of the NCP, the term also includes enforcement activities
18 related thereto;

19 (w) "Response" is defined by Section 101(25) of
20 CERCLA, 42 U.S.C. § 9601(25), and 40 CFR 300.5, and shall mean
21 removal, remedy, or remedial action, including enforcement
22 activities related thereto;

23 (x) "Scope of Work" shall mean the planning
24 document prepared by the USAF, in consultation with U.S. EPA and
25 ADEC, and in accordance with OSWER Directive 9835.8 that
26 identifies the source-specific objectives and general management

1 approach for the RI/FS process for the Site and/or operable
2 unit(s);

3 (y) "Site" shall mean the areal extent of
4 contamination and shall include sources of contamination subject
5 to this Agreement at the Elmendorf ("Elmendorf AFB"), which
6 occupies approximately thirteen thousand one hundred and thirty
7 (13,130) acres, bordered by the Municipality of Anchorage,
8 Alaska, to the south. The Site includes any off-base area(s)
9 contaminated by the migration of hazardous substances,
10 pollutants, or contaminants from Elmendorf AFB;

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

14 (aa) "USAF" shall mean the United States Air
15 Force and, to the extent necessary to effectuate the terms of
16 this Agreement (including appropriations and congressional
17 reporting requirements), its employees, contractors, agents,
18 successors, assigns, and authorized representatives;

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

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

1 III. PURPOSE

2 3.1 The general purposes of this Agreement are
3 to:

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

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

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

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

18 (a) Identify removal and interim action ("IA")
19 alternatives that are appropriate at the Site prior to the
20 implementation of final remedial action(s) for the Site. IA
21 alternatives shall be identified and proposed to the Parties as
22 early as possible prior to formal proposal of IA(s) to U.S. EPA
23 and ADEC pursuant to CERCLA and applicable state law. This
24 process is designed to promote cooperation among the Parties in
25 identifying IA alternatives prior to selection of final IA(s);

26 (b) Establish requirements for the performance of an
27

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

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

15 (d) Implement the selected interim and final remedial
16 action(s) in accordance with CERCLA and applicable state law, and
17 meet the requirements of Section 120(e)(2) of CERCLA, 42 U.S.C.
18 § 9620(e)(2), for an interagency agreement among the Parties;

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

22 (f) Coordinate response actions at the Site with the
23 mission and support activities at Elmendorf AFB;

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

26 (h) Provide for ADEC involvement in the initiation,
27

1 development, selection, and enforcement of remedial actions to be
2 undertaken at Elmendorf AFB, including the review of all
3 applicable data as it becomes available, and the development of
4 studies, reports, and actions plans; and to identify and
5 integrate state ARARs into the remedial action process; and

6 (i) Provide for operation and maintenance of any
7 remedial action selected and implemented pursuant to this
8 Agreement.

9
10 IV. PARTIES BOUND

11 4.1 This Agreement shall apply to and be binding
12 upon USAF, U.S. EPA, and ADEC. This Agreement shall also apply
13 to subsequent owners and operators of any portion of the Site.

14 USAF agrees to include notice of this Agreement in any document
15 transferring ownership of property owned by the United States to
16 any subsequent owners and operators of any portion of the Site in
17 accordance with Section 120(h) of CERCLA, 42 U.S.C. § 120(h),
18 40 CFR §§ 264.119 and 264.120, and Part XXXII of this Agreement.

19 4.2 USAF will notify U.S. EPA and ADEC of the
20 identity of its contractors performing work under this Agreement.
21 USAF shall provide copies of this Agreement to all contractors
22 performing work under this Agreement. USAF shall ensure that
23 whenever an Architect-Engineer firm is selected by negotiated
24 procurement specifically to perform work under this Agreement,
25 U.S. EPA and ADEC shall be invited to review the Standard Forms
26 254 (Architect-Engineer and Related Services Questionnaire) and

1 255 (Architect- Engineer and Related Services Questionnaire for
2 Specific Contract) concerning prospective Architect-Engineer
3 firms before the Preselection Board prepares its preselection
4 list.

5 4.3 Under no condition shall a Party under this
6 Agreement utilize the services of any consultant, prime
7 contractor, or subcontractor who has been suspended, debarred, or
8 voluntarily excluded within the scope of 40 CFR Part 32 or under
9 the Federal Acquisition Regulation ("FAR") at 48 CFR Subpart 9.4
10 et seq.

11 4.4 Each undersigned representative of a Party
12 certifies that he or she is fully authorized to enter into the
13 terms and conditions of this Agreement and to legally bind such
14 Party to this Agreement.

15
16 V. RCRA-CERCLA INTEGRATION

17 5.1 The Parties intend to integrate USAF's
18 CERCLA response obligations and RCRA corrective action
19 obligations that relate to the release(s) of hazardous
20 substances, hazardous wastes, pollutants, or contaminants covered
21 by this Agreement into this comprehensive Agreement. Therefore,
22 the Parties intend that activities covered by this Agreement will
23 achieve compliance with CERCLA, 42 U.S.C. 9601 et seq.; satisfy
24 the corrective action requirements of Sections 3004(u) and (v) of
25 RCRA, 42 U.S.C. § 6924(u) and (v), for a RCRA permit, and Section
26 3008(h), 42 U.S.C. § 6928(h), for interim status facilities; and

1 meet or exceed all applicable or relevant and appropriate federal
2 and state laws and regulations, to the extent required by Section
3 121 of CERCLA, 42 U.S.C. § 9621, and applicable state law.

4 5.2 Based upon the foregoing, the Parties intend
5 that any remedial action selected, implemented, and completed
6 under this Agreement will be protective of human health and the
7 environment such that remediation of releases covered by this
8 Agreement shall obviate the need for further corrective action
9 under RCRA (i.e., no further corrective action shall be
10 required). The Parties agree that with respect to releases of
11 hazardous waste covered by this Agreement, RCRA shall be
12 considered an ARAR pursuant to Section 121 of CERCLA, 42 U.S.C.
13 § 9621. Releases or other hazardous waste activities not covered
14 by this Agreement remain subject to all applicable state and
15 federal environmental requirements.

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

1 schedules), of this Agreement into such permit. With respect to
2 those portions of this Agreement incorporated by reference into
3 permits, the Parties intend that judicial review of the
4 incorporated portions shall, to the extent authorized by law, be
5 reviewed only under the provisions of CERCLA.

6 5.4. Nothing in this Agreement shall alter either
7 USAF's authority or ADEC's rights with respect to removal actions
8 conducted pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

9
10 VI. FINDINGS OF FACT

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

17 6.2 Elmendorf AFB covers thirteen thousand one
18 hundred and thirty (13,130) acres in the municipality of
19 Anchorage, Alaska.

20 6.3 The major sources of hazardous waste on the
21 base include industrial shops, fire fighting training activities,
22 fuels management and landfill practices.

23 6.4 Elmendorf AFB was proposed for inclusion on
24 the CERCLA National Priorities List ("NPL") in July 1989, and
25 listed as final in August 1990. 55 Fed. Reg. 35502.
26 (August 30, 1990).

VII. REGULATORY DETERMINATIONS

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

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

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

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

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

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

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

VIII. SCOPE OF AGREEMENT

A. Work to be Performed

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

8.2 USAF will conduct and finance the cost of the RI/FS consultant studies in accordance with the RI/FS Management Plan and implement the RD/RA at the Site in accordance with the final RD and the RA Work Plan, and all relevant statutes and regulations.

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

8.4 USAF shall perform the tasks and submit plans, reports, and other documents as required by the Plans.

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

1 Part XXXIII of this Agreement.

2 B. Limited Field Investigations

3 8.6 USAF shall develop and implement Limited
4 Field Investigations ("LFI") as described in Attachment 1.

5 C. Interim Actions

6 8.7 USAF shall develop and implement Interim
7 Actions ("IAS") that shall be set forth in an RI/FS Management
8 Plan, where appropriate, and/or modified pursuant to Part XX.
9 The IA(s) shall be consistent with the purposes set forth in Part
10 III of this Agreement.

11 D. Remedial Investigations

12 8.8 USAF shall develop, implement, and report
13 upon remedial investigations of the Site. These investigations
14 shall comply with applicable requirements of CERCLA; the NCP;
15 and, to the extent set forth in this Agreement, pertinent written
16 guidance and U.S. EPA policy.

17 E. Feasibility Studies

18 8.9 USAF shall design, propose, undertake, and
19 report upon feasibility studies for the Site. These studies
20 shall comply with applicable requirements of CERCLA; the NCP;
21 and, to the extent set forth in this Agreement, pertinent written
22 guidance and U.S. EPA policy.

23 F. Remedial Actions

24 8.10 USAF shall develop and submit its proposed
25 RA alternative. ADEC may recommend to U.S. EPA the RA
26 alternative it deems appropriate. U.S. EPA and USAF, in

1 consultation with ADEC, shall make final selection of the RA(s)
2 for each OU. In the event of disagreement, U.S. EPA shall make
3 final selection of the RA(s). The selection of RA(s) by the
4 U.S. EPA Administrator shall be final, subject to Part XXXVI.

5 G. Technical Review Committee

6 8.11 Pursuant to 10 U.S.C. § 2705(c), USAF shall
7 establish a Technical Review Committee ("TRC").

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

13
14 IX. PROJECT MANAGERS

15 9.1 U.S. EPA, ADEC, and USAF shall each
16 designate a Project Manager and Alternate (hereinafter jointly
17 referred to as Project Manager) for the purpose of overseeing the
18 implementation of this Agreement. Within five (5) days of the
19 effective date of this Agreement, each Party shall notify the
20 other Parties of the name and address of its Project Manager.
21 Any Party may change its designated Project Manager by notifying
22 the other Parties, in writing, within five (5) days of the
23 change. Communications between the Parties concerning the terms
24 and conditions of this Agreement shall be directed through the
25 Project Managers as set forth in Part XIV of this Agreement. Each
26 Project Manager shall be responsible for assuring that all

1 communications from the other Project Managers are appropriately
2 disseminated and processed by their respective Agencies.

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

16 9.3 Each Project Manager shall be, or rely on, a
17 qualified and competent person with experience in hazardous
18 substances site investigations and remedial actions and having
19 the skills necessary to implement this Agreement.

20 9.4 The Project Managers may, in accordance with
21 Part XX(J) of this Agreement, make modifications to the work to
22 be performed pursuant to this Agreement, or in techniques,
23 procedures, or designs utilized in carrying out this Agreement.
24 Any minor field modification proposed by any Party pursuant to
25 this Part must be approved orally by all Parties' Project
26 Managers to be effective. The USAF Project Manager will make a

1 contemporaneous record of such modification, which shall be
2 included in the next progress report. Even after approval of the
3 proposed modification, no Project Manager will require
4 implementation by a government contractor without approval of the
5 appropriate Government Contracting Officer.

6 9.5 The Project Manager for USAF shall be
7 responsible for day-to-day field activities at the Site, and
8 shall have all the authority vested in the Remedial Project
9 Manager by the NCP, 40 CFR Part 300. The Project Manager for
10 USAF shall be physically present at the Site, or reasonably
11 available to supervise work, during all hours of work performed
12 at the Site pursuant to this Agreement.

13 9.6 The Project Managers shall be reasonably
14 available to consult on work performed pursuant to this Agreement
15 and shall make themselves available to each other for the
16 pendency of this Agreement. The absence of USAF, U.S. EPA, or
17 ADEC Project managers from the Site shall not be cause for work
18 stoppage or delay.

19
20 X. ACCESS

21 10.1 Without limitation on any authority
22 conferred on them by law, U.S. EPA, ADEC, and/or their authorized
23 representatives, shall have authority to enter the Site at all
24 reasonable times for the purposes of, among other things: (1)
25 inspecting records, operating logs, contracts, and other
26 documents relevant to implementation of this Agreement;

1 (2) reviewing the progress of USAF, its response action
2 contractors, or agents in implementing this Agreement;
3 (3) conducting such tests as ADEC and U.S. EPA Project Managers
4 deem necessary; and (4) verifying the data submitted to U.S. EPA
5 and ADEC by USAF. USAF shall honor all requests for such access
6 by U.S. EPA and ADEC, subject only to any statutory or regulatory
7 requirement as may be necessary to protect national security or
8 mission-essential activities. In the event that access requested
9 by either U.S. EPA or ADEC is denied by USAF, USAF shall, within
10 forty-eight (48) hours, provide a written explanation of the
11 reason for the denial, including reference to the applicable
12 regulations, and, upon request, a copy of such regulations. USAF
13 shall expeditiously make alternative arrangements for
14 accommodating the requested access. USAF shall not restrict the
15 access rights of U.S. EPA or ADEC to any greater extent than USAF
16 restricts the access rights of its contractors performing work
17 pursuant to this Agreement.

18 10.2 To the extent that this Agreement requires
19 access to property not owned and controlled by USAF, USAF shall
20 exercise its authorities to obtain access pursuant to Section
21 104(e) of CERCLA, 42 U.S.C. § 9604(e), and will make every
22 reasonable effort to obtain signed access agreements for itself,
23 its contractors, agents, U.S. EPA, and ADEC, and provide U.S. EPA
24 and ADEC with copies of such agreements. With respect to
25 non-USAF property upon which monitoring wells, pumping wells,
26 treatment facilities, or other response actions are to be

1 located, the access agreements should provide that no conveyance
2 of title, easement, or other interest in the property shall be
3 consummated without provisions for the continued operation of
4 such wells, treatment facilities, or other response actions on
5 the property. The access agreements should also provide to the
6 extent practicable that the owners of any property where
7 monitoring wells, pumping wells, treatment facilities, or other
8 response actions are located shall notify the USAF, ADEC, and the
9 U.S. EPA by certified mail, at least thirty (30) days prior to
10 any conveyance, of the property owner's intent to convey any
11 interest in the property and of the provisions made for the
12 continued operation of the monitoring wells, treatment
13 facilities, or other response actions installed pursuant to this
14 Agreement.

15 10.3 Nothing in this Part shall be construed to
16 limit the discretion of USAF to exercise the authority of the
17 President under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), as
18 delegated by Executive Order 12580.

19
20 XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

21 11.1 The Parties shall make available to each
22 other quality-assured results of sampling, tests, or other data
23 generated by or on behalf of any Party under this Agreement
24 within sixty (60) days of collection or field testing. If
25 quality assurance is not completed within sixty (60) days,
26 preliminary data or results shall be made available within the

sixty (60) day period and quality assured data or results shall be submitted as they become available but in no event later than one hundred (100) days after the sampling or testing. These periods can be extended upon mutual agreement among the Project Managers.

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

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

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

XII. QUALITY ASSURANCE

12.1 Throughout all sample collection, transportation, and analyses activities conducted in connection with this Agreement, USAF shall use procedures for quality

1 assurance, and for quality control, and for chain-of-custody in
2 accordance with approved U.S. EPA methods, including "Interim
3 Guidelines and Specifications for Preparing Quality Assurance
4 Project Plans," QAMS-005/80, "Data Quality Objective Guidance,"
5 U.S. EPA 1540/687/003 and 004, and subsequent amendments to such
6 guidelines. USAF shall require each laboratory it uses to
7 perform any analysis according to approved U.S. EPA methods and
8 to demonstrate a quality assurance/quality control program
9 equivalent to that followed by U.S. EPA and consistent with
10 U.S. EPA document QAMS-005/80.

12 XIII. REPORTING

13 13.1 USAF shall submit to the other Parties
14 quarterly written progress reports. The reports will include,
15 but not be limited to, the following information:

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

21 (b) An outline of the planned activities for the
22 upcoming quarter;

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

25 (d) The status of efforts to obtain
26 rights-of-entry necessary for monitoring and well installation

1 off-Base; and

2 (e) The status of any other activities proposed
3 or underway that may affect any phase of the activities described
4 in the Attachments.

5 13.2 The quarterly written progress reports shall
6 be submitted on the tenth (10th) day of each calendar quarter
7 following the effective date of this Agreement.

8
9 XIV. NOTICE TO THE PARTIES

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

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

16
17 (A) For the USAF:
21 CSG/DEEV
22 22040 Maple Street
23 Elmendorf AFB, Alaska 99506-3240
24 (907) 552-4157/4618

25 (B) For U.S. EPA:
26 U.S. Environmental Protection Agency
27 Alaska Operations Office
28 222 W. 7th Avenue, Box 19
Anchorage, Alaska 99513
(907) 271-5083
and

U.S. Environmental Protection Agency
Federal Facility Section
1200 Sixth Avenue, HW-074
Seattle, Washington 98101
(206) 442-6642

1 (C) For the State of Alaska:

2 Alaska State Department of
3 Environmental Conservation
4 South Central Office
5 Contaminated Site Program
6 3601 C Street, Suite 1334
7 Anchorage, Alaska 99503
8 (907) 563-6529

9 XV. PERMITS

10 15.1 Nothing in this Agreement relieves USAF from
11 the requirement of obtaining an otherwise applicable permit or
12 other authorization whenever it proposes a response action
13 involving the shipment or movement off-site of a hazardous
14 substance, or undertakes any activities not directly related to
15 response actions at the Site.

16 XVI. RETENTION OF RECORDS

17 16.1 The Parties shall preserve for a minimum of
18 ten (10) years after termination of this Agreement all records
19 and documents in their possession or in the possession of their
20 divisions, employees, agents, accountants, contractors, or
21 attorneys that relate to the presence of hazardous wastes,
22 hazardous substances, pollutants, and contaminants at the Site or
23 to the implementation of this Agreement, despite any document
24 retention policy to the contrary. After this ten (10) year
25 period, the Parties shall notify one another at least forty-five
26 (45) days prior to destruction or disposal of any such documents
27 or records. Upon request by any Party, all Parties shall make
28 available such records or documents, or true copies to one

1 another. Documents may be converted to permanent electronic or
2 optical media and paper originals disposed of after
3 forty-five (45) days notification to the other Parties.
4

5 XVII. PUBLIC PARTICIPATION AND ADMINISTRATIVE RECORD

6 17.1 The Parties agree that this Agreement and
7 any subsequent plan(s) for remedial action at the Site arising
8 out of this Agreement shall comply with the administrative record
9 and public participation requirements of CERCLA, including
10 Section 117 of SARA, the NCP, and U.S. EPA guidance on public
11 participation and administrative records.

12 17.2 USAF shall develop and implement a Community
13 Relations Plan ("CRP") that responds to the need for an
14 interactive relationship with all interested community elements,
15 both on- and off-Site, regarding activities and elements of work
16 undertaken by USAF. USAF agrees to develop and implement the CRP
17 in a manner consistent with Section 117 of SARA, 42 U.S.C.
18 § 9613(k), the NCP, and U.S. EPA guidance.

19 17.3 USAF shall establish and maintain an
20 administrative record at or near Elmendorf AFB in accordance with
21 Section 113(k) of CERCLA, 42 U.S.C. § 9613(k). The
22 administrative record shall be established and maintained in
23 accordance with U.S. EPA policy and guidelines. A copy of each
24 document included in the administrative record developed by USAF
25 shall expeditiously be provided to ADEC and U.S. EPA upon written
26 request. USAF shall provide to U.S. EPA and ADEC an Index of

documents in the administrative record on a quarterly basis, if changes have occurred.

XVIII. CREATION OF DANGER/EMERGENCY ACTION

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

18.2 In the event USAF determines that activities undertaken in furtherance of this Agreement or any other circumstances or activities at the Site are creating an imminent and substantial endangerment to the health or welfare of the people on the Site or in the surrounding area or to the environment, USAF may stop implementation of this Agreement for such periods of time necessary for U.S. EPA and ADEC to evaluate the situation and determine whether USAF should proceed with implementation of the Agreement or whether the work stoppage should be continued until the danger is abated. USAF shall notify the other Parties as soon as is possible, but not later

1 than twenty-four (24) hours after such stoppage of work, and
2 provide U.S. EPA and ADEC with documentation of its analysis in
3 reaching this determination. If, after consultation with ADEC,
4 U.S. EPA disagrees with the USAF determination, it may require
5 USAF to resume implementation of this Agreement.

6 18.3 If U.S. EPA concurs in the work stoppage by
7 USAF, or if U.S. EPA or ADEC require or order a work stoppage,
8 USAF's obligations shall be suspended and the time periods for
9 performance of that work, as well as the time period for any
10 other work dependent upon the work that was stopped, shall be
11 extended, pursuant to Part XXV of this Agreement. Any
12 disagreements pursuant to this Part shall be resolved through the
13 dispute resolution procedures in Part XXI of the Agreement by
14 referral directly to the DRC.

15
16 XIX. FIVE YEAR REVIEW

17 19.1 If a remedial action is selected that
18 results in any hazardous substances, pollutants, or contaminants
19 remaining at the Site, the Parties shall review such remedial
20 action no less often than each five (5) years after the
21 initiation of such remedial action to assure that human health
22 and the environment are being protected by the remedial action
23 being implemented. The U.S. EPA Project Manager and the ADEC
24 Project Manager shall advise the USAF Project Manager of their
25 findings in this regard. If any Party determines that additional
26 action is required, the Agreement may be amended pursuant to Part

1 XXXVIII. If the Parties are unable to agree on the need to amend
2 this Agreement, dispute resolution under Part XXI shall be
3 available to any Party.
4

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

6 A. Applicability

7 20.1 The provisions of this Part establish the
8 procedures that shall be used by the Parties to provide each
9 other with appropriate notice, review, comment, and response to
10 comments regarding RI/FS and RD/RA documents, specified herein as
11 either primary or secondary documents. In accordance with
12 Section 120 of CERCLA, 42 U.S.C. § 9620, and 10 U.S.C. § 2705,
13 USAF will normally be responsible for issuing primary and
14 secondary documents to U.S. EPA and ADEC. As of the effective
15 date of this Agreement, all draft and draft final documents for
16 any deliverable document identified herein shall be prepared,
17 distributed, and subject to dispute in accordance with Paragraphs
18 20.3 through 20.24.

19 20.2 The designation of a document as "draft" or
20 "final" is solely for purposes of consultation with U.S. EPA and
21 ADEC in accordance with this Part. Such designation does not
22 affect the obligation of the Parties to issue documents, which
23 may be referred to herein as "final," to the public for review
24 and comment as appropriate and as required by law.

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

26 20.3 Primary documents include those documents
27

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

17 20.4 Secondary documents include those documents
18 that are discrete portions of the primary documents and are
19 typically input or feeder documents. Secondary documents are
20 issued by USAF in draft subject to review and comment by U.S. EPA
21 and ADEC. Although USAF will respond to comments received, the
22 draft secondary documents may be finalized in the context of the
23 corresponding primary documents. A secondary document may be
24 disputed only at the time the corresponding draft final primary
25 document is issued.

1 C. Primary Documents

2 20.5 USAF shall complete and transmit draft
3 documents for the following primary documents to U.S. EPA and
4 ADEC for review and comment in accordance with the provisions of
5 this Part:

- 6 (a) Base-wide Investigation Work Plan
7 (b) RI/FS Management Plan, including Work Plan, Field
8 Sampling Plan ("FSP"), Quality Assurance Project
9 Plan ("QAPP"), and Treatability Study Work Plan
10 (c) Community Relations Plan ("CRP") [Base-wide]
11 (d) RI/FS Report (including RI, Baseline Risk
12 Assessment, FS)
13 (e) ROD(s)
14 (f) Remedial Design/Remedial Action ("RD/RA") Scope
15 of Work, including
16 - Critical path schedule for RD/RA and
17 start of RA work element
18 - Funding needs and availability for
19 RD/RA
20 - Description of each remedial work
21 element
22 - CRP Amendment
23 (g) Remedial Design
24 (h) Remedial Action Work Plan

25 20.6 Only the draft final documents for the
26 primary documents identified above shall be subject to dispute
27

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

9 D. Secondary Documents

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

- 14 (a) LFI Work Plan
- 15 (b) LFI Report
- 16 (c) Conceptual Site Model/Data Quality Objectives
- 17 (d) ARARs Evaluation
- 18 (e) Health and Safety Plan ("HSP")
- 19 (f) Base-Wide Background Sampling Plan
- 20 (g) Base-Wide Ecological Survey
- 21 (h) RI Report
- 22 (i) Baseline Risk Assessment
- 23 (j) Proposed Plan
- 24 (k) 35% Remedial Design
- 25 (l) 60% Remedial Design

26 20.8 Although U.S. EPA and ADEC may comment on

1 the draft documents for the secondary documents listed above,
2 such documents shall not be subject to dispute resolution except
3 as provided by Paragraph 20.4. Target dates shall be established
4 pursuant to Part XXIV of this Agreement for the completion and
5 transmission of draft secondary documents.

6 E. Meetings of the Project Managers on Development of Reports

7 20.9 The Project Managers shall meet
8 approximately every thirty (30) days, except as otherwise agreed
9 by the Parties, to review and discuss the progress of work being
10 performed at the Site on the primary and secondary documents.
11 Prior to preparing any draft report specified in Paragraphs 20.5
12 and 20.7 above, the Project Managers shall meet to discuss the
13 report results in an effort to reach a common understanding, to
14 the maximum extent practicable, with respect to the results to be
15 presented in the draft report. Prior to the development of
16 either a Statement of Work, Management Plan, or Sampling and
17 Analysis Plan, the Project Managers shall meet to develop a Scope
18 of Work that will be used when preparing a Sampling and Analysis
19 Plan or Management Plan for a remedial site inspection or
20 investigation.

21 F. Identification and Determination of Potential ARARs

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

determinations shall be prepared in accordance with Section 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), the NCP, and pertinent written guidance issued by U.S. EPA and ADEC, that is not inconsistent with CERCLA and the NCP.

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

G. Review and Comment on Draft Documents

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

20.13 Unless the Parties mutually agree to another time period, all draft documents shall be subject to a thirty (30) day period for review and comment. Review of any document by U.S. EPA or ADEC may concern all aspects of the report (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and

1 consistency with CERCLA, the NCP, applicable state laws, and any
2 pertinent guidance or policy issued by U.S. EPA or ADEC.
3 Comments by U.S. EPA and ADEC shall be provided with adequate
4 specificity so that USAF may respond to the comments and, if
5 appropriate, make changes to the draft document. Comments shall
6 refer to any pertinent sources of authority or references upon
7 which the comments are based, and, upon request of USAF, U.S. EPA
8 or ADEC shall provide a copy of the cited authority or reference.
9 In unusual circumstances, U.S. EPA and ADEC may extend the thirty
10 (30) day comment period for an additional twenty (20) days by
11 written notice to USAF prior to the end of the thirty (30) day
12 period. On or before the close of the comment period, U.S. EPA
13 and ADEC shall transmit by next day mail their written comments
14 to USAF.

15 20.14 Representatives of USAF shall make
16 themselves readily available to U.S. EPA and ADEC during the
17 comment period for purposes of informally responding to questions
18 and comments on draft documents. Oral comments made during such
19 discussions need not be the subject of a written response by USAF
20 on the close of the comment period.

21 20.15 In commenting on a draft document that
22 contains a proposed ARAR determination, U.S. EPA and ADEC shall
23 include a reasoned statement of whether they object to any
24 portion of the proposed ARAR determination. To the extent that
25 U.S. EPA or ADEC do object, they shall explain the basis for
26 their objection in detail and shall identify any ARARs that they

1 believe were not properly addressed in the proposed ARAR
2 determination.

3 20.16 Following the close of the comment period
4 for a draft document, USAF shall give full consideration to all
5 written comments on the draft document submitted during the
6 comment period. Within thirty (30) days of the close of the
7 comment period on a draft secondary document, USAF shall transmit
8 to U.S. EPA and ADEC its written response to comments received
9 within the comment period. Within thirty (30) days of the close
10 of the comment period on a draft primary document, USAF shall
11 transmit to U.S. EPA and ADEC a draft final primary document that
12 shall include USAF's response to all written comments received
13 within the comment period. While the resulting draft final
14 document shall be the responsibility of USAF, it shall be the
15 product of consensus to the maximum extent possible.

16 20.17 USAF may extend the thirty (30) day period
17 for either responding to comments on a draft document or for
18 issuing the draft final primary document for an additional twenty
19 (20) days by providing notice to U.S. EPA and ADEC. In
20 appropriate circumstances, this time period may be further
21 extended in accordance with Part XXV.

22 H. Availability of Dispute Resolution for
23 Draft Final Primary Documents

24 20.18 Project Managers may agree to extend by
25 fifteen (15) days the period for finalization of the draft final
26 primary documents provided in Paragraph 20.3 as necessary for
27 discussion and modification of draft final primary documents as

1 necessary to resolve potential disputes.

2 20.19 Dispute resolution shall be available to the
3 Parties for draft final primary documents as set forth in Part
4 XXI.

5 20.20 When dispute resolution is invoked on a
6 draft final primary document, work may be stopped in accordance
7 with the procedures set forth in Part XXI.

8 I. Finalization of Documents

9 20.21 The draft final primary document shall serve
10 as the final primary document if no Party invokes dispute
11 resolution regarding the document or, if invoked, at completion
12 of the dispute resolution process should USAF's position be
13 sustained. If USAF's determination is not sustained in the
14 dispute resolution process, USAF shall prepare, within not more
15 than thirty-five (35) days, a revision of the draft final
16 document that conforms to the results of dispute resolution. In
17 appropriate circumstances, the time period for this revision
18 process may be extended in accordance with Part XXV hereof.

19 J. Subsequent Modifications

20 20.22 Following finalization of any primary
21 document pursuant to Paragraph 20.20 above, any Party may seek to
22 modify the document, including seeking additional field work,
23 pilot studies, computer modeling, or other supporting technical
24 work, only as provided in Paragraphs 20.22 and 20.23.

25 20.23 A Party may seek to modify a document,
26 including Attachment 1, after finalization if it determines,

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

8 20.24 In the event that a consensus among the
9 Parties is reached, the modification shall be incorporated by
10 reference and become fully enforceable under the Agreement. In
11 the event that a consensus is not reached by the Project Managers
12 on the need for a modification, any Party may invoke dispute
13 resolution as provided in Part XXI to determine if such
14 modification shall be conducted. Modification of a document
15 shall be required only upon a showing that: (1) the requested
16 modification is based on significant new information, and (2) the
17 requested modification could be of significant assistance in
18 evaluating effects on human health or the environment, in
19 evaluating the selection of remedial alternatives, or in
20 protecting human health and the environment.

21 20.25 Nothing in this Part shall alter U.S. EPA's
22 or ADEC's ability to request the performance of additional work
23 that was not contemplated by this Agreement. USAF's obligation
24 to perform such work must be established by either a modification
25 of a report or document or by amendment to this Agreement.

XXI. RESOLUTION OF DISPUTES

21.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Part shall apply. All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Part shall be implemented to resolve a dispute.

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

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

21.4 The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate

1 one individual and an alternate to serve on the DRC. The
2 individuals designated to serve on the DRC shall be employed at
3 the policy level (SES or equivalent) or be delegated the
4 authority to participate on the DRC for the purposes of dispute
5 resolution under this Agreement. The U.S. EPA representative on
6 the DRC is the Hazardous Waste Division Director ("Division
7 Director") of U.S. EPA's Region 10. USAF's designated member is
8 the Vice Commander, 11th Air Force (PACAF). ADEC's designated
9 member is the Section Chief of the Contaminated Site Section
10 ("Section Chief"), Alaska Department of Environmental
11 Conservation. Written notice of any delegation of authority from
12 a Party's designated representative on the DRC shall be provided
13 to all other Parties.

14 21.5 Following elevation of a dispute to the DRC,
15 the DRC shall have twenty-one (21) days to unanimously resolve
16 the dispute and issue a written decision. If the DRC is unable to
17 unanimously resolve the dispute within this twenty-one (21) day
18 period, the written statement of dispute shall be forwarded to
19 the Senior Executive Committee (SEC) for resolution within seven
20 (7) days after the close of the twenty-one (21) day resolution
21 period.

22 21.6 The SEC will serve as the forum for
23 resolution of disputes for which agreement has not been reached
24 by the DRC. The U.S. EPA representative on the SEC is the
25 Regional Administrator of U.S. EPA's Region 10. USAF's
26 representative on the SEC is the Deputy Assistant Secretary of
27

1 the Air Force for Environment, Safety and Occupational Health.
2 ADEC's representative on the SEC is the Director, Division of
3 Spill Prevention and Response, Alaska Department of Environmental
4 Conservation. The SEC members shall, as appropriate, confer,
5 meet, and exert their best efforts to resolve the dispute and
6 issue a written decision. If unanimous resolution of the dispute
7 is not reached within twenty-one (21) days, U.S. EPA's Regional
8 Administrator shall issue a written position on the dispute.
9 USAF or ADEC may, within fourteen (14) days of the Regional
10 Administrator's issuance of U.S. EPA's position, issue a written
11 notice elevating the dispute to the Administrator of U.S. EPA for
12 resolution in accordance with all applicable laws and procedures.
13 In the event that USAF or ADEC elect not to elevate the dispute
14 to the Administrator within the designated fourteen (14) day
15 escalation period, USAF and/or ADEC shall be deemed to have
16 agreed with the Regional Administrator's written position with
17 respect to the dispute.

18 21.7 Upon escalation of a dispute to the
19 Administrator of U.S. EPA pursuant to Paragraph 21.6, the
20 Administrator will review and resolve the dispute within
21 twenty-one (21) days. Upon request, and prior to resolving the
22 dispute, the U.S. EPA Administrator shall meet and confer with
23 USAF's Secretariat Representative and the Commissioner of ADEC or
24 the Commissioner's representative to discuss the issue(s) under
25 dispute. The Administrator will provide notice to all Parties of
26 any Party's request to meet or confer with respect to any such

1 dispute and will provide an adequate opportunity for all Parties
2 to participate in any meeting or conference convened to resolve
3 such dispute. Upon resolution, the Administrator shall provide
4 USAF and ADEC with a written final decision setting forth
5 resolution of the dispute. The duties of the Administrator set
6 forth in this Part shall not be delegated.

7 21.8 The pendency of any dispute under this Part
8 shall not affect USAF's responsibility for timely performance of
9 the work required by this Agreement, except that the time period
10 for completion of work affected by such dispute shall be extended
11 for a period of time usually not to exceed the actual time taken
12 to resolve any good faith dispute in accordance with the
13 procedures specified herein. All elements of the work required
14 by this Agreement that are not affected by the dispute shall
15 continue and be completed in accordance with the applicable
16 schedule.

17 21.9 When dispute resolution is in progress, work
18 affected by the dispute will immediately be discontinued if the
19 Division Director for U.S. EPA's Region 10 or the ADEC Section
20 Chief request, in writing, that work related to the dispute be
21 stopped because, in U.S. EPA's or ADEC's opinion, such work is
22 inadequate or defective, and such inadequacy or defect is likely
23 to yield an adverse effect on human health or the environment, or
24 is likely to have a substantial adverse effect on the remedy
25 selection or implementation process. To the extent possible,
26 U.S. EPA and ADEC shall consult with all Parties prior to

1 initiating a work stoppage request. After stoppage of work, if
2 any Party believes that the work stoppage is inappropriate or may
3 have potential significant adverse impacts, that Party may meet
4 with the other Parties to discuss the work stoppage. Following
5 this meeting, and further consideration of the issues, the
6 U.S. EPA Division Director will issue, in writing, a final
7 decision with respect to the work stoppage. The final written
8 decision of the U.S. EPA Division Director may immediately be
9 subjected to formal dispute resolution. Such dispute may be
10 brought directly to either the DRC or the SEC, at the discretion
11 of the Party requesting dispute resolution.

12 21.10 Within twenty-one (21) days of resolution of
13 a dispute pursuant to the procedures specified in this Part, USAF
14 shall incorporate the resolution and final determination into the
15 appropriate plan, schedule, or procedures and proceed to
16 implement this Agreement according to the amended plan, schedule,
17 or procedures.

18 21.11 Resolution of a dispute pursuant to this
19 Part of the Agreement constitutes a final resolution of that
20 dispute arising under this Agreement. All Parties shall abide by
21 all terms and conditions of any final resolution of dispute
22 obtained pursuant to this Part of this Agreement.

23

24 XXII. ENFORCEABILITY

25 22.1 The Parties agree that:

26 (a) Upon its effective date and to the extent

27

1 permitted by Section 310 of CERCLA, 42 U.S.C. § 9659, this
2 Agreement is enforceable by any person, and the violation of any
3 standard, regulation, condition, requirement, or order contained
4 herein will be subject to civil penalties under Sections 310(c)
5 and 109 of CERCLA, 42 U.S.C. §§ 9659(c) and 9609;

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

11 (c) All terms and conditions of this Agreement
12 that relate to interim or final remedial actions, including
13 corresponding schedules and deadlines, and all work associated
14 with the interim or final remedial actions, shall be enforceable
15 by any person pursuant to Section 310(c) of CERCLA, 42 U.S.C.
16 § 9659(c), and any violation of such terms or conditions will be
17 subject to civil penalties under Sections 109 and 310(c) of
18 CERCLA, 42 U.S.C. §§ 9609 and 9659(c); and

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

26 22.2 The Parties agree that all Parties shall

1 have the right to enforce the terms of this Agreement.

2
3 XXIII. STIPULATED PENALTIES

4 23.1 In the event that USAF fails to submit a
5 primary document to U.S. EPA and ADEC pursuant to the appropriate
6 timetable or deadline in accordance with the requirements of this
7 Agreement, or fails to comply with a term or condition of this
8 Agreement that relates to an interim or final remedial action,
9 U.S. EPA may assess a stipulated penalty against USAF. A
10 stipulated penalty may be assessed in an amount not to exceed
11 five thousand dollars (\$5,000) for the first week (or part
12 thereof), and ten thousand dollars (\$10,000) for each additional
13 week (or part thereof) for which a failure set forth in this
14 paragraph occurs.

15 23.2 Upon determining that USAF has failed in a
16 manner set forth in Paragraph 23.1, U.S. EPA shall so notify USAF
17 in writing. If the failure in question is not already subject to
18 dispute resolution at the time such notice is received, USAF
19 shall have fifteen (15) days after receipt of the notice to
20 invoke dispute resolution on the question of whether the failure
21 did, in fact, occur. USAF shall not be liable for the stipulated
22 penalty assessed by U.S. EPA if the failure is determined,
23 through the dispute resolution process, not to have occurred. No
24 assessment of a stipulated penalty shall be final until the
25 conclusion of dispute resolution procedures related to the
26 assessment of the stipulated penalty.

1 23.3 The annual reports required by Section
2 120(e)(5) of CERCLA, 42 U.S.C. § 9620(e)(5), shall include, with
3 respect to each final assessment of a stipulated penalty against
4 USAF under this Agreement, each of the following:

- 5 a. The facility responsible for the failure;
- 6 b. A statement of the facts and circumstances
7 giving rise to the failure;
- 8 c. A statement of any administrative or other
9 corrective action taken at the relevant
 facility, or a statement of why such
 measures were determined inappropriate;
- 10 d. A statement of any additional action taken
11 by or at the facility to prevent recurrence
 of the same type of failure; and
- 12 e. The total dollar amount of the stipulated
13 penalty assessed for the particular failure.

14 23.4 Stipulated penalties assessed pursuant to
15 this Part shall be payable to the Hazardous Substances Response
16 Trust Fund only in the manner and to the extent expressly
17 provided for in Acts authorizing funds for, and appropriations
18 to, the U.S. Department of Defense.

19 23.5 In no event shall this Part give rise to a
20 stipulated penalty in excess of the amount set forth in Section
21 109 of CERCLA, 42 U.S.C. § 9609, or Section 3008 of RCRA,
22 42 U.S.C. § 6928.

23 23.6 This Part shall not affect USAF's ability to
24 obtain an extension of a timetable, deadline, or schedule
25 pursuant to Part XXV of this Agreement.

26 23.7 Nothing in this Agreement shall be construed
27 to render any officer or employee of USAF personally liable for

1 the payment of any stipulated penalty assessed pursuant to this
2 Part.

3 XXIV. DEADLINES

4 24.1 Deadlines (subject to extension pursuant to
5 Part XXV and Part XXXIII) for the draft primary documents are
6 established in Attachment 1 (Table 3).

7 24.2 Within twenty-one (21) days of the effective
8 date of this Agreement, USAF shall propose target dates for
9 completion of appropriate draft secondary documents for each of
10 the OUs.

11 24.3 Within twenty-one (21) days of issuance of
12 each ROD, USAF shall submit the RD/RA Scope of Work that shall
13 include the schedule for submittal of post-ROD documents. If the
14 Parties agree on the proposed deadlines, the finalized deadlines
15 shall be incorporated into the Agreement. If the Parties fail to
16 agree within thirty (30) days of the proposed deadlines, the
17 matter shall immediately be submitted for dispute resolution
18 pursuant to Part XXI of this Agreement. The deadlines shall be
19 published utilizing the procedures set forth in Paragraph 24.5.

20 24.4 USAF shall provide notification to U.S. EPA
21 and ADEC within thirty (30) days of identifying an additional
22 potential source area that appears to require additional
23 investigation and/or remediation under the Agreement. A remedial
24 source evaluation shall, if appropriate, be undertaken by the
25 USAF to evaluate the potential releases of hazardous substances,
26 pollutants, or contaminants.

1 24.5 The final deadlines established pursuant to
2 this Part shall be published by U.S. EPA, in conjunction with
3 ADEC.

4 24.6 The deadlines set forth in this Part may be
5 extended pursuant to Part XXV of this Agreement. The Parties
6 recognize that one possible basis for extension of the deadlines
7 for completion of the RI/FS Reports is the identification of
8 significant new site conditions during performance of the RI.

9
10 XXV. EXTENSIONS

11 25.1 Either a deadline or a schedule shall be
12 extended upon receipt of a timely request for extension and when
13 good cause exists for the requested extension. Any request for
14 extension by USAF shall be submitted in writing to the Project
15 Managers and shall specify:

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

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

- 22 a. An event of Force Majeure;
23 b. A delay caused by another Party's failure to meet
24 any requirement of this Agreement;
25 c. A delay caused by the good faith invocation of
26 dispute resolution or the initiation of judicial
27 action;

d. A delay caused, or that is likely to be caused, by the grant of an extension in regard to another deadline or schedule; and

e. Any other event or series of events mutually agreed to by the Parties as constituting good cause.

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

25.3 Within seven (7) days of receipt of a request for an extension of a deadline or a schedule, the other Parties shall attempt to advise USAF, in writing, of their respective positions on the request. Any failure by the other Parties to respond within twenty-one (21) days shall be deemed to constitute concurrence in the request for extension. If either U.S. EPA or ADEC does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

25.4 If there is consensus among the Parties that the requested extension is warranted, USAF shall extend the affected deadline or schedule accordingly. If there is no consensus among the Parties as to whether all or part of the requested extension is warranted, the deadline or schedule shall not be extended except in accordance with a determination resulting from the dispute resolution process.

25.5 Within twenty-one (21) days of receipt of a statement of nonconcurrence with the requested extension, USAF

1 may invoke dispute resolution.

2 25.6 A timely and good faith request for an
3 extension shall toll any assessment of stipulated penalties,
4 forfeiture of comment rights, or application for judicial
5 enforcement of the affected deadline or schedule until a decision
6 is reached on whether the requested extension will be approved.
7 If dispute resolution is invoked and the requested extension is
8 denied, stipulated penalties may be assessed and may accrue from
9 the date of the original deadline or the date U.S. EPA or ADEC
10 denied, in writing, USAF's requested extension, whichever is
11 later. Following the grant of an extension, an assessment of
12 stipulated penalties or an application for judicial enforcement
13 may be sought only to compel compliance with the timetable and
14 deadline or schedule as most recently extended.

15
16 XXVI. FORCE MAJEURE

17 26.1 A Force Majeure shall mean any event arising
18 from causes beyond the control of a Party that causes a delay in
19 or prevents the performance of any obligation under this
20 Agreement, including, but not limited to, acts of God; fire; war;
21 insurrection; civil disturbance; explosion; unanticipated
22 breakage or accident to machinery, equipment, or lines of pipe
23 despite reasonably diligent maintenance; adverse weather
24 conditions that could not be reasonably anticipated; unusual
25 delay in transportation; restraint by court order or order of
26 public authority; inability to obtain, at a reasonable cost and

1 after exercise of reasonable diligence, any necessary
2 authorizations, approvals, permits, or licenses due to action or
3 inaction of any governmental agency or authority other than USAF;
4 delays caused by compliance with applicable statutes or
5 regulations governing contracting, procurement, or acquisition
6 procedures, despite the exercise of reasonable diligence; and
7 insufficient availability of appropriated funds, if USAF shall
8 have made timely request for such funds as part of the budgetary
9 process as set forth in Part XXVII of this Agreement. A Force
10 Majeure shall also include any strike or other labor dispute,
11 whether or not within the control of the Parties affected
12 thereby. Force Majeure shall not include increased costs or
13 expenses of response actions, whether or not anticipated at the
14 time such response actions were initiated, or normally-occurring
15 difficulties posed by winter conditions that could have been
16 reasonably anticipated.

18 XXVII. FUNDING

19 27.1 It is the expectation of the Parties to this
20 Agreement that all obligations of USAF arising under this
21 Agreement will be fully funded. USAF agrees to seek sufficient
22 funding through the U.S. Department of Defense budgetary process
23 to fulfill its obligations under this Agreement.

24 27.2 In accordance with Section 120(e)(5)(B) of
25 CERCLA, 42 U.S.C. § 9620(e)(5)(B), USAF shall provide to the
26 U.S. Department of Defense for its annual report to Congress the

specific cost estimates and budgetary proposals associated with the implementation of this Agreement.

27.3 Funds authorized and appropriated annually by Congress under the "Environmental Restoration, Defense" appropriation in the U.S. Department of Defense Appropriation Act and allocated by the DASD(E) to USAF will be the source of funds for activities required by this Agreement consistent with Section 211 of SARA, 10 U.S.C. Chapter 160. However, should the Environmental Restoration, Defense appropriation be inadequate in any year to meet the total U.S. Department of Defense implementation requirements, the U.S. Department of Defense shall employ and USAF shall follow a standardized U.S. Department of Defense prioritization process that allocates that year's appropriations in a manner that maximizes the protection of human health and the environment. The standardized U.S. Department of Defense prioritization model shall be utilized.

27.4 Any requirement for the payment or obligation of funds, including stipulated penalties, by USAF established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases where payment or obligation of funds, including stipulated penalties, would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

1 27.5 If appropriated funds are not available to
2 fulfill USAF's obligations under this Agreement, U.S. EPA and
3 ADEC reserve the right to initiate an action against any other
4 person or to take any response action that would be appropriate
5 absent this Agreement.

6 27.6 USAF shall submit copies of all budget
7 request documents to U.S. EPA and ADEC by October 1 of each year
8 after the execution of this Agreement, and shall notify U.S. EPA
9 and ADEC of the actual amounts budgeted by February 1 of each
10 year. The budget documents shall clearly establish that USAF has
11 requested all necessary funds to carry out its obligations under
12 this Agreement for the applicable budget year. USAF shall honor
13 all reasonable requests by U.S. EPA or ADEC to obtain additional
14 documentation or information regarding the budget, and shall
15 respond to such requests within fifteen (15) days of the request.

16
17 XXVIII. RECOVERY OF EXPENSES

18 28.1 USAF and U.S. EPA agree to amend this Part
19 at a later date in accordance with any subsequent resolution of
20 the currently contested issue of cost reimbursement.

21 28.2 USAF and ADEC agree to use the Defense/State
22 Memorandum of Agreement signed on June 1, 1990, for the
23 reimbursement of services provided in direct support of the USAF
24 environmental restoration activities at the Site pursuant to this
25 Agreement.

1 XXIX. OTHER CLAIMS

2 29.1 Nothing in this Agreement shall constitute
3 or be construed as a bar or release from any claim, cause of
4 action, or demand in law or equity by or against any persons,
5 firm, partnership, or corporation not a signatory to this
6 Agreement for any liability it may have arising out of or
7 relating in any way to this Agreement or the generation, storage,
8 treatment, handling, transportation, release, or disposal of any
9 hazardous substances, hazardous wastes, pollutants, or
10 contaminants found at, taken to, or taken from Elmendorf AFB.

11 29.2 U.S. EPA and ADEC shall not be held as a
12 Party to any contract entered into by USAF to implement the
13 requirements of this Agreement.

14 29.3 USAF shall notify the appropriate federal
15 and state natural resource trustees as required by Section
16 104(b)(2) of CERCLA, 42 U.S.C. § 9604(e), and Section 2(e)(2) of
17 Executive Order 12580. Except as provided herein, USAF is not
18 released from the liability that it may have pursuant to any
19 provisions of state and federal law for any claim for damages or
20 liability for destruction of, or loss of, natural resources.

21 29.4 This Agreement shall not restrict U.S. EPA
22 and/or ADEC from taking any legal or response action for any
23 matter not covered by this Agreement.

24
25 XXX. OTHER APPLICABLE LAWS

26 30.1 All actions required to be taken pursuant to

1 this Agreement shall be undertaken in accordance with the
2 requirements of all applicable state and federal laws and
3 regulations unless an exemption from such requirements is
4 provided in this Agreement, CERCLA, or the NCP.

5
6 XXXI. CONFIDENTIAL INFORMATION

7 31.1 USAF may assert on its own behalf, or on
8 behalf of a contractor, subcontractor, or consultant, a
9 confidentiality claim covering all or part of the information
10 requested by any Party to this Agreement pursuant to Section 104
11 of CERCLA, 42 U.S.C. § 9604(e), and 32 CFR Part 806. Analytical
12 data shall not be claimed as confidential by USAF, unless it may
13 disclose information that has already been so classified for
14 reasons of national security. Information determined to be
15 confidential by USAF pursuant to 32 CFR Part 806 shall be
16 afforded the protection specified therein and such information
17 shall be treated by ADEC as confidential. If no claim of
18 confidentiality accompanies the information when it is submitted
19 to either regulatory agency, the information may be made
20 available to the public without further notice to USAF.

21
22 XXXII. TRANSFER OF PROPERTY

23 32.1 Conveyance of title, easement, or other
24 interest in Elmendorf AFB shall be in accordance with Section 120
25 of CERCLA, 42 U.S.C. § 9620.

1 XXXIII. MODIFICATION/AMENDMENT OF AGREEMENT

2 33.1 Modifications to and/or actions taken
3 pursuant to Parts XI (Sampling and Data/Document Availability),
4 XII (Quality Assurance), XX (Consultation with U.S. EPA and
5 ADEC), XXIV (Deadlines), XXV (Extensions), and Attachment 1
6 (Scope of Work) may be effected by the unanimous agreement of the
7 Project Managers.

8 33.2 Modifications or amendments not permitted by
9 Paragraph 33.1 may be effected only by the unanimous agreement of
10 the signatories or upon completion of Dispute Resolution, as
11 applicable.

12 33.3 Any modification or amendment shall be
13 reduced to writing; shall be effective as of the date it is
14 signed by all the Project Managers or signatories, as applicable;
15 and shall be incorporated into, and modify, this Agreement.

16
17 XXXIV. SEVERABILITY

18 34.1 If any provision of this Agreement is ruled
19 invalid, illegal, or unconstitutional, the remainder of the
20 Agreement shall not be affected by such ruling.

21
22 XXXV. TERMINATION AND SATISFACTION

23 35.1 The provisions of this Agreement shall be
24 deemed satisfied when the Parties unanimously agree that USAF has
25 completed its obligations under the terms of this Agreement. Any
26 Party may propose in writing the termination of this Agreement

1 upon a showing that the requirements of this Agreement have been
2 satisfied. A Party opposing termination of this Agreement shall
3 serve its objection upon the proposing Party within thirty (30)
4 days of receipt of the proposal. Any objection shall describe in
5 detail the additional work needed to satisfy the requirements of
6 the Agreement. Any Party may invoke dispute resolution as to the
7 request for or objection to a proposal to terminate.

8
9 XXXVI. RESERVATION OF RIGHTS

10 36.1 The Parties agree to exhaust their rights
11 under Parts XX and XXI prior to exercising any rights to judicial
12 review that they may have.

13 36.2 Nothing in this Agreement shall be construed
14 as a restriction or waiver of any rights that U.S. EPA or ADEC
15 may have under CERCLA, including, but not limited to, any rights
16 under Section 113 and 310 of CERCLA, 42 U.S.C. §§ 9613 and 9659.
17 The U.S. Department of Defense does not waive any rights it may
18 have under CERCLA Sections 120 and 121(f)(3)(C), 42 U.S.C.
19 §§ 9620 and 9621(f)(3)(C); Section 211 of SARA, 10 U.S.C.
20 Chapter 160; and Executive Order 12580.

21 36.3 ADEC reserves its right to maintain an
22 action under Section 121(f)(3)(B) of CERCLA, 42 U.S.C.
23 § 9621(f)(3)(B), to challenge the selection of a remedial action
24 that does not attain a legally applicable or relevant and
25 appropriate standard, requirement, criteria, or limitation
26 ("ARAR"). If ADEC exercises its right under Section 121(f)(3)(B)

1 of CERCLA, 42 U.S.C. § 9621(f)(3)(B), ADEC shall withdraw from
2 this Agreement within sixty (60) days following the effective
3 date of the ROD. If ADEC exercises its right to withdraw from
4 this Agreement, USAF expressly reserves any jurisdictional claim
5 or defense that it may have in regard to any legal right or
6 remedies pursued by ADEC.

7 36.4 Nothing in this Agreement shall be construed
8 as authorizing any person to seek judicial review of any action
9 or work where review is barred by any provision of CERCLA,
10 including Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).
11

12 XXXVII. EFFECTIVE DATE

13 37.1 This Agreement is effective upon signature
14 by all the Parties to this Agreement.
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Signature sheet for the foregoing Federal Facility

2 Agreement for the Elmendorf Air Force Base, among the
3 U.S. Environmental Protection Agency, the U.S. Department of the
4 Air Force, and the Alaska Department of Environmental
5 Conservation.

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7 

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9 DONALD J. CREIGHTON
Colonel, USAF
10 Vice Commander, 11th Air Force

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13 15 Nov 91

Date

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19 REPRESENTED BY:

20 Major James G. Van Ness, Esq.
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27

1 Signature sheet for the foregoing Federal Facility
2 Agreement for the Elmendorf Air Force Base, among the
3 U.S. Environmental Protection Agency, the U.S. Department of the
4 Air Force, and the Alaska Department of Environmental
5 Conservation.
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9 JOHN A. SANDOR

Commissioner

10 Alaska Department of Environmental Conservation
11 State of Alaska

Nov. 12, 1991

Date

12
13 

14 CHARLES E. COLE

Attorney General

15 State of Alaska


October 25, 1991

Date

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19 REPRESENTED BY:

20 Breck C. Tostevin, Esq.
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Signature sheet for the foregoing Federal Facility
Agreement for the Elmendorf Air Force Base, among the
U.S. Environmental Protection Agency, the U.S. Department of the
Air Force, and the Alaska Department of Environmental
Conservation.


DANA A. RASMUSSEN
Regional Administrator
Region 10
United States Environmental Protection Agency

9-30-91

Date

REPRESENTED BY:

Cynthia L. Mackey, Esq.