

IAG COVER SHEET

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

10
11 IN THE MATTER OF:

12 The U.S. Department of the Army,
13 Old Navy Dump, Manchester Annex
14 Manchester, Washington

)
) INTERAGENCY AGREEMENT
) UNDER CERCLA SECTION 120,
) 42 U.S.C. §9620

) Administrative Docket No.:
) CERCLA 1094-06-12-120
)

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21 Attachments

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|----|----|--|
| 22 | A. | Implementation Plan |
| | B. | RI/FS Management Plan |
| 23 | C. | RD/RA SOW (pursuant to paragraph 8.5) |
| | D. | RA Work Plan (pursuant to paragraph 8.5) |

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

5
6 I. JURISDICTION

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

9 1.1 The United States Environmental Protection
10 Agency ("U.S. EPA"), Region 10, enters into those portions of
11 this Agreement that relate to the Remedial Investigation/
12 Feasibility Study ("RI/FS") for the Site pursuant to Section
13 120(e)(1) of the Comprehensive Environmental Response,
14 Compensation, and Liability Act ("CERCLA"), 42 U.S.C.
15 § 9620(e)(1), as amended by the Superfund Amendments and
16 Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499 (hereinafter
17 jointly referred to as "CERCLA") and Executive Order 12580;

18 1.2 U.S. EPA, Region 10, enters into those
19 portions of this Agreement that relate to interim actions and
20 final remedial actions for the Site pursuant to Section 120(e)(2)
21 of CERCLA, 42 U.S.C. §9620(e)(2); and Executive Order 12580;

22 1.3 The Department of the Army enters into those
23 portions of this Agreement that relate to the RI/FS for the Site
24 pursuant to Sections 101, and 120(e)(1) of CERCLA, 42 U.S.C. §§
25 9601, and 9620(e)(1); the Defense Environmental Restoration
26 Program (DERP), 10 U.S.C. §2701 et. seq.; Executive Order 12580;
27 and the National Environmental Policy Act, 42 U.S.C. §4321;

1 1.4 The Department of the Army enters into those
2 portions of this Agreement for the Site that relate to interim
3 actions and final remedial actions pursuant to Sections 101 and
4 120(e)(2) of CERCLA, 42 U.S.C. §§ 9601 and 9620(e)(2); the
5 Defense Environmental Restoration Program (DERP); and Executive
6 Order 12580.

7 8 II. DEFINITIONS

9 2.1 The terms used in this Agreement shall have
10 the same meaning as defined in Section 101 of CERCLA, 42 U.S.C.
11 §9601; the NCP, 40 C.F.R. §300.5; and Section 1004 of RCRA,
12 42 U.S.C. §6903. In addition:

13 (a) "Agreement" shall mean this document and
14 shall include all Attachments to this document. All such
15 Attachments are incorporated by reference and are an integral and
16 enforceable part of this document;

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

21 (c) "Army" or "DA" shall mean the United States
22 Department of the Army and, to the extent necessary to effectuate
23 the terms of this Agreement (including appropriations and
24 congressional reporting requirements), its employees, agents,
25 successors, assigns, and authorized representatives. By letter
26 dated June 29, 1994 DA transmitted to USACE the current FUDS
27 Charter. This letter references the DOD delegation to DA in an

1 April 14, 1994 guidance document for Fiscal Years 1994/1995/1996.

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

4 (e) "CERCLA" shall mean the Comprehensive
5 Environmental Response, Compensation, and Liability Act of 1980,
6 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments
7 and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499, or as
8 further amended;

9 (f) "Community Relations" shall mean U.S. EPA's
10 and USACE's combined program to inform and encourage public
11 participation in the Superfund process and to respond to
12 community concerns. The term "public" includes citizens directly
13 affected by the Site, other interested citizens or parties,
14 organized groups, elected officials, and potentially responsible
15 parties;

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

20 (h) "Deadline" shall mean the same as
21 "timetable" and both terms shall mean the specific date or period
22 of time for which a document or action under this Agreement is
23 scheduled to be completed or submitted;

24 (i) "DERA" shall mean the Defense Environmental
25 Restoration Account as established under 10 U.S.C. §2703;

26 (j) "DERP" shall mean the Defense Environmental
27 Restoration Program, 10 U.S.C. §2701 et seq., which is the

1 Secretary of Defense's program of environmental restoration; the
2 DERP program includes Formerly Used Defense Sites (FUDS);

3 (k) "DOD" shall mean the United States
4 Department of Defense;

5 (l) "Early Action Options Report" shall mean the
6 document, and its supplements, identifying and describing actions
7 (if any) that will be taken to protect human health or the
8 environment prior to the implementation of the Remedial Action.

9 (m) "Ecology" shall mean the State of
10 Washington, as represented by the Department of Ecology, its
11 employees, agents, and authorized representatives;

12 (n) "FUDS" shall mean Formerly Used Defense
13 Site. Formerly Used Defense Sites are facilities or Sites within
14 the meaning of the Defense Environmental Restoration Program
15 (DERP) which were under the jurisdiction of the Secretary of
16 Defense and owned by, leased to, or otherwise possessed by the
17 United States at the time of actions leading to contamination by
18 hazardous substances;

19 (o) "Implementation Plan" shall mean the
20 CERCLA/NCP response action process for implementation of this
21 Agreement which is set forth as Attachment A.

22 (p) "Interim Remedial Actions" or "IRAs" are
23 discussed in the Preamble to 40 C.F.R. § 300.430(a)(1), 55 Fed.
24 Reg. 8703-8706 (March 8, 1990), and shall mean all discrete
25 actions implemented under remedial authority that are taken to
26 prevent or minimize the release of hazardous substances,
27 pollutants, or contaminants so that they do not endanger human

1 health or the environment. Interim actions shall neither be
2 inconsistent with nor preclude implementation of the final
3 expected Site remedy and shall be undertaken in accordance with
4 the NCP, 40 C.F.R. Part 300, as amended, and with the
5 requirements of CERCLA;

6 (q) "NCP" shall mean the National Oil and
7 Hazardous Substances Pollution Contingency Plan, 40 C.F.R.
8 Part 300, as amended;

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

11 (s) "Part" shall mean one of the thirty-six (36)
12 subdivisions of this Agreement, designated by a Roman numeral;

13 (t) "Parties" shall mean the Department of the
14 Army and U.S. EPA;

15 (u) "Project Manager" shall mean the parties'
16 Project Managers, and representatives so designated by the
17 Project Managers.

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

22 (w) "Record of Decision" or "ROD" is discussed
23 at 40 C.F.R. § 300.430 and shall mean the document that
24 summarizes the selection of an interim remedial action or a final
25 remedial action, and summarizes the facts, analyses of facts, and
26 source-specific policy determinations considered in the course of
27 carrying out activities at the Site;

1 (x) "Remedial Investigation/Feasibility Study
2 Management Plan" shall mean the comprehensive document describing
3 all activities planned within the RI and the FS process. The
4 Management Plan generally includes the Work Plan, Sampling and
5 Analysis Plan, Quality Assurance Plan, Data Management Plan,
6 Community Relations Plan ("CRP"), and Treatability Study Work
7 Plan (as needed). The parties recognize that the Management Plan
8 has been submitted by USACE and accepted by EPA prior to the date
9 of this IAG;

10 (y) "Scope of Work" ("SOW") shall mean the
11 planning document prepared in accordance with OSWER Directive
12 9835.8, that identifies the source-specific objectives and
13 general management approach for the RD/RA and shall be as
14 described in Section VII of the Implementation Plan;

15 (z) "Site" shall mean the area described in the
16 National Priority List for "Old Navy Dump/Manchester Laboratory"
17 at 59 Federal Register No. 103, 27989 (May 31, 1994) and releases
18 therefrom. For the purposes of this Agreement, "Site" includes
19 only area(s) contaminated as a result of former Department of
20 Defense ownership/operations or contaminated due to migration
21 from the source and adjacent areas needed to respond to FUDS
22 contamination;

23 (aa) "USACE" shall mean the United States Army
24 Corps of Engineers as the executive agent of the DA for all
25 purposes of this Agreement and, to the extent necessary to
26 effectuate the terms of this Agreement (including appropriations
27 and congressional reporting requirements), its employees, agents,

1 successors, assigns, and authorized representatives.

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

5 (cc) "Work Plan" shall mean the RI/FS,
6 Treatability Study, RD, or RA Work Plan that is to be prepared in
7 accordance with Office of Solid Waste and Emergency Response
8 ("OSWER") Directives 9355.3-01 (October 1988) and 9355.0-4A (June
9 1986), this Agreement and the NCP. Such Plan shall include
10 schedules establishing deadlines and target dates for upcoming
11 work.

12 13 III. PURPOSE

14 3.1 The general purposes of this Agreement are
15 to:

16 (a) Ensure that the environmental impacts associated
17 with Department of Defense activities at the site are thoroughly
18 investigated and that appropriate removal and/or remedial
19 action(s) are taken as necessary to protect the public health,
20 welfare, and the environment. This Agreement is not intended to
21 address contamination caused by non-FUDS activities. It is the
22 presumption of the Parties, based on current information, that
23 the contamination is a result of FUDS. If non-FUDS contamination
24 is discovered at the site, this Agreement may be reviewed and
25 renegotiated. If the DA determines that non-FUDS contamination
26 exists, the DA shall review this agreement and determine whether
27 the agreement requires renegotiation. The DA's determination

1 regarding whether there has been non-FUDS contamination shall be
2 subject to the Disputes Resolution process set forth in Part XXI;

3 (b) Establish a procedural framework and schedule for
4 developing, implementing, and monitoring appropriate response
5 actions at the site in accordance with CERCLA, the NCP, national
6 Superfund guidance and policy; and,

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

9 3.2 Specifically, the purposes of this Agreement
10 are to:

11 (a) Identify those sources of contamination that will
12 be addressed under this Agreement using historical information
13 about the site which has been provided to EPA by USACE;

14 (b) Identify removal and Interim Remedial Action(s)
15 ("IRA") alternatives that are appropriate at the site prior to
16 the implementation of final remedial action(s) for the site. IRA
17 alternatives shall be identified and proposed to the Parties as
18 early as possible prior to formal proposal of IRA(s) to U.S. EPA
19 pursuant to CERCLA. This process is designed to promote
20 cooperation between the Parties in identifying IRA alternatives
21 prior to selection of final IRA(s);

22 (c) Establish requirements for the performance of a
23 Remedial Investigation ("RI") to determine fully the nature and
24 extent of the threat to the public health or welfare or the
25 environment caused by the release or threatened release of
26 hazardous substances, pollutants, or contaminants at the site,
27 and to establish requirements for the performance of an FS for
28

1 the site to identify, evaluate, and select alternatives for the
2 appropriate remedial action(s) to prevent, mitigate, or abate the
3 release or threatened release of hazardous substances,
4 pollutants, or contaminants at the site in accordance with CERCLA
5 and applicable state law;

6 (d) Identify the nature, objective, and schedule of
7 response actions to be taken at the site. Response actions at
8 the site shall attain that degree of cleanup of hazardous
9 substances, pollutants, or contaminants mandated by CERCLA;

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

14 (f) Coordinate response actions at the site with the
15 activities occurring at the operating facilities at the site
16 including the EPA Manchester Laboratory, the National Marine
17 Fisheries Service Laboratory, the Manchester State Park, and the
18 Naval Fuel Supply Depot at Manchester;

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

21 (h) Provide for operation and maintenance of any
22 remedial action selected and implemented pursuant to this
23 Agreement.

24 25 IV. PARTIES BOUND

26 4.1 This Agreement shall apply to and be binding
27 upon the Department of the Army (through the agency of the USACE)

1 and U.S. EPA. The USACE is the agency implementing, performing,
2 and administering this Agreement for the Department of the Army.

3 4.2 USACE will notify U.S. EPA of the identity
4 of its contractors performing work under this Agreement thirty
5 (30) days after signing of this document for existing contractors
6 and within thirty (30) days of selection of each new contractor.
7 USACE shall provide copies of this Agreement to all contractors
8 performing work under this Agreement.

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

15 4.4 Each undersigned representative of a Party
16 certifies that he or she is fully authorized to enter into the
17 terms and conditions of this Agreement in regard to contamination
18 at the site which may be attributable to FUDS and certifies that
19 he/she is fully authorized to legally bind such Party to this
20 Agreement.

21 22 V. RCRA-CERCLA INTEGRATION

23 5.1 The Parties recognize that the State of
24 Washington is authorized for RCRA (including corrective action)
25 and, as such, implements almost all components of the RCRA
26 program in lieu of U.S. EPA. Subject to RCRA determinations made
27 by the State of Washington pursuant to that authorization, the

1 Parties intend that activities covered by this Agreement will be
2 deemed to achieve compliance with CERCLA, 42 U.S.C. 9601 et seq.;
3 to satisfy the corrective action requirements of RCRA §§3004(u)
4 and (v); 42 U.S.C. §§6924(u) and (v), for a RCRA permit, and RCRA
5 §3008(H), 42 U.S.C. §6928(h), for interim status facilities; and
6 to meet or exceed all applicable or relevant and appropriate
7 federal and state laws and regulations, to the extent required by
8 Section 121 of CERCLA, 42 U.S.C. §9621.

9 5.2 Based upon the foregoing, the Parties intend
10 that any remedial action selected, implemented, and completed
11 under this Agreement shall be deemed to be protective of human
12 health and the environment such that remediation of releases
13 covered by this Agreement shall obviate the need for further
14 corrective action. Releases or other hazardous waste activities
15 not covered by this Agreement remain subject to all applicable
16 state and federal environmental requirements.

17 5.3 The Parties recognize that the requirement
18 to obtain permits for response actions undertaken pursuant to
19 this Agreement shall be as provided for in CERCLA and the NCP.

20 5.4 Nothing in this Agreement shall alter any
21 Party's authority with respect to removal actions conducted
22 pursuant to Section 104 of CERCLA, 42 U.S.C. §9604. Any removal
23 actions conducted at the site shall be conducted in a manner
24 consistent with this Agreement, CERCLA, the NCP, and Executive
25 Order 12580.

1 VI. FINDINGS OF FACT

2 6.1 For purposes of this Agreement, the
3 following constitutes a summary of the facts upon which this
4 Agreement is based. None of the facts related herein shall be
5 considered admissions by any Party and they shall not be used for
6 any purpose other than determining the jurisdictional basis of
7 this Agreement.

8 6.2 The Old Navy Dump (Manchester Annex)
9 facility constitutes 39.50 acres of uplands and an unquantified
10 amount of tidelands within Clam Bay.

11 6.3 The Old Navy Dump (Manchester Annex)
12 facility was acquired with other adjacent lands by the U.S. Army
13 in 1898 and was transferred to the U.S. Navy in 1919. In about
14 1960, the Navy transferred the Old Navy Dump facility and other
15 adjacent property to the U. S. General Services Administration
16 (GSA). In about 1967, 1968, and 1970, GSA transferred portions
17 of the property to other U.S. government agencies.

18 6.4 In about 1967, GSA transferred approximately
19 17 acres of the site to the United States Public Health Service.
20 Between 1967 and 1973 the U. S. Public Health Service considered
21 use of the property for a laboratory, but no significant
22 activities were conducted. In 1973, the 17 acres were
23 transferred from the U. S. Public Health Service to EPA. From
24 1973 to 1979, the 17 acres were occupied by one trailer and one
25 person conducting bioassay testing. In July 1979, EPA completed
26 construction of an analytical laboratory and has since occupied
27 the property for this purpose.

1 6.5 In about 1968, GSA transferred approximately
2 22.5 acres of the site to the U.S. Bureau of Sports Fisheries and
3 Wildlife. Upon establishment of the National Marine Fisheries
4 Service (NMFS), the property subsequently was transferred to the
5 National Oceanic and Atmospheric Administration (NOAA) for use by
6 NMFS. Since the transfer in 1968, the NMFS has operated a
7 fisheries research facility on the property.

8 6.6 Portions of the site may extend onto
9 adjacent property currently owned by Washington State Parks
10 (property conveyed from GSA to the State in 1970) and by the U.S.
11 Navy (Naval Supply Center Puget Sound).

12 6.7 From the early 1940's to the late 1960's,
13 the Navy used a portion of the site as a Naval Fire Fighter
14 Training School. The fire training school used a variety of
15 fuels, including waste oils, to generate training fires. The
16 school contained a number of above and below ground tanks and
17 piping formerly used to store the fuels, to pump in seawater to
18 extinguish the fires, and to wash and drain away residual fuels
19 and water at the conclusion of the training fires. The school
20 also contained a number of simulators in which the training fires
21 were set. In 1993, contractors for the USACE found petroleum
22 stained soils adjacent to some of the underground tanks. Oily
23 water containing PCBs was found in some of the underground tanks.
24 Soil containing Dioxin contamination was found inside the
25 simulators.

26 6.8 From the 1940's to the 1960's, the Navy used
27 approximately five acres of the site to dispose of refuse, scrap
28

1 metal, and other waste from on-site operations and from the Puget
2 Sound Naval Shipyard in Bremerton. A 1992 Site Investigation
3 conducted by EPA found elevated levels of heavy metals including
4 lead, mercury, and cadmium, PCBs, and asbestos in soils within
5 the landfill. The Investigation found elevated concentrations of
6 these same contaminants in sediments on the beach adjacent to the
7 fill area.

8 6.9 The Navy used other portions of the site for
9 construction, repair, maintenance, and storage of submarine nets.

10 6.10 Based on current information, historic U.S.
11 Navy operations prior to 1970 are determined to be the likely
12 cause of the contamination identified at the site.

13 6.11 The site was proposed for inclusion on the
14 CERCLA National Priorities List ("NPL") in January 1994. 59 Fed.
15 Reg. No. 011, 2568 (Jan. 18, 1994). It was finally listed in May
16 1994. 59 Fed. Reg. No. 103, 2798 (May 31, 1994).

17 6.12 The site is a Formerly Used Defense Site
18 (FUDS) within the meaning of the Department of Defense's Defense
19 Environmental Restoration Program (DERP). The DA is the
20 executive agent for implementation of DERP-FUDS. The Seattle
21 District U.S. Army Corps of Engineers (USACE) has been delegated
22 the authority under DERP-FUDS to execute all response actions on
23 this site which are approved by authorized officials of DA.

24 6.13 USACE is authorized, pursuant to Executive
25 Order 12580, to receive notification of State ARARS as required
26 by Section 121(d)(2)(A)(ii) of CERCLA, 42 U.S.C.
27 §9621(D)(2)(A)(ii).

1 6.14 The authority of USACE to exercise the
2 delegated removal authority of the President, pursuant to Section
3 104 of CERCLA, 42 U.S.C. §9604, is not altered by this Agreement.
4

5 **VII. REGULATORY DETERMINATIONS**

6 7.1 For purposes of this Agreement, the
7 following constitutes a summary of EPA's Regulatory
8 Determinations upon which this Agreement is based. None of the
9 Regulatory Determinations related herein are admissions nor are
10 they legally binding upon any Party with respect to any unrelated
11 claims of person(s) not a Party to this Agreement.

12 7.2 The site is a facility within the meaning of
13 Section 101(9) of CERCLA, 42 U.S.C. §9601(9);

14 7.3 EPA and NOAA are current owners within the
15 meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. §9607(a)(1);

16 7.4 Hazardous substances, pollutants, or
17 contaminants within the meaning of Section 101(14) of CERCLA, 42
18 U.S.C. §§9601(14), have been disposed of at the facility;

19 7.5 There have been releases of hazardous
20 substances, pollutants, or contaminants into the environment
21 within the meaning of Sections 101(22), 104, 106, and 107 of
22 CERCLA, 42 U.S.C. §§9601(22), 9604, 9606, and 9607, at and from
23 the facility;

24 7.6 With respect to the releases identified in
25 paragraphs 6.7 and 6.8, the Department of Defense (U.S. Navy) was
26 an owner and/or operator at the time of disposal of hazardous
27 substances at the facility within the meaning of Section 107 of
28

1 CERCLA, 42 U.S.C. §9607. The USACE is the responsible federal
2 agency acting on behalf of the Department of Defense as provided
3 by DERP-FUDS;

4 7.7 The actions to be taken pursuant to this
5 Agreement are reasonable and necessary to protect human health
6 and the environment; and

7 7.8 A reasonable time for beginning and/or
8 completing the actions has been, or will be, provided.

9
10 **VIII. SCOPE OF AGREEMENT**

11 **A. Work to be Performed**

12 8.1 The Parties recognize that some work called
13 for by this Agreement has already been performed by USACE and
14 that some work is ongoing. The Parties intend that such
15 completed work and data generated prior to (or ongoing at the
16 time of) the effective date of this Agreement be retained and
17 utilized to the maximum extent technically feasible in accordance
18 with applicable law.

19 8.2 USACE will conduct RI/FS or other consultant
20 studies for the site in accordance with each RI/FS Management
21 Plan or Work Plan and implement the RD/RA at the site in
22 accordance with the appropriate RD and the RA Work Plan, and all
23 relevant statutes and regulations.

24 8.3 All work performed pursuant to this
25 Agreement shall be under the direction and supervision, or in
26 consultation with, a qualified engineer, geologist, or equivalent
27 expert with expertise in hazardous substances remedial

1 investigation and/or remediation.

2 8.4 USACE shall perform the tasks and submit
3 plans, reports, and other documents as required by the Plans
4 referenced in Paragraph 8.2.

5 8.5 These matters are set forth in more detail
6 below and in the RI/FS Management Plan (Attachment B of this IAG)
7 and in the subsequent RD/RA SOW and the RA Work Plan, which, when
8 final, shall be incorporated fully into this IAG as Attachment C
9 and Attachment D respectively. This Agreement fully incorporates
10 the provisions of these Plans as set forth in paragraph 2.1(a) of
11 this document, including but not limited to, schedules,
12 definitions and procedures for submission, review, and approval
13 of documents. In the event of any inconsistency between this
14 Agreement and the Plans, this Agreement shall govern unless and
15 until duly amended pursuant to Part XXXII of this Agreement.

16 **B. Interim Remedial Actions**

17 8.6 USACE shall, where appropriate, develop and
18 implement Interim Remedial Actions ("IRAs") for the site. The
19 IRA(s) shall be consistent with the purposes set forth in Part
20 III of this Agreement.

21 **C. Remedial Investigations**

22 8.7 USACE shall develop, implement, and report
23 upon remedial investigations of the site. These investigations
24 shall comply with applicable requirements of CERCLA; the NCP; the
25 previously submitted RI/FS Management Plan; and, to the extent
26 set forth in this Agreement, applicable U.S. EPA guidance, rules,
27 regulations, and criteria. USACE may follow its own guidance, if

1 USACE can demonstrate that its guidance is consistent with the
2 NCP. Disagreement regarding such consistency may be subject to
3 the dispute resolution process at Part XXI of this Agreement.

4 D. Feasibility Studies

5 8.8 USACE shall design, propose, undertake, and
6 report upon feasibility studies for the site. These studies
7 shall comply with applicable requirements of CERCLA and the NCP;
8 and, to the extent set forth in this Agreement, applicable U.S.
9 EPA guidelines, rules, regulations, and criteria, and the RI/FS
10 Management Plan. USACE may follow its own guidance, if USACE can
11 demonstrate that its guidance is consistent with the NCP.
12 Disagreement regarding such consistency may be subject to the
13 dispute resolution process at Part XXI of this Agreement.

14 E. Remedial Actions

15 8.9 In compliance with applicable requirements
16 of CERCLA and the NCP; and, to the extent set forth in this
17 Agreement, applicable U.S. EPA guidance, rules, regulations, and
18 criteria, USACE shall develop and submit its proposed RA
19 alternative for the site. USACE may follow its own guidance, if
20 USACE can demonstrate that its guidance is consistent with the
21 NCP. Disagreement regarding such consistency may be subject to
22 the dispute resolution process at Part XXI of this Agreement.
23 USDA in consultation with USEPA and with the State of Washington
24 Department of Ecology shall make final selection of the RA(s) for
25 each OU or if unable to reach agreement on selection of Remedial
26 Action, final selection of the RA(s) shall be made by U.S. EPA.

1 F. Compliance With The Off-Site Rule

2 8.10 Any hazardous substance, pollutant or
3 contaminant transferred off-site as a result of this Agreement
4 must be taken to a facility acceptable under U.S. EPA's Off-Site
5 Rule (40 CFR Part 300.440; 58 Fed. Reg. No. 182, 49200-49218,
6 September 22, 1993) in accordance with Section 121(d) (3) of
7 CERCLA, as amended, 42 U.S.C. § 9621(d) (3).

8 G. Implementation of Remedial Actions

9 8.11 Following finalization of any ROD, USACE
10 shall design, propose, and submit, where necessary, a detailed RD
11 Work Plan (if required) and/or RA Work Plan for implementation of
12 each selected remedial action for the site, including appropriate
13 schedules, to U.S. EPA. Following review by U.S. EPA and
14 finalization of the RD or RA Work Plans in accordance with Part
15 XX of this Agreement, USACE shall implement the remedial
16 action(s) for the site in accordance with the requirements and
17 schedules set forth in this Agreement.

18
19 IX. PROJECT MANAGERS

20 9.1 U.S. EPA and USACE shall each designate a
21 Project Manager and Alternate (hereinafter jointly referred to as
22 Project Manager) for the purpose of overseeing the implementation
23 of this Agreement. Within five (5) days of the effective date of
24 this Agreement, each Party shall notify the other Parties of the
25 name and address of its Project Manager. Any Party may change
26 its designated Project Manager by notifying the other Party, in
27 writing, within five (5) days of the change. Communications

1 between the Parties concerning the terms and conditions of this
2 Agreement shall be directed through the Project Managers as set
3 forth in Part XIV of this Agreement. Each Project Manager shall
4 be responsible for assuring that all communications from the
5 other Project Manager are appropriately disseminated and
6 processed by the respective Agencies.

7 9.2 The Project Manager or authorized
8 representative for USACE shall be responsible for day-to-day
9 field activities at the site. The Project Manager or authorized
10 representative for USACE shall be physically present at the site,
11 or reasonably available to supervise work, during all hours of
12 work performed at the site pursuant to this Agreement.

13 9.3 Each Project Manager shall have the
14 authority to: (1) take samples, request split samples, and
15 ensure that work is performed properly and in accordance with the
16 terms of any final Management Plan; (2) observe all activities
17 performed pursuant to this Agreement, take photographs, and make
18 such other reports on the progress of the work as the Project
19 Manager deems appropriate; (3) review records, files, and
20 documents relevant to this Agreement; (4) recommend and request
21 minor field modifications to the work to be performed pursuant to
22 the Agreement, or in techniques, procedures, or designs utilized
23 in carrying out this Agreement; (5) exercise the authorities
24 granted to the Project Manager in this Part, and the NCP; and (6)
25 act in accordance with Paragraph 32.1 (Modification/Amendment of
26 Agreement).

27 9.4 Each Project Manager shall be, or rely on, a
28

1 qualified and competent person with experience in hazardous
2 substances site investigations and remedial actions and having
3 the skills necessary to implement this Agreement.

4 9.5 The Project Managers may make minor field
5 modifications to the work to be performed pursuant to this
6 Agreement, or in techniques, procedures, or designs utilized in
7 carrying out this Agreement. Any minor field modification
8 proposed by any Party pursuant to this Part must be approved
9 orally by all Parties' Project Managers to be effective. The
10 USACE Project Manager shall make a contemporaneous record of such
11 modification and approval in a written log, and a summary of the
12 log entry will be included in the next progress report.

13 9.6 The Project Managers may, upon mutual
14 agreement, make minor field modifications to the work to be
15 performed pursuant to this Agreement, or in techniques,
16 procedures, or design utilized in carrying out this Agreement,
17 which are necessary to the completion of the project without
18 resort to Part XXXII of this Agreement. All modifications shall
19 be documented in writing.

20 9.7 Subject to each agency's own internal
21 requirements, the Project Managers for U.S. EPA and USACE are
22 authorized to take the following actions without resort to Part
23 XXXII of this Agreement: Review, comment on, and modify draft
24 and draft final primary and secondary reports and documents
25 pursuant to Part XX; coordinate dispute resolution, invoke
26 dispute resolution, and issue written statements of dispute
27 pursuant to Part XXI; approve the establishment and extension of

1 deadlines pursuant to Part XXV; and approve the addition or
2 redefinition of operable units/hazardous waste areas..

3 9.9 The Project Managers shall be reasonably
4 available to consult on work performed pursuant to this Agreement
5 and shall make themselves available to each other for the
6 pendency of this Agreement. The absence of the USACE or U.S. EPA
7 Project Managers from the site shall not be cause for work
8 stoppage or delay.

9
10 X. ACCESS

11 10.1 To the extent that either party to this
12 Agreement owns or controls property to which access pursuant to
13 this Part is required, that party agrees to honor such requests
14 for access by U.S. EPA or USACE, subject only to any statutory or
15 regulatory requirement as may be necessary to protect national
16 security or mission-essential activities.

17 10.2 Without limitation on any authority
18 conferred on them by law, authorized representatives of the
19 parties shall have authority to enter the work area under USACE
20 control at all reasonable times for the purposes of, among other
21 things: (1) inspecting records, operating logs, contracts, and
22 other documents relevant to implementation of this Agreement;
23 (2) reviewing the progress of USACE, its response action
24 contractors, or agents in implementing this Agreement;
25 (3) conducting such tests as the U.S. EPA Project Manager deems
26 necessary; and (4) verifying the data submitted to U.S. EPA by
27 USACE.

1 10.3 USACE shall be completely responsible for
2 the management, storage, and disposal of any investigation-
3 derived waste, and any hazardous substances, wastes, or other
4 materials generated by or resulting from USACE's investigation or
5 remediation work on the described property. USACE shall ensure
6 that its waste management and its management of any materials
7 connected with the investigation and remediation work on, or in
8 connection with, the described property shall be in compliance
9 with all applicable Federal, State, and local laws. USACE shall
10 keep separate and distinct from the Manchester laboratory
11 activities and shall clearly designate with signs all areas in
12 which USACE's investigation and or remediation connected waste
13 materials are stored, treated, or disposed of on the described
14 property.

15 10.4 To the extent that this Agreement requires
16 access to property not owned and controlled by parties to this
17 Agreement, USACE shall make best efforts to obtain access and to
18 obtain signed access agreements for itself, its contractors,
19 agents, and U.S. EPA, and provide U.S. EPA with copies of such
20 agreements. USACE may request the assistance of U.S. EPA in
21 obtaining such access, and, upon such request, U.S. EPA will use
22 its best efforts to obtain the required access.

23 10.5 Nothing in this Part shall be construed to
24 limit the discretion of DOD to exercise the authority of the
25 President under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), as
26 delegated to the Secretary of Defense by Executive Order 12580.
27
28

1 **XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY**

2 11.1 The Parties shall make available to each
3 other quality-assured results of sampling, tests, or other data
4 generated by or on behalf of any Party under this Agreement
5 within sixty (60) days following completion of the field event.
6 If quality assurance is not completed within sixty (60) days,
7 preliminary data or results shall be made available within the
8 sixty (60) day period and quality assured data or results shall
9 be submitted as they become available but in no event later than
10 one hundred (100) days after the sampling or testing. These
11 periods can be extended upon mutual agreement among the Project
12 Managers.

13 11.2 At the request of the U.S. EPA Project
14 Manager, the USACE shall allow split or duplicate samples to be
15 taken by U.S. EPA during sample collection conducted during the
16 implementation of this Agreement. The USACE's Project Manager
17 shall notify the U.S. EPA Project Managers not less than fourteen
18 (14) business days in advance of any scheduled well drilling,
19 sample collection, or other monitoring activity, conducted
20 pursuant to this Agreement. The Project Managers will be
21 notified prior to any unscheduled sampling event. The fourteen
22 (14) day notification can be waived upon mutual agreement among
23 the Project Managers.

24 11.3 If preliminary analysis indicates a
25 potential imminent and substantial endangerment to the public
26 health, all Project Managers shall be immediately notified.

27 11.4 Laboratory reports shall be made available

1 for review by the Parties immediately upon completion of
2 laboratory analysis.

3 4 5 **XII. QUALITY ASSURANCE**

6 12.1 Throughout all sample collection,
7 transportation, and analyses activities conducted in connection
8 with this Agreement, USACE shall use procedures for quality
9 assurance, for quality control, and for chain-of-custody in
10 accordance with approved U.S. EPA methods, including "Interim
11 Guidelines and Specifications for Preparing Quality Assurance
12 Project Plans," QAMS-005/80, "Data Quality Objective Guidance,"
13 U.S. EPA 1540/687/003 and 004, and subsequent amendments to such
14 guidelines. USACE shall require each laboratory it uses to
15 perform any analysis according to approved U.S. EPA methods and
16 to demonstrate a quality assurance/quality control program
17 consistent with that followed by U.S. EPA and consistent with
18 U.S. EPA document QAMS-005/80.

19 20 **XIII. REPORTING**

21 13.1 USACE shall submit to U.S. EPA monthly
22 written progress reports. The following reporting requirements
23 were designed mainly for RI/FS activities. The reporting
24 requirements may be modified for RD/RA activities. Such
25 modifications will be made through the RD/RA SOW. The reports
26 for RI/FS activities will include, but not be limited to, the
27 following information:

1 (a) A summary of all of the remedial, removal,
2 and investigation activities not previously reported, including
3 sampling and analytical results, any community relations
4 activities, and a list of community contacts or inquiries related
5 to the hazardous substance contamination at the site;

6 (b) An outline of the planned activities for the
7 upcoming 3 months;

8 (c) A statement of the manner and the extent to
9 which the timetables, deadlines and cost projections are being
10 met, including a discussion of any problems encountered in the
11 implementation of the Management Plans and their status;

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

15 (e) The status of any other activities proposed
16 or underway that may affect any phase of the activities described
17 in the Implementation Plan (Attachment A); and

18 f) The status of the critical path schedule of
19 activities, showing how progress to date corresponds with the
20 schedule for the project, including the impact, if any, on the
21 upcoming primary and secondary deliverables as identified in
22 paragraphs 20.3 through 20.7 of this Agreement.

23 13.2 The monthly written progress reports shall
24 be submitted on the twentieth (20th) day of each month beginning
25 with the first full month following the effective date of this
26 Agreement.

1 XIV. NOTICE TO THE PARTIES

2 14.1 All Parties shall expeditiously transmit
3 primary and secondary documents, and all notices required herein.
4 Date of receipt of documents shall be used for purposes of
5 computation of deadlines and time limitations.

6 14.2 Unless otherwise provided in this Agreement
7 or unless changed by provision of written notice, notice to the
8 individual Parties shall be provided under this Agreement to the
9 following addresses:

10 (A) For USACE: Mark Ohlstrom
11 CENPS-EN-GT-HW
12 U.S. Army Engineer District, Seattle
13 P. O. Box 3755
14 4735 East Marginal Way South
15 Seattle, Washington 98124-2255
16 (206) 764-3457

17 Ralph Totorica
18 CENPS-EN-6T-EM
19 U.S. Army Engineer District, Seattle
20 P. O. Box 3755
21 4735 East Marginal Way South
22 Seattle, Washington 98124-2255
23 (206) 764-6682

24 (B) For EPA: Robert Kievit
25 U.S. EPA Region 10, WOO
26 300 Desmond Drive
27 Lacey, Washington 98503
28 (206) 753-9014

23 XV. PERMITS

24 15.1 The Parties recognize that the requirement
25 to obtain permits for response actions undertaken pursuant to
26 this Agreement shall be as provided for in CERCLA and the NCP.
27 The Parties further recognize other potential ongoing hazardous
28

1 waste management activities at the site by NOAA, EPA, or other
2 landowners may require the issuance of permits under federal and
3 State laws. This Agreement does not affect the requirements, if
4 any, to obtain such permits.

5
6 **XVI. RETENTION OF RECORDS**

7 16.1 USACE shall preserve for a minimum of seven
8 (7) years after termination of this Agreement all records and
9 documents in its possession or in the possession of its
10 divisions, employees, agents, accountants, contractors, or
11 attorneys that relate to the presence of hazardous wastes and
12 constituents, hazardous substances, pollutants, and contaminants
13 at the site or to the implementation of this Agreement, despite
14 any document retention policy to the contrary. After this
15 seven (7) year period, USACE shall notify Ecology and U.S. EPA at
16 least forty-five (45) days prior to destruction or disposal of
17 any such documents or records. Upon request by EPA or Ecology,
18 USACE shall make available such records or documents, or true
19 copies to EPA and Ecology. After termination of this Agreement,
20 documents may be converted to permanent electronic or optical
21 media and paper originals disposed of after forty-five (45) days
22 notification to U.S. EPA and Ecology, unless otherwise required
23 by law.

24
25 **XVII. PUBLIC PARTICIPATION AND ADMINISTRATIVE RECORD**

26 17.1 The Parties agree that this Agreement and
27 any subsequent plan(s) for remedial action at the site arising
28

1 out of this Agreement shall comply with the administrative record
2 and public participation requirements of CERCLA, including
3 Sections 113(k) and 117 of CERCLA, 42 U.S.C. §§ 9613(k) and 9617,
4 the NCP, U.S. EPA national guidance on public participation and
5 administrative records and DERP guidance.

6 17.2 USACE shall develop and implement a
7 Community Relations Plan ("CRP") that responds to the need for an
8 interactive relationship with all interested community elements,
9 both on- and off-site, regarding activities and elements of work
10 undertaken by USACE. USACE agrees to develop and implement the
11 CRP in a manner consistent with Section 117 of CERCLA, 42 U.S.C.
12 § 9617, the NCP, U.S. EPA national guidance, and DERP guidance.

13 17.3 USACE shall establish and maintain an
14 administrative record at the EPA Manchester Laboratory and at the
15 USACE Seattle District Office and shall provide a copy of current
16 documents to the Manchester Library in Manchester, Washington, in
17 accordance with Section 113(k) of CERCLA, 42 U.S.C. § 9613(k).
18 Current documents to be provided to the Manchester Library shall
19 include the Administrative Record Index, Fact Sheets, Proposed
20 Plans, and Records of Decision. A copy of this Agreement shall
21 be placed in the administrative record. The administrative
22 record shall be established and maintained in accordance with the
23 NCP and with EPA guidance. U.S. EPA may also request that
24 documents be included in the administrative record. A copy of
25 each document included in the administrative record developed by
26 USACE shall expeditiously be provided to U.S. EPA upon written
27 request. USACE shall provide to U.S. EPA an Index of documents

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

3 17.4 USACE and EPA have established a workgroup
4 for the purposes of keeping interested parties informed of CERCLA
5 activities at the site and for providing interested parties a
6 forum for individual involvement in a wide variety of site-
7 related decisions including Site analysis and characterization,
8 future site uses, alternatives development and analysis, and
9 selection of remedy. The workgroup(s) may include residents and
10 workers in the area of the site; elected officials representing
11 those residents and workers; site property owners; adjacent
12 property owners; federal, state, or local agencies with a vested
13 interest in CERCLA activities at the site, environmental groups,
14 and natural resource trustees. This workgroup will be
15 incorporated into, or become a part of, the Restoration Advisory
16 Board (RAB), if a RAB is created.

17
18 XVIII. CREATION OF DANGER/EMERGENCY ACTION

19 18.1 In the event U.S. EPA determines that
20 activities conducted pursuant to this Agreement, or any other
21 circumstances or activities, may create an imminent and
22 substantial endangerment to the health or welfare of the people
23 on the site or in the surrounding area or to the environment,
24 U.S. EPA may require or order USACE to stop further
25 implementation of this Agreement for such period of time as
26 needed to abate the danger. Any unilateral work stoppage for
27 longer than twenty-four (24) hours requires the concurrence of

1 the U.S. EPA Region 10 Director of the Office of Environmental
2 Cleanup ("OEC Director"), in accordance with Paragraph 21.10.

3 18.2 In the event USACE determines that
4 activities undertaken in furtherance of this Agreement or any
5 other circumstances or activities at the site may create an
6 imminent and substantial endangerment to the health or welfare of
7 the people on the Site or in the surrounding area or to the
8 environment, USACE may stop implementation of this Agreement for
9 such periods of time necessary for U.S. EPA to evaluate the
10 situation and determine whether USACE should proceed with
11 implementation of the Agreement or whether the work stoppage
12 should be continued until the danger is abated. USACE shall
13 notify U.S. EPA as soon as is possible, but not later than
14 twenty-four (24) hours after such stoppage of work, and provide
15 U.S. EPA with documentation of its analysis in reaching this
16 determination. If U.S. EPA disagrees with the USACE
17 determination, it may require USACE to resume implementation of
18 this Agreement.

19 18.3 If U.S. EPA concurs in the work stoppage by
20 USACE, or if U.S. EPA requires or orders a work stoppage, USACE's
21 obligations shall be suspended and the time periods for
22 performance of that work, as well as the time period for any
23 other work dependent upon the work that was stopped, shall be
24 extended, pursuant to Part XXV of this Agreement. Any
25 disagreements pursuant to this Part shall be resolved through the
26 dispute resolution procedures in Part XXI of the Agreement by
27 referral directly to the DRC.

1 18.4 Notwithstanding any other provision of this
2 Agreement, USACE retains the right, consistent with Executive
3 Order 12580, to conduct such emergency actions as may be
4 necessary to alleviate immediate threats to human health or the
5 environment from the release or threat of release of hazardous
6 substances, pollutants or contaminants at or from the Old Navy
7 Dump, Manchester Annex Superfund Site in Manchester, Washington.
8 Such actions may be conducted at any time, either before or after
9 the issuance of a ROD.

10
11 XIX. FIVE YEAR REVIEW

12 19.1 Consistent with Section 121(c) of CERCLA,
13 42 U.S.C. § 9621(c), and in accordance with this Agreement, if a
14 remedial action is selected under this Agreement that results in
15 any hazardous substances, pollutants, or contaminants remaining
16 at the site which would prevent unrestricted or unlimited use of
17 the site, the Parties shall review such remedial action no less
18 often than each five (5) years after the initiation of such
19 remedial action to assure that human health and the environment
20 are being protected by the remedial action being implemented.
21 The U.S. EPA Project Manager shall advise the USACE Project
22 Manager of its findings in this regard. If either Party
23 determines that additional action is appropriate in accordance
24 with Sections 104 or 106 of CERCLA, 42 U.S.C. §§ 9604 or 9606,
25 the Agreement may be amended pursuant to Part XXXII. If the
26 Parties are unable to agree on the need to amend this Agreement,
27 dispute resolution under Part XXI shall be available to any

1 Party.

3 **XX. CONSULTATION WITH U.S. EPA**

4 **A. Applicability**

5 20.1 The provisions of this Part establish the
6 procedures that shall be used by the Parties to provide each
7 other with appropriate notice, review, comment, and response to
8 comments regarding RI/FS and RD/RA documents, specified herein as
9 either primary or secondary documents. In accordance with
10 Section 120 of CERCLA, 42 U.S.C. § 9620 and 10 U.S.C. § 2705,
11 USACE will normally be responsible for issuing primary and
12 secondary documents to U.S. EPA. As of the effective date of
13 this Agreement, all draft final documents for any deliverable
14 document identified herein shall be prepared, distributed, and
15 subject to dispute in accordance with Paragraphs 20.3 through
16 20.24.

17 20.2 The designation of a document as "draft" or
18 "final" is solely for purposes of consultation with U.S. EPA in
19 accordance with this Part. Such designation does not affect the
20 obligation of the Parties to issue documents, which may be
21 referred to herein as "final," to the public for review and
22 comment as appropriate and as required by law.

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

24 20.3 Primary documents include those documents
25 that are major, discrete portions of RI/FS or RD/RA activities
26 identified in paragraph 20.5. Primary documents are initially
27 issued by USACE in draft subject to review and comment by U.S.

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

14 20.4 Secondary documents include those documents
15 that are discrete portions of the primary documents and are
16 typically input or feeder documents. They are identified in
17 paragraph 20.7. Secondary documents are issued by USACE in draft
18 subject to review and comment by U.S. EPA. Although USACE will
19 respond to comments received, the draft secondary documents may
20 be finalized in the context of the corresponding primary
21 documents. A secondary document may be disputed only at the time
22 the corresponding draft final primary document is issued.

23 C. Primary Documents

24 20.5 USACE shall complete and transmit draft
25 documents for the following primary documents to USEPA for review
26 and comment in accordance with the provisions of this Part:

27 (a) RI/FS Management Plan

- (b) Early Action Options Report
- (c) RI/FS (if an FS is applicable)
- (d) Record of Decision
- (e) RD/RA Scope of Work
- (f) Pre-final (95%) Design
- (g) RA Work Plan
- (h) Remedial Action Report
- (i) Operation & Maintenance Report
- (j) Closeout Report

20.6 Only the draft final documents for the primary documents identified above or added pursuant to Part XXXII shall be subject to dispute resolution. USACE shall complete and transmit draft primary documents in accordance with the schedules and deadlines established pursuant to Part XXIV of this Agreement. The Implementation Plan (Attachment A) includes deadlines for submittal of draft documents (a) through (e) of Paragraph 20.5. The RD/RA SOW and the RAWP shall identify deadlines for submittal of draft documents (f) through (j) of Paragraph 20.5. Those deadlines identified in the RD/RA SOW and RAWP shall be considered automatically incorporated into Paragraph 20.5 of this Agreement upon submission of the final RD/RA SOW or RAWP. Primary documents may include secondary document target dates as provided for in Paragraph 20.8. The purpose of target dates is to assist USACE in meeting deadlines, but target dates do not become enforceable by their inclusion in the primary documents and are not subject to Parts XXII, XXIII, XXIV, and/or XXV.

1 **D. Secondary Documents**

2 20.7 USACE shall complete and transmit draft
3 documents for the following secondary documents to U.S. EPA for
4 review and comment in accordance with the provisions of this
5 Part:

- 6 (a) Site Characterization Technical Memorandum;
7 (b) Treatability Study Work Plan, as needed;
8 (c) Preliminary Draft Remedial Investigation;
9 (d) Proposed Plan - Annotated Outline;
10 (e) Other documents identified in the RD/RA Scope of
11 Work and/or the RA Work Plan;

12 20.8 Although U.S. EPA may comment on the draft
13 documents for the secondary documents listed above, such
14 documents shall not be subject to dispute resolution except as
15 provided by Paragraph 20.4. Target dates shall be established
16 pursuant to Part XXIV of this Agreement for the completion and
17 transmission of draft secondary documents.

18 **E. Meetings of the Project Managers on Development of Documents**

19 20.9 The Project Managers shall meet or confer
20 approximately every fourteen (14) days, except as otherwise
21 agreed by the Parties, to review and discuss the progress of work
22 being performed at the site on the primary and secondary
23 documents. Prior to preparing any draft document specified in
24 Paragraphs 20.5 and 20.7 above, the Project Managers shall meet
25 to discuss the document results in an effort to reach a common
26 understanding, to the maximum extent practicable, with respect to
27 the results to be presented in the draft document.

1 **F. Identification and Determination of Potential ARARs**

2 20.10 The USACE shall have the obligation of requesting
3 ARARs identification from the State of Washington Department of
4 Ecology. For those primary or secondary documents that consist
5 of or include ARAR determinations, prior to the issuance of a
6 draft document, the Project Managers may meet to identify and
7 propose, to the best of their ability, all potential ARARs
8 pertinent to the document being addressed. Draft ARAR
9 determinations shall be prepared in accordance with Section
10 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), the NCP, and
11 pertinent written guidance issued by U.S. EPA, which is not
12 inconsistent with CERCLA and the NCP. USACE may follow its own
13 guidance if it can demonstrate that the guidance is consistent
14 with the NCP. Disagreement regarding such consistency may be
15 subject to the dispute resolution process at Part XXI of this
16 Agreement. The parties recognize that it is the obligation of
17 the USACE to identify all ARARs.

18 20.11 The Parties recognize that ARARs are identified
19 on a site-specific basis and that ARARs depend on the specific
20 hazardous substances, pollutants, and contaminants at a site, the
21 particular actions proposed as a remedy, and the characteristics
22 of the site. The Parties recognize that ARAR identification is
23 an iterative process and that potential ARARs must be re-examined
24 throughout the RI/FS process until a ROD is issued.

25 **G. Review and Comment on Draft Documents**

26 20.12 USACE shall complete and transmit each draft
27 primary document to U.S. EPA on or before the corresponding

1 deadline established for the issuance of the document. USACE
2 shall complete and transmit the draft secondary document in
3 accordance with the target dates established for the issuance of
4 such documents.

5 20.13 Unless the Parties mutually agree to another time
6 period, all draft documents shall be subject to a thirty (30) day
7 period for review and comment. Review of any document by
8 U.S. EPA may concern all aspects of the document (including
9 completeness) and should include, but not be limited to,
10 technical evaluation of any aspect of the document, and
11 consistency with CERCLA, the NCP, applicable laws, and any
12 pertinent guidance or policy issued by U.S. EPA. Comments by
13 U.S. EPA shall be provided with adequate specificity so that
14 USACE may respond to the comments and, if appropriate, make
15 changes to the draft document. Comments shall refer to any
16 pertinent sources of authority or references upon which the
17 comments are based. Upon request of USACE, EPA shall provide a
18 copy of the cited authority or reference. In cases involving
19 complex or unusually lengthy reports, U.S. EPA may extend the
20 thirty (30) day comment period for an additional twenty (20) days
21 by written notice to USACE prior to the end of the thirty (30)
22 day period. In unusual circumstances, U.S. EPA may request, in
23 writing, USACE to extend the current period for an additional
24 twenty (20) days, and USACE will not unreasonably deny such
25 request. On or before the close of the comment period, U.S. EPA
26 shall transmit by next day mail written comments to USACE.

27 20.14 Representatives of USACE shall make themselves

1 readily available to U.S. EPA during the comment period for
2 purposes of informally responding to questions and comments on
3 draft documents. Oral comments made during such discussions need
4 not be the subject of a written response by USACE on the close of
5 the comment period.

6 20.15 In commenting on a draft document that contains a
7 proposed ARAR determination, U.S. EPA shall include a reasoned
8 statement of whether it objects to any portion of the proposed
9 ARAR determination. To the extent that U.S. EPA objects, U.S.
10 EPA shall explain the basis for the objection in detail and shall
11 identify any ARARs that EPA believes were not properly addressed
12 in the proposed ARAR determination.

13 20.16 Following the close of the comment period for a
14 draft document, USACE shall give full consideration to all
15 written comments on the draft document submitted during the
16 comment period. Within thirty (30) days of the close of the
17 comment period on a draft secondary document, USACE shall
18 transmit to U.S. EPA its written response to comments received
19 within the comment period. Within thirty (30) days of receipt of
20 EPA's comments on a draft primary document, USACE shall transmit
21 to U.S. EPA a draft final primary document that shall include
22 USACE's response to all written comments received within the
23 comment period. While the resulting draft final document shall
24 be the responsibility of USACE, it shall be the product of
25 consensus to the maximum extent possible.

26 20.17 USACE may extend the thirty (30) day period for
27 either responding to comments on a draft document or for issuing

1 the draft final primary document for an additional twenty (20)
2 days by providing notice to U.S. EPA. In appropriate
3 circumstances, this time period may be further extended in
4 accordance with Part XXV.

5 H. Availability of Dispute Resolution for
6 Draft Final Primary Documents

7 20.18 If required for editing or mailing purposes,
8 Project Managers may agree, in writing, to extend by fifteen (15)
9 days the period for finalization of the draft final primary
10 documents provided in Paragraph 20.3 for discussion and
11 modification of draft final primary documents as necessary to
12 resolve potential disputes.

13 20.19 Dispute resolution shall be available to the
14 Parties for draft final primary documents as set forth in
15 Part XXI.

16 20.20 When dispute resolution is invoked on a
17 draft final primary document, work may be stopped in accordance
18 with the procedures set forth in Part XXI.

19 I. Finalization of Documents

20 20.21 The draft final primary document shall serve
21 as the final primary document if neither Party invokes dispute
22 resolution regarding the document or, if invoked, at completion
23 of the dispute resolution process should USACE's position be
24 sustained. If USACE's determination is not sustained in the
25 dispute resolution process, USACE shall prepare, within not more
26 than 21 days, a revision of the draft final document that
27 conforms to the results of dispute resolution. In appropriate

1 circumstances, the time period for this revision process may be
2 extended in accordance with Part XXV hereof.

3 J. Subsequent Modifications

4 20.22 Following finalization of any primary
5 document pursuant to Paragraph 20.21 above, either Party may seek
6 to modify the document, including seeking additional field work,
7 pilot studies, computer modeling, or other supporting technical
8 work, only as provided in Paragraphs 20.23 and 20.24.

9 20.23 A Party may seek to modify a document after
10 finalization if it determines, based on new information (i.e.,
11 information that became available, or conditions that became
12 known, after the document was finalized) that the requested
13 modification is necessary. A Party may seek such a modification
14 by submitting a concise written request to the Project Manager of
15 the other Party. The request shall specify the nature of the
16 requested modification and how the request is based on new
17 information.

18 20.24 In the event that a written consensus among
19 the Parties is reached, the modification shall be incorporated by
20 reference and become fully enforceable under the Agreement. In
21 the event that a consensus is not reached by the Project Managers
22 on the need for a modification, either Party may invoke dispute
23 resolution as provided in Part XXI to determine if such
24 modification shall be conducted. Modification of a document
25 shall be required only upon a showing that: (1) the requested
26 modification is based on significant new information, and (2) the
27 requested modification could be of significant assistance in

1 evaluating effects on human health or the environment, in
2 evaluating the selection of remedial alternatives, or in
3 protecting human health and the environment.

4 20.25 Nothing in this Part shall alter U.S. EPA's
5 ability to request the performance of additional work that was
6 not contemplated by this Agreement. USACE's obligation to
7 perform such work must be attributable to FUDS contamination and
8 must be established by either a modification of a document or by
9 amendment to this Agreement.

10
11 **XXI. RESOLUTION OF DISPUTES**

12 21.1 Except as specifically set forth elsewhere
13 in this Agreement, if a dispute arises under this Agreement, the
14 procedures of this Part shall apply. All Parties to this
15 Agreement shall make reasonable efforts to informally resolve
16 disputes at the Project Manager or immediate supervisor level.
17 If resolution cannot be achieved informally, the procedures of
18 this Part shall be implemented to resolve a dispute.

19 21.2 Within 30 days after: (1) the issuance of a
20 draft final primary document pursuant to this Agreement, or (2)
21 any action which leads to or generates a dispute, the disputing
22 Party shall submit to the Dispute Resolution Committee (DRC) a
23 written statement of dispute setting forth the nature of the
24 dispute, the work affected by the dispute, the disputing Party's
25 position with respect to the dispute, and the technical, legal,
26 or factual information the disputing Party is relying upon to
27 support its position.

1 21.3 Prior to any Party's issuance of a written
2 statement of dispute, the disputing Party shall engage the other
3 Party in informal dispute resolution among the Project Managers
4 and/or their immediate supervisors. During this informal dispute
5 resolution period the Parties shall meet as many times as are
6 necessary to discuss and attempt resolution of the dispute.

7 21.4 The DRC will serve as a forum for resolution
8 of disputes for which agreement has not been reached through
9 informal dispute resolution. The Parties shall each designate
10 one individual and an alternate to serve on the DRC. The
11 individuals designated to serve on the DRC shall be employed at
12 the policy level (SES or equivalent) or be delegated the
13 authority to participate on the DRC for the purposes of dispute
14 resolution under this Agreement. The U.S. EPA representative on
15 the DRC is the Director of the Office of Environmental Cleanup
16 ("OEC Director") of U.S. EPA's Region 10 or his/her designate.
17 USACE's designated member is the Seattle District Commander, or
18 his/her designate. Written notice of any delegation of authority
19 from a Party's designated representative on the DRC shall be
20 provided to the other Party pursuant to the procedures of Part
21 XIV, Notice to Parties.

22 21.5 Following elevation of a dispute to the DRC,
23 the DRC shall have twenty-one (21) days to unanimously resolve
24 the dispute and issue a written decision signed by the parties.
25 If the DRC is unable to unanimously resolve the dispute within
26 this twenty-one (21) day period the written statement of dispute
27 shall be forwarded to the Senior Executive Committee ("SEC") for
28

1 resolution, within seven (7) days after the close of the twenty-
2 one (21) day resolution period.

3 21.6 The SEC will serve as the forum for
4 resolution of disputes for which agreement has not been reached
5 by the DRC. The U.S. EPA representative on the SEC is the
6 Regional Administrator of the U.S. EPA's Region 10. The USACE
7 representative on the SEC is the Deputy Assistant Secretary of
8 the Army (Environmental Safety and Occupational Health),
9 DASA(ESOH), or his/her designate. The SEC members shall, as
10 appropriate, confer, meet, and exert their best efforts to
11 resolve the dispute and issue a written decision signed by all
12 parties. If unanimous resolution of the dispute is not reached
13 within twenty-one (21) days, U.S. EPA's Regional Administrator
14 shall issue a written position on the dispute. The USACE may,
15 within twenty-one (21) days of the issuance of the U.S. EPA's
16 position, issue a written notice elevating the dispute to the
17 Administrator of U.S. EPA for resolution in accordance with all
18 applicable laws and procedures. In the event that a party elects
19 not to elevate the dispute to the Administrator of U.S. EPA
20 within the designated twenty-one (21) day escalation period, the
21 party shall be deemed to have agreed with the Regional
22 Administrator's written position with respect to the dispute.

23 21.7 Upon escalation of a dispute to the
24 Administrator of U.S. EPA pursuant to Paragraph 21.6, the
25 Administrator or her designee will review and resolve the dispute
26 within twenty-one (21) days. Upon request, and prior to
27 resolving the dispute, the U.S. EPA Administrator or her

1 designee, shall meet and confer with the Deputy Assistant
2 Secretary of the Army for Environment, Safety and Occupational
3 Health, [DASA(ESOH)] to discuss the issue(s) under dispute. Upon
4 resolution, the Administrator shall provide the parties with her
5 written final decision setting forth resolution of the dispute.
6 The Administrator may designate only the Assistant Administrator
7 for Enforcement and Compliance Assurance as her designee for
8 purposes of this part.

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

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

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

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

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

24 25 XXII. ENFORCEABILITY

26 22.1 The Parties agree that:

27 (a) Upon the effective date of this Agreement,

1 any standard, regulation, condition, requirement, or order which
2 has become effective under CERCLA and is incorporated into this
3 Agreement is enforceable by any person pursuant to Section 310 of
4 CERCLA, 42 U.S.C. §9659, and any violation of such standard,
5 regulation, condition, requirement, or order will be subject to
6 civil penalties under CERCLA sections 109 and 310(c), 42 U.S.C.
7 §§9609 and 9659(c);

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

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

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

1 22.2 Nothing in this Agreement shall be construed
2 as authorizing any person to seek judicial review of any action
3 or work where review is barred by any provision of CERCLA,
4 including Section 113(h) of CERCLA, 42 U.S.C. §9613(h).

5 22.3 The Parties agree that all Parties shall
6 have the right to enforce the terms of this Agreement.

7
8 XXIII. STIPULATED PENALTIES

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

20 23.2 Upon determining that the USACE has failed
21 in a manner set forth in Paragraph 23.1, U.S. EPA shall notify
22 USACE in writing. If the failure in question is not already
23 subject to dispute resolution at the time such notice is
24 received, USACE shall have 15 days after receipt of the notice to
25 invoke dispute resolution on the question of whether the failure
26 did, in fact, occur. DOD shall not be liable for the stipulated
27 penalty assessed by U.S. EPA if the failure is determined,

1 through the dispute resolution process, not to have occurred. No
2 assessment of a stipulated penalty shall be final until the
3 conclusion of dispute resolution procedures related to the
4 assessment of the stipulated penalty.

5 23.3 The annual reports required by Section
6 120(e)(5) of CERCLA, 42 U.S.C. §9620(e)(5), shall include, with
7 respect to each final assessment of a stipulated penalty against
8 USACE under this Agreement, each of the following:

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

22 23.4 Stipulated penalties assessed pursuant to
23 this Part shall be made payable to the EPA-Hazardous Substance
24 Response Trust Fund and mailed to U.S. EPA Region 10, Attn:
25 Superfund Accounting, P.O. Box 360903M, Pittsburgh, Pennsylvania
26 15251.

27 23.5 Stipulated penalties assessed pursuant to
28 this Part shall be payable to the Hazardous Substances Response
Trust Fund only in the manner and to the extent expressly
provided for in Acts authorizing funds for, and appropriations
to, the Department of Defense for this site.

1 23.6 In no event shall this Part give rise to a
2 stipulated penalty in excess of the amount set forth in Section
3 109 of CERCLA, 42 U.S.C. §9609.

4 23.7 This Part shall not affect USACE's ability
5 to obtain an extension of a timetable, deadline, or schedule
6 pursuant to Part XXV of this Agreement.

7 23.9 Nothing in this Agreement shall be construed
8 to render any officer or employee of the Army or USACE personally
9 liable for the payment of any stipulated penalty assessed
10 pursuant to this Part.

11
12 XXIV. DEADLINES

13 24.1 Enforceable deadlines (subject to extension
14 pursuant to Parts XXV and XXXII) for draft primary documents are
15 established in the Implementation Plan (Attachment A).

16 24.2 USACE will propose deadlines for submission
17 of primary documents and target dates for submission of secondary
18 documents not otherwise established in the Implementation Plan
19 (Attachment A). Within twenty-one (21) days of issuance of each
20 ROD, USACE shall submit a draft final RD/RA SOW which shall
21 include a list of primary documents and secondary documents and
22 respective completion dates for the Remedial Design. The SOW
23 shall include deadlines for submission of the following primary
24 documents, as appropriate:

25 (a) Pre-final (95%) Design;

26 (b) RAWP.

27 The Remedial Action Work Plan shall establish additional
28

1 secondary documents, deadlines, and/or target dates. The RAWP
2 shall include deadlines for submission of the following primary
3 documents, as appropriate:

- 4 (a) Remedial Action Report;
- 5 (b) Operation & Maintenance Report;
- 6 (c) Closeout Report.

7 If the Parties agree on the proposed deadlines and/or target
8 dates, the finalized deadlines and/or target dates shall be
9 incorporated into the Agreement. If the Parties fail to agree on
10 proposed deadlines and/or target dates within thirty (30) days of
11 submittal of the draft final RD/RA or RAWP, the matter shall
12 immediately be submitted for dispute resolution pursuant to Part
13 XXI of this Agreement. The final deadlines established pursuant
14 to this paragraph shall be published by U.S. EPA.

15 24.3 The deadlines set forth in this Part or to
16 be established as set forth in this Part, may be extended
17 pursuant to Part XXV of this Agreement. The Parties recognize
18 that one possible basis for extension of the deadlines for
19 completion of the Remedial Investigation and Feasibility Study
20 Reports is the identification of significant new site conditions
21 during the performance of the Remedial Investigation.

22 23 XXV. EXTENSIONS

24 25.1 Either a deadline or a schedule shall be
25 extended upon receipt of a timely request for extension and when
26 good cause exists for the requested extension. Any request for
27 extension by USACE shall be submitted in writing to the U.S. EPA

1 Project Manager and shall specify:

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

8 25.2 Good cause exists for an extension when
9 sought in regard to:

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

22 25.3 Absent agreement of the Parties with respect
23 to the existence of good cause, USACE may seek a determination
24 through the dispute resolution process that good cause exists.

25 25.4 Within 14 days of receipt of a written
26 request for an extension of a timetable, a deadline, or a
27 schedule, U.S. EPA shall advise USACE, in writing, of its
28 position on the request. Any failure by U.S. EPA to respond
within the 14-day period shall be deemed to constitute
concurrence in the request for an extension. If U.S. EPA does
not concur in the requested extension, it shall include in its

1 statement of nonconcurrence an explanation of the basis for its
2 position.

3 25.5 If there is written agreement between the
4 Parties that the requested extension is warranted, USACE shall
5 extend the affected deadline or schedule accordingly. If there
6 is no agreement between the Parties as to whether all or part of
7 the requested extension is warranted, the deadline or schedule
8 shall not be extended except in accordance with a determination
9 resulting from the dispute resolution process.

10 25.6 Within seven (7) days of receipt of a
11 statement of nonconcurrence with the requested extension, USACE
12 may invoke dispute resolution.

13 25.7 A timely and good faith request for an
14 extension shall toll any assessment of stipulated penalties or
15 application for judicial enforcement of the affected deadline or
16 schedule until a decision is reached on whether the requested
17 extension will be approved. If dispute resolution is invoked and
18 the requested extension is denied, stipulated penalties may be
19 assessed and may accrue from the date of the original timetable,
20 deadline, or schedule, or the date U.S. EPA denied, in writing,
21 USACE's requested extension, whichever is later. Following the
22 grant of an extension, an assessment of stipulated penalties or
23 an application for judicial enforcement may be sought only to
24 compel compliance with the deadline or schedule as most recently
25 extended.

1 XXVI. FORCE MAJEURE

2 26.1 Force Majeure shall mean any event arising
3 from causes beyond the control of a Party that causes a delay in
4 or prevents the performance of any obligation under this
5 Agreement, including, but not limited to:

6 (a) acts of God; fire; war; insurrection; civil
7 disturbance; or explosion;

8 (b) unanticipated breakage or accident to machinery,
9 equipment, or lines of pipe despite reasonably diligent
10 maintenance;

11 (c) adverse weather conditions that could not be
12 reasonably anticipated, or unusual delay in transportation;

13 (d) restraint by court order or order of public
14 authority;

15 (e) inability to obtain, at a reasonable cost and
16 after exercise of reasonable diligence, any necessary
17 authorizations, approvals, permits, or licenses due to action or
18 inaction of any governmental agency or authority other than DA;

19 (f) delays caused by compliance with applicable
20 statutes or regulations governing contracting, procurement, or
21 acquisition procedures, despite the exercise of reasonable
22 diligence; and

23 (g) insufficient availability of appropriated funds,
24 if DA shall have made timely request for such funds as part of
25 the budgetary process as set forth in Part XXVII of this
26 Agreement. If such an event occurs, U.S. EPA shall be bound by
27 this Force Majeure and shall not assess stipulated penalties.

1 26.2 Force Majeure shall also include any strike
2 or other labor dispute, whether or not within the control of the
3 Parties affected thereby. Force Majeure shall not include
4 increased costs or expenses of response actions, whether or not
5 anticipated at the time such response actions were initiated.
6

7 XXVII. FUNDING

8 27.1 It is the expectation of the Parties to this
9 Agreement that all obligations of the DA arising under this
10 Agreement will be fully funded. The DA agrees to seek sufficient
11 funding through the U.S. Department of Defense budgetary process
12 to fulfill its obligations under this Agreement.

13 27.2 In accordance with Section 120(e)(5)(B) of
14 CERCLA, 42 U.S.C. §9620(e)(5)(B), the DA shall include in its
15 annual report to Congress the specific cost estimates and
16 budgetary proposals associated with the implementation of this
17 Agreement.

18 27.3 Funds authorized and appropriated annually
19 by Congress under the "Environmental Restoration, Defense"
20 appropriation in the Department of Defense Appropriation Act and
21 allocated by the DASA(ESOH) to the DA will be a source of funds
22 for obligations required by this Agreement consistent with
23 Section 211 of SARA, 10 U.S.C. §160. However, should the
24 Environmental Restoration, Defense appropriation be inadequate in
25 any year to meet the total CERCLA implementation requirements,
26 United States Department of Defense shall employ and the DA shall
27 follow a standardized United States Department of Defense
28

1 prioritization process which allocates that year's appropriations
2 in a manner which maximizes the protection of human health and
3 the environment. A standardized United States Department of
4 Defense prioritization model shall be developed and utilized with
5 the assistance of U.S. EPA and the states. Such processes shall
6 not preclude USACE using best efforts to minimize adverse impacts
7 on this project. To that end, the Project Managers shall discuss
8 the potential impact of the funding shortfall to determine if
9 reprioritization of actions, revision of schedules or alternative
10 actions may be implemented to resolve the problem at this site.
11 If the receipt of additional funding is determined to be
12 necessary, the USACE Project Manager shall, if feasible, prepare
13 a request for reprogramming to obtain the additional funds
14 required. As such action may be significant and may require
15 approvals within USACE, U.S. Army, OMB, and the Congress,
16 depending on the extent of the reprogramming required, a minimum
17 of 60 days should be allowed for completion of the action.

18 27.4 Any requirement for the payment or
19 obligation of funds, including stipulated penalties, by DA
20 established by the terms of this Agreement shall be subject to
21 the availability of appropriated funds, and no provision herein
22 shall be interpreted to require obligation or payment of funds in
23 violation of the Anti-Deficiency Act, 31 U.S.C. §1341. In cases
24 where payment or obligation of funds, including stipulated
25 penalties, would constitute a violation of the Anti-Deficiency
26 Act, the dates established requiring the payment or obligation of
27 such funds shall be appropriately adjusted.

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

6 27.6 Consistent with law and applicable OMB
7 regulations and policies concerning the release of budgetary
8 information, USACE shall timely apprise U.S. EPA of budget
9 information, available to it, that may adversely affect project
10 schedules. USACE shall honor all reasonable U.S. EPA requests
11 for budget information related to extension of project schedules,
12 Force Majeure, or other event based on budget limitation.

13
14 XXVIII. RECOVERY OF EXPENSES

15 28.1 DA and U.S. EPA agree to amend this Part at
16 a later date in accordance with any subsequent national
17 resolution of the currently contested issue of cost
18 reimbursement.

19
20 XXIX. OTHER CLAIMS

21 29.1 Subject to Part V, RCRA-CERCLA Integration,
22 nothing in this Agreement shall restrict EPA from taking any
23 action under CERCLA, RCRA, or other environmental statutes for
24 any matter not specifically part of the work performed pursuant
25 to this Agreement.

26 29.2 Nothing in this Agreement shall constitute
27 or be construed as a release from any claim, cause of action, or

1 demand in law or equity by or against any persons, firm,
2 partnership, or corporation not a signatory to this Agreement for
3 any liability it may have arising out of or relating in any way
4 to the generation, storage, treatment, handling, transportation,
5 release, or disposal of any hazardous substances, hazardous
6 wastes, pollutants, or contaminants found at, taken to, or taken
7 from the site.

8 29.3 U.S. EPA shall not be held as a Party to any
9 contract entered into by DA to implement the requirements of this
10 Agreement.

11 29.4 DA shall notify the appropriate federal and
12 state natural resource trustees as required by Section 104(b) (2)
13 of CERCLA, 42 U.S.C. §9604(b) (2), and Section 2(e) (2) of
14 Executive Order 12580. Except as provided herein, DOD is not
15 released from any liability that it may have pursuant to any
16 provisions of state and federal law for any claim for damages or
17 liability for destruction of, or loss of, natural resources.

18
19 **XXX. OTHER APPLICABLE LAWS**

20 30.1 All actions required to be taken pursuant to
21 this Agreement shall be undertaken in accordance with the
22 requirements of all applicable state and federal laws and
23 regulations unless an exemption from such requirements is
24 provided in this Agreement, CERCLA, or the NCP.

1 **XXXI. CONFIDENTIAL INFORMATION**

2 31.1 USACE may assert on its own behalf, or on
3 behalf of a contractor, subcontractor, or consultant, a
4 confidentiality claim covering all or part of the information
5 requested by U.S. EPA pursuant to Section 104(e) of CERCLA,
6 42 U.S.C. § 9604(e); the Privacy Act; the Freedom of Information
7 Act; national security; or other statutory authorities.
8 Analytical data shall not be claimed as confidential or exempt by
9 USACE unless it may disclose information that has already been so
10 classified for reasons of national security. If no claim of
11 confidentiality accompanies the information when it is submitted
12 to U.S. EPA, the information may be made available to the public
13 without further notice to USACE. The Parties agree to coordinate
14 with one another regarding the release of records under the
15 Freedom of Information Act.

16
17 **XXXII. MODIFICATION/AMENDMENT OF AGREEMENT**

18 32.1 Modifications, extensions, and/or actions
19 taken pursuant to Parts XI (Sampling and Data/Document
20 Availability), XII (Quality Assurance), XIII (Reporting),
21 XX (Consultation with U.S. EPA), XXIV (Deadlines), and XXV
22 (Extensions) may be effected by the unanimous agreement of the
23 Project Managers.

24 32.2 Modifications or amendments not permitted by
25 Paragraph 32.1 may be effected only by the unanimous written
26 agreement of the signatories or upon completion of Dispute
27 Resolution, as applicable.

1 32.3 Any modification or amendment allowed in
2 32.1 shall be reduced to writing; shall be effective as of the
3 date it is signed by all the Project Managers or signatories, as
4 applicable; and shall be incorporated into, and modify, this
5 Agreement.
6

7 XXXIII. SEVERABILITY

8 33.1 If any provision of this Agreement is ruled
9 invalid, illegal, or unconstitutional, the remainder of the
10 Agreement shall not be affected by such ruling unless the dispute
11 resolution process determines that the severed provision
12 materially impacts upon another provision.
13

14 XXXIV. TERMINATION AND SATISFACTION

15 34.1 The provisions of this Agreement shall be
16 deemed satisfied upon a consensus of the Parties that the
17 Department of the Army has completed its obligations under the
18 terms of this Agreement. Any Party may propose in writing the
19 termination of this Agreement upon a showing that the objectives
20 of this Agreement have been satisfied. A Party's failure to
21 oppose termination within 30 days of receipt of the proposal
22 shall constitute consensus to terminate the Agreement. Without
23 prejudice to the Department of the Army's obligation for periodic
24 review under Part XIX (Five Year Review) no Party shall
25 unreasonably withhold or delay termination of this Agreement.
26 Termination of this Agreement shall not terminate the Department
27 of the Army's obligations under Parts XVI (Retention of Records),
28

1 XXVIII (Recovery of Expenses), and XXXV (Reservation of Rights)
2 of this Agreement.

4 **XXXV. RESERVATION OF RIGHTS**

5 35.1 Nothing in this Agreement shall be construed
6 as a restriction or waiver of any rights that U.S. EPA may have
7 under CERCLA, including, but not limited to, any rights under
8 sections 113 and 310 of CERCLA, 42 U.S.C. §§9613 and 9659. USACE
9 does not waive any rights it may have under CERCLA sections 113,
10 120, and 121(f)(3)(C), 42 U.S.C. §§9613, 9620, and 9621(F)(3)(c);
11 and Executive Order 12580.

12 35.2 Nothing in this Agreement shall be construed
13 as authorizing any person to seek judicial review of any action
14 or work where review is barred by any provision of CERCLA,
15 including Section 113(h) of CERCLA, 42 U.S.C. §9613(h).

16 35.3 The DOD reserves the right to raise or
17 assert any defense, whether procedural or substantive, in law or
18 equity, or any matter in any proceeding related or not related to
19 this Agreement, which the DOD might otherwise be entitled to
20 raise or assert.

22 **XXXVI. EFFECTIVE DATE**

23 36.1 This Agreement is effective upon signature
24 by all the Parties to this Agreement.

Signature sheet for the foregoing Interagency
Agreement for the Old Navy Dump (Manchester Annex), between the
U.S. Environmental Protection Agency and the U.S. Department of
the Army.

Raymond J. Feb

Deputy Assistant Secretary of the Army
Environmental Safety and Occupational Health

JUL 14 1997
Date

REPRESENTED BY:

Siri Nelson, Esq.
U.S. Army Corps of Engineers.
Seattle, Washington

Signature sheet for the foregoing Interagency
Agreement for Old Navy Dump (Manchester Annex) between the
U.S. Environmental Protection Agency and the U.S. Department of
the Army.

Amie G. Frankel
CHUCK CLARKE
Regional Administrator
U.S. EPA Region 10

7/30/97
Date

REPRESENTED BY:

Joan C. Shirley
Assistant Regional Counsel
U.S. EPA Region 10

TABLE 1

SCHEDULE FOR MANCHESTER ANNEX RI/FS

Task	Start	Finish
1. Submit Draft Final RI/FS Mgt. Pl.		8/1/94
2. Finalize Mgt. Pl. & Enter Into IAG	8/1/94	12/1/94
3. Conduct Field Work, Validate Data, & Write Draft Site Charact. Tech. Memo	12/1/94	7/3/95
4. Submit Draft Tech. Memo. ²		7/3/95 ²
5. Submit Early Action Options Report ¹		11/1/95 ¹
6. Review & Finalize Tech. Memo., Conduct Phase 2 Field Work(if needed), & Write Draft RI	7/3/95	3/25/96
7. Submit Draft RI ²		3/25/96 ²
8. Review & Comment On Draft RI	3/25/96	4/25/96
9. Write Draft RI/FS	4/25/96	8/25/96
10. Submit Draft RI/FS ¹		8/25/96 ¹
11. Review & Comment On Draft RI/FS	8/25/96	9/25/96
12. Write Draft Final RI/FS	9/25/96	11/25/96
13. Submit Draft Final RI/FS		11/25/96
14. Review & Finalize RI/FS	11/25/96	12/26/96
15. Submit Final RI/FS ³		12/26/96 ³
16. Submit Draft Proposed Plan		2/10/97
17. Review & Finalize Proposed Plan (P.P. will not be released until RI/FS is finalized)	2/10/97	4/2/97
18. Public Comment Period On P.P.	4/2/97	5/2/97
19. Submit Draft ROD ¹ (Will not be submitted until end of public comment period)		5/16/97 ¹
20. Review & Comment On Draft ROD	5/16/97	6/16/97
21. Write Draft Final ROD	6/16/97	6/30/97
22. Submit Draft Final ROD		6/30/97
23. Review & Finalize ROD ³	6/30/97	8/30/97 ³
24. Submit Draft RD/RA SOW ¹ (Will be submitted in conjunction with Draft Final ROD)		6/30/97 ¹
25. Review & Comment On Draft RD/RA SOW	6/30/97	7/30/97
26. Write Draft Final RD/RA SOW	7/30/97	9/3/97
27. Submit Draft Final RD/RA SOW		9/3/97
28. Review & Finalize RD/RA SOW ³	9/3/97	10/3/97 ³

1 - Denotes Primary Document

2 - Denotes Secondary Document

3 - It is recognized that 10 days are necessary to prepare final document submittals.

TABLE 1

SCHEDULE FOR DESIGNATED EARLY ACTIONS AT MANCHESTER ANNEX
(if determined to be needed)

Task	Start	Finish
1. Submit Early Action Options Report¹		11/1/95¹
2. Review & Finalize EAOR	11/1/95	12/20/95
3. Write Proposed Pl. Annot. Outline	12/9/95	12/20/95
4. Submit Annotated Outline²		12/20/95²
5. Write Draft Proposed Plan	12/20/95	1/6/96
6. Submit Draft Proposed Plan		1/6/96
7. Review & Finalize Proposed Plan (P.P. will not be released until EAOR is finalized)	1/6/96	2/15/96
8. Public Comment Period on P.P.	2/15/96	3/15/96
9. Write ROD Annotated Outline	1/8/96	1/29/96
10. Write Draft ROD	1/29/96	3/29/96
11. Submit Draft ROD¹ (Will not be submitted until end of public comment period)		3/29/96¹
12. Review & Comment on Draft ROD	3/29/96	4/12/96
13. Write Draft Final ROD	4/12/96	5/1/96
14. Submit Draft Final ROD		5/1/96
15. Review & Finalize ROD ³	5/1/96	6/1/96 ³

1 - Denotes Primary Document.

2 - Denotes Secondary Document.

3 - It is recognized that 10 days are necessary to prepare final document submittals.

OLD NAVY DUMP (MANCHESTER ANNEX)
IMPLEMENTATION PLAN
ATTACHMENT A to INTERAGENCY AGREEMENT

I. Introduction

This Implementation Plan describes the management approach for responding to the threats posed by hazardous substances resulting from former Department of Defense activities at the Old Navy Dump (Manchester Annex) Superfund site. The activities described will be conducted under the Interagency Agreement (IAG) between U.S. Environmental Protection Agency (EPA) and the Department of the Army (Army). The U.S. Army Corps of Engineers (Corps) is the agency implementing this IAG for the Army. This Implementation Plan is incorporated as Attachment A to the Interagency Agreement. The detailed plan for conducting Remedial Investigation/Feasibility Study (RI/FS) activities at the site is contained in the RI/FS Management Plan for the Site. The RI/FS Management Plan is fully incorporated as Attachment B to this IAG.

II. Schedules

Table 1 of this Implementation Plan contains the schedule for RI/FS activities. EPA and the Corps recognize that some of the activities may be completed prior to execution of the IAG. In the event of any apparent inconsistencies between deadlines and schedules in the narrative text of this Implementation Plan and Table 1, the deadlines and schedules in Table 1 shall prevail. Additional deadlines and schedules may also be set forth in the Remedial Design/Remedial Action Scope of Work (RD/RA SOW) and in the RD Work Plan (fully incorporated as Attachments C and D respectively).

Deadlines and schedules for additional operable units will be established if the agencies determine that the site needs to be divided into separate operable units as discussed in Section III below. If the site is divided into separate operable units, this Implementation Plan will be applicable to each operable unit, where appropriate.

III. Preliminary Scoping Determinations

Two known sources of contamination at the site are the Fire Fighting Training School and the Landfill. A potential source of contamination is the Net Depot. Preliminary data indicates that the Fire Fighting Training School and the Landfill have impacted the sediments and biota of adjacent Clam Bay. As the sources of contamination are adjacent to each other and have similar targets and pathways and because of the interrelationship between the sources and Clam Bay, the site investigation and decision-making process will be treated as one operable unit. If the investigation/decision-making process for Clam Bay becomes more complex and time-consuming than currently anticipated, Clam Bay, or a portion of Clam Bay, may be broken out as a separate

operable unit in order to keep the remainder of the site on schedule.

If the agencies agree to break out Clam Bay or a portion of Clam Bay into a separate operable unit, that decision will be documented in an addendum to the RI/FS Management Plan. The Management Plan addendum will also include a description of and schedule for the collection of any additional information needed to complete the RI/FS for the new operable unit. The schedule will include a Proposed Plan, Record of Decision, and, if necessary, an RD/RA Scope of Work for the new operable unit. Upon approval of the Management Plan addendum, the schedules for submission of primary and secondary documents will be considered to be fully incorporated into the IAG.

IV. Early Actions

Early actions are actions that may be taken prior to implementation of the Remedial Action in order to protect human health or the environment. When risk reduction can be accomplished promptly and efficiently, there will be a bias for taking early action. Early actions include Interim Remedial Action (IRA), and Non-Time Critical Removal (NTRC). Early actions should be straightforward and limited in scope. Early actions should provide significant health or environmental benefits, must not be inconsistent with potential final actions, and should be accomplished significantly before the implementation of the Remedial Action. Unless exigencies of circumstances dictate otherwise, it is expected that the need for early actions would be identified and would begin at least one year prior to the issuance of the site-wide Record of Decision (ROD).

Early Action Options Report:

An Early Action Options Report (EAOR) shall be developed by the Corps and submitted for EPA review by Nov. 1, 1995 and shall serve as the preliminary decision-making document for early actions. The EAOR shall be supplemented as necessary to include subsequently identified early actions prior to the implementation of the Remedial Action. The EAOR may range from a letter stating that no early actions are appropriate to a comprehensive proposal for multiple early actions. The general content and scope of the EAOR will be determined by the RPMs during or shortly after development of the Site Characterization Technical Memo, but no later than 30 days after submittal of the Technical Memo. If the early action will be conducted as an Interim Remedial Action, it is anticipated that a ROD will be developed and finalized within 7 months of the EAOR.

Few alternatives, and in some cases only one alternative, need to be developed for an early action. A completed baseline risk assessment generally will not be necessary to justify an early action. Qualitative risk information should be presented to demonstrate that the action is needed to stabilize the site, prevent further degradation, or achieve significant risk

reduction quickly. For efficiency, an attempt should be made to make the early action as final as possible, such that it will approximate visions of a final action.

V. Proposed Plan and Record of Decision

To facilitate the timely completion of the Proposed Plan and the ROD, EPA and the Corps expect that development of these documents will be a result of joint efforts through all phases.

The schedule in Table 1 assumes that the proposed plan will be subject to a 30 day public comment and that the public comment will not result in a significant amount of controversy. If EPA and the Corps determine that additional time is needed for public comment or needed to appropriately respond to public comments, then the schedule in Table 1 may be adjusted by mutual agreement of the RPMs. Any mutual agreement shall be documented in writing.

VI. Post-ROD Activities

In order to assure an efficient and smooth flow between pre-ROD and post-ROD activities, preparation for post-ROD activities will begin prior to signing the ROD. A Scope of Work (SOW) covering Remedial Design (RD) and Remedial Action (RA) activities shall be drafted by the Corps and submitted to EPA along with the draft final ROD.

VII. Remedial Design/Remedial Action (RD/RA) Scope of Work

When final, the RD/RA SOW shall be fully incorporated into the IAG as Attachment C (pursuant to IAG paragraph 8.5). The RD/RA SOW shall establish the overall strategy for managing post-ROD activities, and shall describe a time-optimal way of phasing necessary elements of the remedial design along with the preliminary strategy for conducting the remedial action. The RD/RA SOW shall include, but not be limited to:

- a. A description of each phase, or work element, of the design and the rationale used to divide the RD into such phases or elements. The description shall include:
 - i) The design criteria with reference to the technical requirements and performance standards contained in the ROD;
 - ii) The "critical path" schedule for completion of the work element including identification of primary and secondary deliverables;
 - iii) A discussion of funding availability, design contractor limitations, and resource needs to complete the work element;
 - iv) A description of treatability studies and/or additional field data collection necessary to be conducted prior to or concurrent with the design;
 - v) A description of how projected short term risks associated with implementation of the work element will be assessed;

- b. The recommended overall RD/RA "critical path" enforceable schedule (through development of the RA workplan). The schedule shall include a description of the dependency of each RD work element and identification of primary document deliverables;
- c. Anticipated overall post-ROD funding needed to complete the RD and availability of that funding;
- d. A proposed working schedule for completion of RD activities and proposals to expedite those activities;
- e. Suggested modifications to the Community Relations Plan and/or elements of the Plan which will be implemented during the RD;
- f. Identification of those secondary documents which are associated with the RD and target submittal dates for those documents;
- g. A description of issues which require resolution or further analysis;

VIII. RD Work Plan

Matters that an RD work plan might normally address will be subsumed by the RD/RA SOW. Therefore, it is anticipated that no separate RD work plan will be required unless later deemed necessary for additional studies (such as pilot studies or treatability studies) before the remedial design can be completed. In such event, the IAG shall be modified as necessary to fully incorporate any separate RD Work Plan.

IX. RA Work Plan

When final, the RA Work Plan shall be fully incorporated into the IAG as Attachment D (pursuant to IAG paragraph 8.5) and shall:

- a. Specify all relevant changes (i.e. those changes that may be expected to impact the RA) between the Pre-Final Design and the final RD;
- b. Update (and expand upon) the RD/RA "critical path" schedule;
- c. Update (and expand upon) the RA cost estimation;
- d. Identify all additional RA secondary documents, as necessary.

X. Pre-Final Inspection Report

As needed, a Pre-Final Inspection shall be conducted by the RPMs, and (if EPA and the Corps so determine) by an independent third party, agreeable to the RPMs. Following the inspection, the Corps shall prepare and submit a Pre-Final Inspection Report.

The Report shall be finalized in the context of the RA report and shall include:

- a. Outstanding construction requirements;
- b. Actions required to resolve them;
- c. RA Completion date, and date of Final Inspection;

XI. RA Report

At the completion of the RA, the Corps shall prepare and submit an RA Report which shall consist of;

- a. Consolidation of any and all RA reports for individual work elements;
- b. A brief description of outstanding items from the Prefinal Inspection Report;
- c. Synopsis of work discussed in the RA Work Plan, and certification that the work was performed;
- d. Explanation of any modifications to the RA Work Plan.
- e. Certification by a registered professional engineer that the implemented remedy is both operational and functional.

XII. EPA/Corps Roles in Document Review

For efficiency, development of documents is expected to be a dynamic and interactive process that is not limited to mere submittal of documents, review and comment, and resubmittal. Open and frank discussions throughout the process should improve the efficiency of developing documents. The goal of the parties in document development is to maintain communication such that there should need to be no more than one iteration of written comments per document and to hopefully develop draft final documents that need only minimal revisions. It is primarily EPA's responsibility to conduct a complete and thorough review of draft documents. It is primarily the Corps' responsibility to ensure that it thoroughly understands and adequately responds to EPA's comments.

XIII. Actions and Timeframes for Facilitation of Document Review

The parties recognize that potential disputed issues need to be resolved in sufficient time to finalize a document in accordance with the schedule set forth in Table 1 of this Implementation Plan. The parties consider ten days to be the minimum amount of time needed to make document revisions and to print and mail final documents after all issues are resolved. The RPMs will strive to resolve all potential disputed issues at least ten days prior to the scheduled deadline for submittal of a final document. However, Paragraph 20.18 of the IAG allows the RPMs to mutually agree to extend by 15 days the period for finalizing a draft final document if required for editing or mailing purposes.

For scopes of work and work plans, the RPMs will meet to discuss approaches for the work and general contents and organization of a work plan prior to submittal of a draft. When either party feels it appropriate, the RPMs will meet to discuss document organization and content prior to submittal of a draft.

The RPMs shall make reasonable efforts to meet and discuss document review seven to fourteen days prior to the date that comments are due. EPA comments on draft documents will be due 30 days after receipt of the document.

Within approximately seven days after EPA comments on a document, the RPMs will meet to discuss EPA's comments and to plan for addressing the comments. Potential disputed issues should be identified by either party prior to submittal of a draft final document, but no later than fourteen days after submittal of a draft final document.