

## IAG COVER SHEET

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(Talladega County)

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FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120

Between

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION IV

And

THE UNITED STATES DEPARTMENT OF THE ARMY

And

THE ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Concerning

THE U.S. ARMY'S ALABAMA ARMY AMMUNITION PLANT

At

CHILDERSBURG, ALABAMA

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or CERCLA) and Sections 6001, 3004(u) & (v), and 3008(h) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sections 6961, 6924(u) & (v) and 6928(h), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA/HSWA or RCRA) and Executive Order 12580;

(ii) U.S. EPA, Region IV, enters into those portions of this Agreement that relate to remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, Sections 6001, 3004(u) & (v), and 3008(h) of RCRA, and Executive Order 12580;

(iii) The United States Army (U.S. Army or Army) enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, Sections 6001, 3004(u) & (v), and 3008(h) of RCRA, Executive Order 12580, the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4321, and the Defense Environmental Restoration Program (DERP), 10 U.S.C. Section 2701 et seq;

(iv) The U.S. Army enters into those portions of this Agreement that relate to remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, Sections 6001, 3004(u) & (v), and 3008(h) of RCRA, Executive Order 12580 and the DERP;

(v) The Alabama Department of Environmental Management (ADEM) enters into this agreement pursuant to Sections 120(f) and 121(f) of CERCLA/SARA, 42 U.S.C. Sections 9620(f) and 9621(f), Sections 6001, 3004(u) & (v), and 3008(h) of RCRA, and the Code of Alabama (1975), Section 22-22A-6 (1988 Cum. Supp.).

## II. PARTIES

The Parties to this Agreement are the U.S. EPA, ADEM and the Army. Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

The terms of this Agreement shall apply to and be binding upon the U.S. EPA, the ADEM, the Army, and their respective agents and assigns and shall be enforceable against all of the foregoing via the Parties.

The Army will notify U.S. EPA and ADEM of the identity and assigned tasks of each of its contractors performing work under this Agreement upon their selection. The Army shall notify its agents, employees, and applicable contractors of the existence of this Agreement and shall provide a copy of this Agreement to all primary contractors retained to perform work pursuant to this Agreement.

This Part shall not be construed as an agreement to indemnify any person.

## III. PURPOSES

A. The general purposes of this Agreement are to:

1. Ensure that the environmental impacts associated with past and present activities at the Site are thoroughly investigated and that appropriate remedial action is taken as necessary to protect the public health, welfare and the environment;



2. Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with CERCLA/SARA, the NCP, Superfund guidance and policy, RCRA, RCRA guidance and policy, and applicable state law; and,

3. Facilitate cooperation, exchange of information and participation of the Parties in such actions.

B. Specifically, the purposes of this Agreement are to:

1. Identify Operable Unit Remedial Action alternatives which are appropriate at the Site prior to the implementation of final remedial action(s) for the Site. These alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of Operable Unit Remedial Actions to U.S. EPA and ADEM pursuant to CERCLA/SARA and applicable state law. This process is designed to promote cooperation among the Parties in identifying Operable Unit Remedial Action alternatives prior to selection of final Remedial Action.

2. Establish requirements for the performance of a RI to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and/or threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of a FS for the Site to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or

threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA/SARA and applicable state law.

3. Identify the nature, objective and schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA/SARA and applicable state law.

4. Implement the selected operable unit(s) and final remedial action(s) in accordance with CERCLA and applicable state law and meet the requirements of Section 120(e)(2) of CERCLA for an interagency agreement among the Parties.

5. Assure compliance with RCRA and other applicable or relevant and appropriate federal and state hazardous waste laws and regulations for matters covered by this Agreement.

6. Expedite the clean-up process to the extent necessary to protect human health and the environment.

7. Provide ADEM involvement in the initiation, development, selection and enforcement of remedial actions to be undertaken at ALAAP, including the review of all applicable data as it becomes available and the development of studies, reports, and action plans; and to identify and integrate State ARARs into the remedial action process.

8. Provide for operation and maintenance of any remedial action selected and implemented pursuant to this Agreement.

#### IV. DEFINITIONS

Except as noted below or otherwise explicitly stated, the definitions provided or meanings utilized in CERCLA, and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, shall control the meaning of the terms used in this Agreement.

In addition:

A. ALAAP means the Alabama Army Ammunition Plant, a federally owned facility located in Talladega County, Alabama, including all areas identified in Attachment 1 hereto.

B. ADEM means the Alabama Department of Environmental Management.

C. Agreement means this Facility Agreement and all Attachments to this document. All such Attachments shall be appended to and made an integral and enforceable part of this document.

D. ARARs means legally applicable or relevant and appropriate laws, standards, requirements, criteria, or limitations as those terms are used in CERCLA Section 121(d), 42 U.S.C. Section 9621(d).

E. CERCLA means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sections 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law 99-499.

F. Days means calendar days, unless business days are specified. Any submittal or written statement of dispute that under the terms of this Agreement would be due on a Saturday, Sunday, or legal holiday shall be due on the following business day.

G. DOD means the United States Department of Defense.

H. Feasibility Study or FS means the study which fully evaluates and develops remedial action alternatives to prevent or mitigate the migration or the release of hazardous substances and pollutants, or contaminants at and from the Site.

I. Hazardous Substances shall have the meaning set out in Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).

J. National Contingency Plan or NCP means the National Oil and Hazardous Substances Pollution Contingency Plan which codifies at 40 C.F.R. Part 300 implementing regulations for CERCLA, and any amendments thereto.

K. Operable Unit Remedial Action or Operable Unit means a discrete action that comprises an incremental step toward comprehensively addressing site problems. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of release, or pathway of exposure. The cleanup of a site can be divided into a number of operable units, depending on the complexity of the problems associated with the site. Operable units may address geographical phases of an action, or may consist of any set of actions performed

over time or any actions that are concurrent but located in different parts of a site. Operable Units will not impede implementation of subsequent actions, including final action at the site.

All operable unit remedial actions shall be taken in accordance with applicable provisions of the NCP relating to remedial actions and with the requirements of CERCLA.

L. Parties means all Parties who are signatories to this Agreement.

M. Project Managers (EPA and ADEM) means the individuals designated by EPA and ADEM who oversee and provide technical assistance on the activities to be performed pursuant to this Agreement at the Site.

N. Project Manager (Army) means the individual designated by the Army who directs the activities to performed pursuant to this Agreement at the Site.

O. Proposed Plan means the document which describes the preferred remedial action and reviews the screening of alternatives which have been considered.

P. Quality Assured Data means data which has undergone quality assurance as set forth in the approved Quality Assurance Project Plan (QAPP).

Q. RCRA means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616.

R. Record(s) of Decision or ROD(s) means the public document(s) that explain(s) which clean-up alternative(s) will be implemented for the final remedial action for the Site, including any operable units, and includes the bases for the selection of the remedy. The bases include information and technical analysis generated during the Remedial Investigation and Feasibility Study and consideration of public comments and community concerns.

S. Remedial Action or RA means the implementation of the Remedial Design consistent with the NCP.

T. Remedial Design or RD means the technical analysis and procedures which follow the selection of the remedy for a site and result in a detailed set of plans and specifications for implementation of the remedial action.

U. Remedial Investigation or RI means the investigation, as set forth in 40 C.F.R. Part 300, conducted to fully determine the nature and extent of the releases or threats of releases of hazardous substances, pollutants, or contaminants and to gather necessary data to support the corresponding feasibility study.

V. Site means the property currently known as ALAAP, which occupies approximately 6000 acres of contiguous land in a location 4 miles north of Childersburg, Talladega County, Alabama, and other areas outside of ALAAP contaminated by the migration of hazardous substances, pollutants or contaminants from property currently known as ALAAP. Such other areas shall

include those contaminated areas of property now owned by the Kimberly-Clark Company, which property was at one time a part of ALAAP and was purchased from the Army by the Company.

#### V. DETERMINATIONS

This Part contains determinations made solely by U.S. EPA and ADEM as a basis for entering this Agreement. They are not admissions by ALAAP or the Army for any purpose.

A. The Alabama Army Ammunition Plant (ALAAP), located in Childersburg, Alabama, constitutes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9) and Alabama Code Section 22-22A-1 et seq.;

B. The Army is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21) and Alabama Code Section 22-22A-3(7), and an "owner/operator" of ALAAP within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. Section 9607(a)(2), as those terms are defined in Section 101(20) of CERCLA, 42 U.S.C. Section 9601(20), Alabama Code Section 22-22A-1, et seq. and Alabama Pub. Law 859 Section 2(10);

C. Hazardous substances, and pollutants or contaminants within the meaning of Sections 101(14) & (33) and 104(a)(2) of CERCLA, 42 U.S.C. Sections 9601(14) and (33) and 9604(a)(2), and 1988 Alabama Pub. Law 859 Section 2(6), Alabama Code Section 22-22A-1 et seq., have been disposed at ALAAP;

D. There have been releases and there continue to be releases and threatened releases of hazardous substances, hazardous constituents, and pollutants or contaminants into the

environment within the meaning of 42 U.S.C. Sections 9601(22), 9604, 9606, and 9607 and 1988 Alabama Pub. Law 859 Section 2(11), at and from ALAAP;

E. With respect to those releases and threatened releases, the U.S. Army is a responsible party within the meaning of 42 U.S.C. Section 9607 and a liable party within the meaning of 1988 Alabama Pub. Law 859 Section 2(9), and the Army is the owner of the ALAAP facility;

F. The actions to be taken pursuant to this Agreement are reasonable and necessary to protect public health or welfare or the environment; and

G. The schedule for completing the actions required by this Agreement complies with the requirements of Section 120(e) of CERCLA, 42 U.S.C. Section 9620(e).

#### VI. SITE DESCRIPTION

The Alabama Army Ammunition Plant (ALAAP), formerly the Alabama Ordnance Works, is located east of the Coosa River, and approximately four miles north of Childersburg, Talladega County, about 40 miles southeast of Birmingham, Alabama. The plant was established in 1941 on 13,233 acres of land located near the junction of the Talladega Creek and the Coosa River. Over the years, several parcels of the original property have been sold, and today only 5,045 acres remain of the original 13,233 acres that comprised ALAAP. The terrain is level to



rolling and largely suited to pasture and timber land with elevation ranging from 384 to 600 feet above sea level. A map of the site is attached hereto and marked Attachment 1.

In a Remedial Investigation previously conducted by the Army to evaluate contamination and risk of endangerment from that contamination at ALAAP based on 24 different study areas within the installation, the Site was defined to consist of two general areas, Area A and Area B. Area A consists of approximately 2800 acres in the eastern portion of the installation, including the following areas of previous operation: Magazine Area, Old Burning Ground, Small Arms Ballistics Range, Cannon Range, Old Well, a portion of the Propellant Shipping Area, Flaker Screen Wash Area, and a parcel of woodland outside the security fence line. Area B consists of the following areas of previous operation: Inert Material Burning Ground/Sanitary Landfill, Manhattan Project Area, Red Water Storage Basin, Southern and Northern TNT Manufacturing Areas, Acid/Organic Manufacturing Area, Aniline Sludge Basin, Teteryl Manufacturing Area, Flashing Ground, the majority of the Propellant Shipping Area, Blending Tower Area, Lead Remelt Facility, Rifle Powder Finishing Area, and the Demolition Landfill. The Industrial Area of the installation constitutes the majority of Area B. Maps of the Site reflecting the study areas are attached hereto as Attachments 2 and 3.

## VII. FINDINGS OF FACT

This Part contains findings of fact made by U.S. EPA and ADEM solely as a basis for entering this Agreement. None of the findings are admissions by ALAAP or the Army for any purpose.

1. ALAAP was constructed and operated by the United States Army during World War II to produce nitrocellulose, a single-based smokeless powder, explosives [2,4,6-trinitrotoluene (2,4,6-TNT), 2,4-dinitrotoluene (2,4-DNT), and 2,4,6-trinitrophenylmethylnitramine (teteryl)], and supporting chemicals (aniline, N,N-dimethylaniline, diphenylamine, and sulfuric acid). Operations were terminated at ALAAP in August 1945, and from the end of the war until 1973, the plant was maintained in standby status.

2. In 1973, the Department of the Army declared the ALAAP excess to the Army's needs and, since that time, several industries have shown interest in acquiring portions of the land for development and use. One area of particular interest has been the 2,800 acre parcel located on the eastern portion of the ALAAP which was formerly used as a storage area and a burning ground. This area has been designated as Area A in a number of Army studies and is so designated in this Agreement. The remaining portion of the ALAAP installation, which includes the manufacturing areas of the plant, is referred to in Army studies and this Agreement as Area B.

3. In 1977, the Kimberly-Clark Corporation purchased a 1,354 acre parcel of the installation, which included the old

Nitrocellulose and Smokeless Powder Manufacturing Areas.

Following the discovery of contamination, 272 acres of that parcel were leased back to the Army for removal of equipment and decontamination of these manufacturing facilities. A cleanup of these areas, including asbestos removal and decontamination of buildings, sumps, sewer and soils, was completed by the Army in 1981. This 272 acre parcel, known as the "Leaseback Area", is included within the "Site" as listed on the National Priorities List.

4. In 1978, the U.S. Army Toxic and Hazardous Materials Agency (USATHAMA), as a part of the Department of Defense's Installation Restoration Program, conducted a records search into possible contamination at the ALAAP.

5. In May 1978, Report No. 130, the Installation Assessment of ALAAP prepared for USATHAMA, concluded that specific areas were potentially contaminated by explosives and lead compounds.

6. Based on the records search findings, an Exploratory Survey (ES) was conducted from 1979 to 1980. That survey found that the activities conducted by the Army at ALAAP had resulted in significant contamination of the environmental matrix at ALAAP in the form of releases of nitroaromatic compounds, asbestos, lead and other organic contaminants into the soil and groundwater at the site.

7. On June 5, 1981, EPA officially received from the Army a Notification of Hazardous Waste Site for ALAAP.

8. From 1981 through 1983, USATHAMA conducted various investigations at the site, including a groundwater study, a Potential Hazardous Waste Site Identification and Preliminary Assessment, and a Confirmatory Survey to determine the extent of contamination.

9. On October 15, 1984, the ALAAP was initially listed for the proposed National Priorities List in the Federal Register, Volume 49, Number 200.

10. In April, 1986, USATHAMA began more studies, culminating in a Remedial Investigation/Feasibility Study which was completed on 11/11/87 and submitted to EPA on 12/15/87.

11. As noted in Part V, supra, (Site Description), the Remedial Investigation evaluated the extent of contamination and risk of endangerment from that contamination at ALAAP based on 24 different study areas within the installation and then defined the site to consist of the two general areas, Area A and Area B.

12. The RI survey confirmed the existence of the following forms of contamination at the Site: explosive residue (reactive) contamination, nitroaromatic (non-reactive) contamination, asbestos, and lead. These forms of contamination exist in varying degrees in the soil, sediment, surface water and ground water at the Site.

13. On August 20, 1986, the Army awarded a contract for the cleanup of certain areas within Area A to Weston Services, Inc. of Norcross, Georgia (WSI). As a result of this contract, WSI

performed site work cleanup and remedial decontamination activities with respect to seven distinct work areas within Area A.

14. On July 22, 1987, ALAAP was listed in Group 10 on the final National Priorities List at Federal Register, Volume 52, Number 140.

15. On August 5, 1988, USATHAMA submitted a draft statement of work which describes the additional field investigation required to fill the data gaps identified in earlier EPA reviews of the Remedial Investigation and Feasibility Study documents.

#### VIII. STATUTORY COMPLIANCE

A. Based upon current information regarding the present and past activities at ALAAP, it is the belief of the Parties that Sections 6001, 3004(u) and (v), and 3008(h) of RCRA do not apply at the Site. Nevertheless, the Parties intend to integrate the Army's CERCLA response obligations and any RCRA corrective action obligations which might later come to light which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. Section 9601 et seq.; satisfy the corrective action requirements of Sections 3004(u) and (v) for a RCRA permit and of Section 3008(h), 42 U.S.C. Section 6928(h) for interim status facilities; and meet or exceed all applicable or relevant and appropriate Federal and State laws and

regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. Section 9621 and applicable state law.

B. Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement will be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA (i.e., no further corrective action shall be required). The Parties agree that RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to Section 121 of CERCLA, 42 U.S.C. Section 9601 et seq. with respect to any hazardous waste that might be covered by this Agreement.

C. The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that on-going hazardous waste management activities at the ALAAP may require issuance of permits under Federal and State laws. This Agreement does not affect the requirements, if any, for the Army to obtain such permits. However, if a permit is issued to the Army for on-going hazardous waste management activities at the Site, U.S. EPA and, or Alabama shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit.

With respect to those portions of this Agreement incorporated by reference into permits, the parties intend that judicial review of the incorporated portions shall, to the extent review is authorized by law, only occur under the provisions of CERCLA.

#### IX. PERMITS

A. The Parties recognize that under Sections 121(d) and 121(e)(1) of CERCLA/SARA, 42 U.S.C. Sections 9621(d) and 9621(e)(1), and the NCP, portions of the response actions called for by this Agreement and conducted entirely on the Site are exempted from the procedural requirement to obtain federal, state, or local permits but must satisfy all the applicable or relevant and appropriate federal and state standards, requirements, criteria, or limitations which would have been included in any such permit.

B. When the Army proposes a response action (including a Work Plan pursuant to this Agreement) to be conducted entirely on the Site, which in the absence of Section 121(e)(1) of CERCLA/SARA and the NCP would require a federal or state permit, the Army shall include in the submittal:

- (1) Identification of each permit which would otherwise be required;
- (2) Identification of the standards, requirements, criteria, or limitations which would have had to have been met to obtain each such permit,

including input received from ADEM in accordance with Section 121(d)(2)(A)(ii) of CERCLA; and

- (3) Explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified in (2), immediately above.

Upon receipt of this submittal from the Army, U.S. EPA and the ADEM will provide their positions with respect to (2) and (3) above in a timely manner.

C. Paragraph A above is not intended to relieve the Army of the requirement(s) of obtaining a federal, state, or local permit whenever it proposes response action involving the shipment or movement off-Site of a hazardous substance.

D. The Army shall be responsible for obtaining all federal, state or local permits which are required for the performance of any work under this Agreement. The Army shall notify ADEM and U.S. EPA in writing of any permits required for off-Site activities as soon as it becomes aware of the requirement. Upon request, the Army shall provide ADEM and U.S. EPA with copies of all such permit applications and other documents related to the permit process.

E. If a permit which is necessary for implementation of this Agreement is not issued, or is issued or renewed in a manner which is materially inconsistent with the requirements of this Agreement, the Army shall notify the ADEM and U.S. EPA project managers of its intention to propose modifications to



primary documents thereby affected in accordance with Part XII.J. of this Agreement.

F. Notification by the Army of its intention to propose modifications shall be submitted within seven (7) calendar days of receipt by the Army of notification that: (1) a permit will not be issued; (2) a permit has been issued or reissued with terms which are materially inconsistent with an existing primary document; or (3) a final determination with respect to any appeal related to the issuance of a permit has been entered; whichever is later. Within thirty (30) days from the date it submits its notice of intention to propose modifications, the Army shall submit to the ADEM and U.S. EPA its proposed modifications with an explanation of its reasons in support thereof.

G. During any appeal of any permit required to implement this Agreement or during review of any of the Army's proposed modifications as provided in Paragraph D above, the Army shall continue to implement those portions of this Agreement which can be implemented pending final resolution of the permit issue(s).

H. Except as otherwise provided in CERCLA/SARA and this Agreement, the Army shall comply with any applicable state and federal hazardous waste management requirements at the ALAAP facility.

I. To the extent that information required by Paragraph B, above, has been provided by ALAAP in another document or report required under this Agreement, it is not the intent of the

Parties that this Part require resubmission of this information. The Army will identify to U.S. EPA and ADEM where and in what form this information has previously been submitted.

#### X. SCOPE OF AGREEMENT

A. This Agreement shall apply to all releases and threats of release of hazardous substances, pollutants or contaminants at or from ALAAP, including such releases and threats of release at or from solid waste management units at ALAAP, to which CERCLA, to include Section 211 of SARA, and RCRA, or CERCLA alone, applies.

B. Under this Agreement, the U.S. Army agrees it shall:

1. Conduct a Remedial Investigation (RI) as described in Part XI of this Agreement;
2. Conduct a Feasibility Study (FS) of the Site as described in Part XI of this Agreement, incorporating, at a minimum, the results of the ALAAP RI;
3. Develop Operable Unit Remedial Actions (Operable Units) as described in Part XI (Work to be Performed);
4. Develop Remedial Action alternative(s) for the Site and implement those Remedial Actions, including any Operable Units, selected for the Site as described in Part XI of this Agreement;
5. Implement the Remedial Actions selected pursuant to Parts XI, XII and XXVIII of this Agreement for the entire Site.
6. Conduct operation and maintenance to maintain the effectiveness of response actions at the Site.

7. Prepare a Health and Safety Plan, a Data Management Plan and a Community Relations Plan.

8. Conduct all activities pursuant to this Agreement in accordance with all applicable guidelines, rules, regulations and criteria as specified in 42 U.S.C. Section 9620(a) and in accordance with the authorities delegated by the President in Executive Order 12580, 52 Federal Register 2923 (January 29, 1987).

C. U. S. EPA and ADEM agree to provide the Army with guidance and timely response to requests for guidance to assist the Army in the performance of the requirements under this Agreement.

#### XI. WORK TO BE PERFORMED

Under this Agreement, the Army agrees to develop and implement plans for the study and remediation of contamination at the Site. All response actions taken pursuant to this Agreement shall be consistent with CERCLA, the NCP, CERCLA guidance and policy and all ARARs. In addition, all submittals and elements of work undertaken pursuant to this Part shall be performed in accordance with the requirements and deadlines and schedules set forth in this Agreement or any attachments hereto.

Specifically, the work to be performed by the Army pursuant to this Agreement is as follows:

##### A. Remedial Investigation:

The Army agrees it shall develop, implement and report upon a RI of the Site in accordance with the requirements of CERCLA,

the NCP, and the timetables and deadlines developed pursuant to this Agreement.

B. Feasibility Study:

The Army agrees it shall design, propose, undertake and report upon a FS for the Site, including any operable units, which is in accordance with CERCLA, the NCP, and the timetables and deadlines developed pursuant to this Agreement.

C. Operable Unit Remedial Actions:

The Army shall develop Operable Unit Remedial Actions (Operable Units) and propose deadlines for the completion of Operable Unit workplans as such units are identified. Operable Unit Remedial Action selection and implementation shall comply with all NCP requirements governing such actions and all appropriate requirements and procedures under this Agreement for selecting and implementing final Remedial Actions.

D. Remedial Action:

The U.S. Army shall, after consultation with U.S. EPA and ADEM, publish its Proposed Plan outlining the Remedial Action alternative(s), including Operable Unit Remedial Action alternatives, which it proposes to implement for public review and comment. Upon completion of the public comment period, all Parties will consult with each other about the need for modification of the Proposed Plan and for additional public comment based on public response. After due consideration of all comments, the Army shall submit its draft Record of Decision (ROD) in accordance with applicable guidance. A review in

accordance with Part XII shall be conducted on the draft Record of Decision. If the Parties agree on the draft Record of Decision, the draft Record of Decision shall become the final Record of Decision. If the Parties are unable to reach agreement on the draft Record of Decision, resolution of the dispute shall be in accordance with Part XXVIII of this Agreement. Should dispute resolution reach the EPA Administrator level, the Administrator's final selection of the remedial action(s) shall not be subject to dispute by the Army. Notice of the final Record of Decision shall be published by the Army. The final ROD shall be made available to the public prior to the commencement of the remedial action, in accordance with CERCLA Section 117.

Following finalization of the ROD, the Army shall design, propose and submit a plan for implementation of the selected Remedial Action, including appropriate timetables and schedules, to U.S. EPA and ADEM. The purpose of the plan for Remedial Action is to establish procedures for implementation of the selected response action.

E. Additional Work:

1. In the event that the U.S. EPA or ADEM determine that additional work, including remedial investigatory work and/or engineering evaluation, is necessary to accomplish the objectives of this Agreement, notification of such additional work or modification to work shall be provided to the Army.

2. If, after consultation with EPA and ADEM, the Army disputes the necessity of such additional work, the question of whether such work will be conducted shall be resolved pursuant to the dispute resolution procedures of Part XXVIII.

3. Any additional work or modification of work pursuant to this Paragraph shall be governed by the provisions of this Agreement and shall be reflected either by way of a modification of an existing report or document pursuant to Part XII(J.) or by submittal by the Army of additional primary documents addressing the work.

4. Should additional work be required pursuant to this Paragraph, deadlines and schedules for the submission of primary documents or modifications of primary documents relating to that work, as well as schedules for implementation of any remedial activity relating to that work, shall be established in accordance with the procedures set forth in Part XXV of this Agreement, except that the starting point for the process as reflected in Paragraph A of Part XXV shall be "Within 21 days of the determination, pursuant to Subparagraphs 1 and 2 of Paragraph E, Part XI, that the additional work is required...". All deadlines and schedules developed pursuant to this Paragraph shall become attachments to and enforceable parts of this Agreement, subject to stipulated penalties under Paragraph XXIV.

5. If any additional work will adversely affect scheduled work or will require significant revisions to an approved Work Plan, the Army Project Manager will notify the

U.S. EPA and ADEM Project Managers as soon as any such conflict is discovered and will provide any written explanation requested by U.S. EPA or ADEM within five (5) business days of the request.

6. The discovery of previously unknown sites, contamination or releases, and significant new Site conditions may be addressed as additional work under the terms of this Agreement as specified in this Paragraph. Should any Party make such a discovery, it shall notify the other Parties within seven (7) days of such discovery.

XII. CONSULTATION WITH U.S. EPA AND ADEM

Review and Comment Process for Draft and Final Documents

A. Applicability:

1. The provisions of this Part establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comments, and response to comments regarding RI/FS and RD/RA documents, specified herein as either primary or secondary documents. In accordance with Section 120 of CERCLA and 10 U.S.C. Section 2705, the Army will normally be responsible for issuing primary and secondary documents to U.S. EPA and ADEM. As of the effective date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute resolution in accordance with Paragraphs B through J below.

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

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

1. Primary documents include those reports that are major, discrete portions of RI/FS or RD/RA. Primary documents are initially issued by the Army in draft subject to review and comment by U.S. EPA and ADEM. Following receipt of comments on a particular draft primary document, the Army will respond to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary document will become the final primary document 30 days after issuance if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

2. Secondary documents include those reports that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by the Army in draft subject to review and comment by U.S. EPA and ADEM. Although the Army will respond to comments received, the draft secondary documents may be finalized in the context of the corresponding primary documents. A secondary document may be disputed at the time the corresponding draft final primary document is issued.



C. Primary Reports:

1. The Army shall complete and transmit draft reports for the following primary documents to U.S. EPA and ADEM for review and comment in accordance with the provisions of this Part:

- a. RI/FS Work Plan, including Sampling and Analysis Plan and QAPP
- b. Community Relations Plan
- c. Risk Assessment Report
- d. RI Report
- e. Initial Screening of Alternatives
- f. FS Report
- g. Proposed RA Plan
- h. Proposed ROD
- i. Remedial Design
- j. Remedial Action Work Plan

2. Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. The Army shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Part XXV (Deadlines) of this Agreement.

D. Secondary Documents:

1. The Army shall complete and transmit draft reports for the following secondary documents to U.S. EPA and ADEM for review and comment in accordance with the provisions of this Part:

- a. Data Quality Objectives
- b. Site Characterization Summary
- c. Detailed Analysis of Alternatives
- d. Treatability Studies
- e. Sampling and Data Results
- f. Health and Safety Plan
- g. Data Management Plan

2. Although U.S. EPA and ADEM may comment on the draft reports for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Paragraph B hereof. Target dates shall be established for the completion and transmission of draft secondary reports pursuant to Part XXV (Deadlines) of this Agreement.

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

The Project Managers shall meet approximately every thirty (30) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site on the primary and secondary documents. Prior to preparing any draft report specified in Paragraphs C and D above, the Project Managers shall meet to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft report.

F. Identification and Determination of Potential ARARs:

1. For those primary reports or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft report, the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the report being addressed. ADEM shall identify all potential state ARARs as early in the remedial process as possible consistent with the requirements of CERCLA Section 121 and the NCP. The Army shall consider any written interpretations of ARARs provided by the State. Draft ARAR determinations shall be prepared by the Army in accordance with Section 121(d)(2) of CERCLA, the NCP and pertinent guidance issued by U.S. EPA that is consistent with CERCLA and the NCP.

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

G. Review and Comment on Draft Reports:

1. The Army shall complete and transmit each draft primary report to U.S. EPA and ADEM on or before the corresponding deadline established for the issuance of the

report. The Army shall complete and transmit the draft secondary documents in accordance with the target dates established for the issuance of such reports established pursuant to Part XXV (Deadlines) of this Agreement.

2. Unless the Parties mutually agree to another time period, all draft reports shall be subject to a 60-day period for review and comment. Review of any document by the U.S. EPA and ADEM may concern all aspects of the report (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, and any pertinent guidance or policy issued by the U.S. EPA, and with any applicable state law. Comments by the U.S. EPA and ADEM shall be provided with adequate specificity so that the Army may respond to the comments and, if appropriate, make changes to the draft report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Army, the U.S. EPA or ADEM shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, U.S. EPA or ADEM may extend the 60-day comment period for an additional 20 days by written notice to the Army prior to the end of the 60-day period. On or before the close of the comment period, U.S. EPA and ADEM shall transmit by certified mail, return receipt requested, or by overnight delivery service (if such provides a written receipt evidencing delivery) their written comments to the Army.

3. Representatives of the Army shall make themselves readily available to U.S. EPA and ADEM during the comment period for purposes of informally responding to questions and comments on draft reports. Oral comments made during such discussions need not be the subject of a written response by the Army at the close of the comment period.

4. In commenting on a draft report which contains a proposed ARAR determination, U.S. EPA or ADEM shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that U.S. EPA or ADEM does object, it shall explain the bases for its objection in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

5. Following the close of the comment period for a draft report, the Army shall give full consideration to all written comments on the draft report submitted during the comment period. Within 60 days of the close of the comment period on a draft secondary report, the Army shall transmit to U.S. EPA and ADEM its written response to comments received within the comment period. Within 60 days of the close of the comment period on a draft primary report, the Army shall transmit to U.S. EPA and ADEM the draft final primary report, which shall include the Army's response to all written comments received within the comment period. While the resulting draft final report shall be the responsibility of the Army, it shall be the product of consensus among the parties to the maximum extent possible.

6. The Army may extend the 60-day period for either responding to comments on a draft report or for issuing the draft final primary report for an additional twenty (20) days by providing notice to U.S. EPA and ADEM. In appropriate circumstances, this time period may be further extended in accordance with Part XXVI (Extensions) hereof.

H. Availability of Dispute Resolution for Draft Final Primary Documents:

1. Dispute resolution shall be available to the Parties for draft final primary reports as set forth in Part XXVIII (Dispute Resolution).

2. When dispute resolution is invoked on a draft final primary report, work may be stopped in accordance with the procedures set forth in Part XXVIII (Dispute Resolution).

I. Finalization of Reports:

The draft final primary report shall serve as the final primary report if no party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process should the Army's position be sustained. If the Army's determination is not sustained in the dispute resolution process, the Army shall prepare, within not more than 35 days of resolution of a dispute, a revision of the draft final report which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Part XXVI (Extensions) hereof.

J. Subsequent Modifications of Final Reports:

Following finalization of any primary report pursuant to Paragraph I above, a Party may seek to modify the report, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Subparagraphs 1 and 2, below.

1. A Party may seek to modify a report after finalization if it determines, based on new information (i.e., information that became available, or conditions that became known, after the report was finalized) that the requested modification is necessary to protect public health and the environment. A Party may seek such a modification by submitting a concise written request to the Project Managers of the other Parties. The request shall specify the nature of the requested modification and how the request is based on new information.

2. In the event that a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke dispute resolution to determine if such modification shall be conducted. Modification of a report shall be required only upon a showing that: (1) the requested modification is based on significant new information, and (2) the requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment.

3. Nothing in this Paragraph (J) shall alter U.S. EPA's or ADEM's ability to request the performance of additional work which was not contemplated by this Agreement. The Army's obligation to perform such work must be established by either a modification of a report or document, or by amendment to this Agreement.

#### XIII. CREATION OF DANGER

A. In the event the ADEM Director or the U.S. EPA determines that activities conducted pursuant to this Agreement may present an imminent and substantial endangerment to public health or welfare or to the environment, the ADEM or the U.S. EPA, through their Project Managers, may direct the Army to stop further implementation of this Agreement for such period of time as needed to abate the danger and/or may require the Army to take whatever action is necessary to abate the danger.

B. ADEM or EPA shall, within twenty-four (24) hours of directing a work stoppage under this Part, present the reasons therefore in writing to the Army. Within seventy-two (72) hours of written request by the Army for review of any directed work stoppage, the Chief of Special Projects or EPA Division Director shall meet with the Army to discuss the potential danger and possible measures to abate or mitigate the danger and shall determine in writing whether continued work stoppage is necessary. The decision as to whether the work stoppage should continue shall be subject to dispute under Part XXVIII (Resolution of Disputes) of this Agreement.



C. The Parties agree that the sole purpose of a work stoppage under this Part is to abate imminent and substantial endangerment to public health or welfare or the environment and not to cause stipulated penalties or any other adverse impact to a Party. Toward that end, any schedule, deadline, or time period affected by such a work stoppage shall be extended for a period equal to any delay in complying with such schedule, deadline, or time period caused by the work stoppage as determined under the provisions of Part XXVI (Extensions) of this Agreement.

#### XIV. REPORTING

The Army agrees it shall submit to the ADEM Director and the U.S. EPA quarterly written progress reports which describe the actions which the Army has taken during the previous quarter to implement the requirements of this Agreement. Progress reports shall also describe the activities scheduled to be taken during the upcoming quarter. Progress reports shall be submitted by the tenth (10) day of each quarter following the effective date of this Agreement. The progress reports shall include a description of the manner and extent to which the requirements and time schedules set out in this Agreement are being met. In addition, the progress reports shall identify any anticipated delays in meeting time schedules, the reason(s) for the delay and actions taken to prevent or mitigate the delay.

## XV. NOTIFICATION

A. Unless otherwise specified, any report or submittal required to be provided under this Agreement pursuant to a schedule or deadline identified in or developed under this Agreement shall be either hand delivered or sent by certified mail, return receipt requested, overnight delivery, or similar method which provides a record of the dates sent and received, and addressed to:

ALAAP Project Manager  
Special Projects  
Alabama Dept. of Environmental Management  
1751 Cong. William L. Dickinson Drive  
Montgomery, Alabama 36130

and

U.S. Environmental Protection Agency  
Region IV  
Attn: ALAAP Remedial Project Manager  
Site Investigation and Support Branch  
345 Courtland Street, N.E.  
Atlanta, GA 30365

Documents sent to the Army shall be addressed as follows unless the Army specifies otherwise by written notice:

U.S. Army Toxic & Hazardous Materials Agency  
CETHA-BC-B (Attn: ALAAP Project Manager)  
Aberdeen Proving Ground, MD 21010-5401

All deadlines under this Agreement shall begin running on the date of receipt by U.S. EPA, ADEM or the Army, of the document the delivery of which precedes the deadline.

Unless otherwise requested, all routine correspondence, including quarterly progress reports may be sent via regular mail to the above-named persons.

## XVI. PROJECT MANAGERS

A. The U.S. EPA, ADEM and the Army shall each designate a Project Manager and Alternate (hereinafter jointly referred to as Project Manager) for the purpose of overseeing the implementation of this Agreement. Within ten (10) days of the effective date of this Agreement, the Parties shall notify each other of the names and addresses of their Project Managers. Any Party may change its designated Project Manager by notifying the other Parties, in writing, within five days of the change.

B. Communications between the Parties and all documents, including reports, plans, and other correspondence concerning activities performed pursuant to the terms and conditions of this Agreement, shall be directed through the Project Managers. Each Project Manager shall be responsible for assuring that all communications from the other Project Managers and all documents, including reports, plans and other correspondence, are appropriately disseminated and processed by the Party which that Project Manager represents.

C. Subject only to the limitations set forth in Part XVIII (Site Access), the ADEM and U.S. EPA Project Managers shall have the authority to: (1) take samples, request split samples of Army samples and ensure that work is performed properly and pursuant to required protocols and in accordance with the terms of this Agreement and any finalized work plans; (2) observe all activities performed pursuant to this Agreement, take

photographs and make such other reports on the progress of the work as the Project Manager deems appropriate; (3) review records, files and documents relevant to this Agreement; and (4) recommend and request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or design utilized in carrying out this Agreement, which are necessary to the completion of the project.

D. The Army Project Manager may also recommend and request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or design used in carrying out this Agreement, which are necessary to the completion of the project.

E. Any field modifications proposed under this Part by any Party must be approved orally by all three (3) Project Managers to be effective. If agreement cannot be reached on the proposed additional work or modification to work, dispute resolution as set forth in Part XXVIII may be used.

F. Within five (5) business days following a modification made pursuant to this Part, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the other Project Managers. The Parties recognize that modifications and corresponding changes to remedial investigation and response action contracts may necessitate extensions of timetables and deadlines.

G. The Project Manager for the Army shall be physically present on ALAAP or reasonably available to supervise work performed at ALAAP during implementation of the work performed pursuant to this Agreement and shall make himself or herself available to the U.S. EPA and ADEM Project Managers for the pendency of this Agreement. The absence of the U.S. EPA or ADEM Project Managers from the Site shall not be cause for work stoppage.

XVII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. The Army shall use quality assurance, quality control and chain-of-custody procedures in accordance with the most current EPA Region IV Environmental Services Division Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual (ESD-SOP and QA) and the Operations and Quality Control Manual, throughout all field investigation, sample collection and laboratory analysis activities. The Army shall submit all protocols used for sampling and analysis to EPA and ADEM for review and comment as to substantive equivalency with established EPA protocols.

B. The Army shall obtain the comments of EPA and ADEM in planning for, and prior to, all sampling and analysis and shall develop operable-unit or element-specific Quality Assurance Project Plans (QAPPs), as necessary, for review and comment by the EPA and ADEM. The QAPPs should be prepared in accordance with EPA Document QAMS-005/80 and applicable guidance as

developed and provided by EPA and should include, but not be limited to: operable-unit or element-specific sampling methodology; sample storage and shipping methods; documentation, sampling and chain-of-custody procedures; laboratory quality control/quality assurance procedures; and calibration procedures and frequency.

C. The Army shall ensure that any laboratories used for analysis participate in the U.S. Army Toxic and Hazardous Materials Agency Quality Assurance/Quality Control Program. In addition, the Army shall ensure that appropriate EPA and ADEM personnel or their authorized representatives will be allowed access to any laboratory and personnel utilized by the Army in implementing this Agreement for the purpose of validating sample analysis, protocols and procedures.

D. The Parties shall make available to each other quality assured results of sampling or tests, or other data generated by any Party, or on their behalf, with respect to the implementation of this Agreement within ninety (90) days of their collection, performance or generation. If quality assurance is not completed within ninety (90) days, raw data or results shall be submitted within the ninety (90) day period and quality assured data or results shall be submitted as soon as they become available.

E. At the request of either the ADEM or U.S. EPA Project Manager, the Army shall allow split or duplicate samples to be taken by the ADEM or U.S. EPA during sample collection conducted during the implementation of this Agreement. The Army's Project Manager shall notify the U.S. EPA and ADEM Project Managers not less than ten (10) business days in advance of any sample collection. If it is not possible to provide ten (10) business days prior notification, the Army shall notify the ADEM and/or U.S. EPA Project Managers as soon as possible after becoming aware that samples will be collected.

#### XVIII. ACCESS

A. Without limitation on any authority conferred on U.S. EPA or ADEM by statute or regulation and subject to any statutory and regulatory requirements as may be necessary to protect national security, the U.S. EPA, ADEM and/or their authorized representatives, shall have authority to enter and move about the Site at all reasonable times for any purposes consistent with this Agreement, including, but not limited to:

- (1) inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement;
- (2) reviewing the progress of the Army, its response action contractors or lessees in implementing this Agreement;
- (3) conducting such tests and sampling as the ADEM and U.S. EPA Project Managers deem necessary;
- (4) verifying the data submitted to the U.S. EPA and ADEM by the Army, and
- (5)

exercising any other right or responsibility assigned the Party pursuant to this Agreement. The Army shall honor all reasonable requests for such access by the U.S. EPA and ADEM, conditioned only upon presentation of proper credentials.

B. Consistent with Federal statutes and regulations, should the Army determine it will be necessary to deny access, the Army shall provide an explanation within forty-eight (48) hours of the reason for the denial and, to the extent possible, provide a recommendation for accommodating the requested access in an alternate manner. The Parties agree that this Agreement is subject to CERCLA Section 120(j), 42 U.S.C. Section 9620(j).

C. The ALAAP shall provide an escort whenever EPA or ADEM require access to restricted areas of ALAAP for purposes consistent with the provisions of this Agreement. EPA and ADEM shall provide reasonable notice to the Army Project Manager to request any necessary escorts. EPA and ADEM shall not use any camera, sound recording, or other electronic recording device at ALAAP without the permission of the Army Project Manager. The Army shall not unreasonably withhold such permission.

D. All Parties with access to ALAAP pursuant to this Part shall comply with all applicable health and safety plans.

E. To the extent that access is required to areas owned by or leased to parties other than the Army, the Army shall use its best efforts, including the exercise of any authority it may have, pursuant to Executive Order 12580, Section 2(j)(1) & 2(j)(2), to obtain written access agreements which shall provide



reasonable access to U.S. EPA and ADEM and/or their authorized representatives within thirty (30) calendar days after the effective date of this Agreement or of the date requirements therefore are identified.

F. The Army shall use its best efforts to obtain access agreements containing commitments that no conveyance of title, easement, or other interest in non-Army property shall occur without provisions for the continued right of access and for the operation of any monitoring or pumping wells, treatment facilities, or other response actions located on the property and that the owners of such property shall notify the Army, the ADEM Director, and the U.S. EPA by certified mail, at least thirty (30) days prior to any conveyance, of the property owner's intent to convey any interest in the property and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other response actions installed pursuant to this Agreement.

G. If it is unable to obtain such access agreements, the Army shall promptly notify the ADEM and the U.S. EPA. This notification shall include a description of the actions taken to obtain such access.

H. The Army may request the assistance of U.S. EPA and ADEM where necessary access cannot be obtained.

#### XIX. RETENTION OF RECORDS

Each Party to this Agreement shall preserve, for a minimum of seven (7) years after termination of this Agreement, all of its records and documents which relate to the implementation of this Agreement, despite any document retention policy to the contrary. After this seven (7) year period, each Party shall notify the other Parties at least forty-five (45) days prior to destruction or disposal of any such documents or records. Upon request by any Party the requested Party shall make available such records or documents.

#### XX. FIVE YEAR REVIEW

A. The Army agrees that if the remedial action(s) selected result(s) in hazardous substances, pollutants or contaminants remaining on site, U.S. EPA and the ADEM will review the remedial action(s) no less often than each five years after the initiation of the final remedial action(s) to assure that human health and the environment are being protected by the remedial action(s) being implemented. If, upon such review, it is the judgement of U.S. EPA and the ADEM that additional action or modification of the remedial action is appropriate in accordance with Sections 104 or 106 of CERCLA/SARA, the U.S. EPA and the ADEM shall require the Army to implement such additional or modified action in accordance with Part XXII(J) of this Agreement.

B. Any dispute by the Army of the determination by U.S. EPA and ADEM under this Part shall be resolved under Part XXVIII of this Agreement. If the State disagrees with U.S. EPA on whether additional or modified action is appropriate under this Part, the dispute shall be resolved under Part XXVIII of this Agreement.

#### XXI. OTHER CLAIMS

A. Nothing in this Agreement shall constitute or be construed as a release by EPA, ADEM or the Army of any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation not a signatory to this Agreement for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from ALAAP.

B. The U.S. EPA and ADEM shall not be held as Parties to any contract entered into by the Army to implement the requirements of this Agreement.

C. This Agreement shall not restrict U.S. EPA or ADEM from taking any legal or response action for any matter not specifically part of the work covered by this Agreement or modifications hereto.

## XXII. CONFIDENTIAL INFORMATION

The Army may assert a confidentiality claim covering all or part of the information requested by this Agreement pursuant to 40 C.F.R. Part 2. Information determined to be confidential by U.S. EPA pursuant to 40 C.F.R. Part 2 shall be afforded the protection specified therein and such information shall be treated by the ADEM Director as "non-public [confidential] data" pursuant to Alabama Code Section 22-22A-1 et seq. If no claim of confidentiality accompanies the information when it is submitted to the U.S. EPA or ADEM and none has thereafter been submitted by the Army prior to public release of the information, the information may be made available to the public without notice to the Army.

## XXIII. RECOVERY OF EXPENSES

### A. Reservation of Rights for Recovery of Other Expenses:

The Parties agree to amend this section at a later date in accordance with subsequent resolution of the national issue of cost reimbursement.

### B. Reimbursement of ADEM's Expenses:

1. Subject to the conditions and limitations set forth in this Part and in Part XXXVII, Funding, the Army agrees to request funding and to reimburse the Alabama Department of Environmental Management (ADEM) for all reasonable costs it incurs in providing services, which are not inconsistent with the National Contingency Plan (NCP) and are in direct support

of the Army's environmental restoration activities pursuant to this Agreement at the Alabama Army Ammunition Plant (ALAAP).

2. Reimbursable expenses shall include only actual expenditures incurred in providing the following assistance at ALAAP.

a. Timely technical review and substantive comment on reports or studies which ALAAP prepares in support of its response actions and submits to the State;

b. Identification and explanation of State requirements applicable to performing response actions, especially state applicable or relevant and appropriate requirements (ARARs);

c. Field visits to ensure that cleanup activities are implemented in accordance with appropriate State requirements, or in accordance with conditions agreed upon between the State and ALAAP;

d. Support and assistance to ALAAP in the conduct of public education and public participation activities in accordance with federal and state requirements for public involvement;

e. Participation in the review and comment functions of the ALAAP Technical Review Committee.

3. In the event that the State of Alabama or ADEM contracts for services to be provided at ALAAP that are of the same type performed within ADEM or another State agency, the

reimbursable costs for that service shall be limited to the amount that ADEM or such other State agency would have expended if it had performed the service in-house. Neither interest nor profit shall be payable, nor shall costs for any services performed prior to the effective date of this Agreement be reimbursable.

4. The Army shall not be responsible for reimbursing the State for any costs incurred in the implementation of this Agreement in excess of one percent (1%) of the Army's total lifetime Defense Environmental Restoration Account (DERA) eligible project costs incurred through construction of the remedial actions at ALAAP. This total reimbursement limit is currently estimated to be \$20,385,000.00 over the life of the Agreement. Total reimbursable costs payable during any Federal fiscal year following the effective date of this Agreement shall not exceed \$50,000.00 per annum or twenty-five percent of the total lifetime reimbursable costs, whichever is lesser. One year after this Agreement takes effect, the Army and State may review the appropriateness of continuing the \$50,000.00 annual cost reimbursement ceiling component. Any disagreement as to its continuance is not subject to the dispute resolution procedures of Part XXVIII, Disputes Resolution, but will be resolved in accordance with the procedures set forth in this Part.

5. Within thirty (30) days after the end of each quarter of the Federal fiscal year, the State of Alabama shall submit to the Army through ALAAP an accounting of all State costs actually incurred during that quarter in providing services under this Part. Such accounting shall be accompanied by cost summaries which set forth employee hours and other expenses by major type of support service. All costs must be for work directly related to implementation of this Agreement, be supported by documentation which meets Federal auditing requirements, and not inconsistent with the requirements described in OMB Circulars A-87 (Cost Principles for State and Local Governments) and A-128 (Audits for State and Local Cooperative Agreements with State and Local Governments) and Standard Forms 424 and 270. The Army has the right to audit cost reports used by the State to develop the cost summaries. Subject to subparagraph 6, below, the Army will, upon timely receipt of properly presented and documented accountings, pay the allowable portion of such accountings within 90 days of proper presentation.

6. In the event that the Army contends that any costs set forth in the accounting provided pursuant to subparagraph 5, above, are not properly payable, or if the Army and the ADEM have any other dispute concerning cost reimbursement, including any disagreement over a cap over future annual or lifetime cost reimbursement, the matter shall be resolved through a bilateral dispute resolution process as follows:

a. The ALAAP Project Manager and the ADEM Project Manager shall be the primary points of contact to coordinate resolution of disputes arising under this Part.

b. If the ALAAP Project Manager and the ADEM Project Manager are unable to agree, the matter shall be referred to the installation commander or his designated representative and the chief of the designated program office of ADEM as soon as practicable, but in any event, within five (5) working days.

c. Should the aforementioned parties be unable to agree within ten (10) working days, the matter shall be elevated to the ADEM Director and the Deputy for Environment, Safety and Occupational Health, Office of the Assistant Secretary of the Army, (Installations and Logistics), (DESOH, ASA(I&L)).

d. It is the intention of the Army and the State that all disputes shall be resolved in this manner. The use of alternative dispute resolution is encouraged. In the event the ADEM Director and the DESOH, ASA(I&L) are unable to resolve a dispute, the State retains all of its legal and equitable remedies to recover its costs.

7. The State agrees to maintain accounting records sufficient to identify and support all claimed expenses for support services provided at ALAAP for a period of ten years from the termination date of this Agreement. The State agrees to provide the Army or its designated representative reasonable



access to all such financial records for the purpose of audit for a period of ten years from the termination date of this Agreement.

8. As of 1 June of each year, the State shall submit to the Army a budget estimate for projected costs for activities reimbursable under this Agreement for the following Federal fiscal year in the same level of detail as the billing documents.

9. The State agrees to seek reimbursement for its expenses solely through the mechanisms established in this Part, and reimbursement provided under this Part shall be in settlement of any claims for State response costs relative to the Army's environmental restoration activities at ALAAP.

10. The Army and the State agree that the terms and conditions of this Part shall become null and void when the State enters into a Defense/State Memorandum of Agreement (DSMOA) with the Department of Defense (DOD) which addresses State reimbursement.

#### XXIV. STIPULATED PENALTIES

A. In the event that the Army fails to submit a primary document to U.S. EPA pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an operable unit or final remedial action, including any deadlines, timetables or schedules developed under the Remedial Action Workplan, or otherwise pursuant to this

Agreement, reflecting when actual work on remedial actions will take place, U.S. EPA may assess a stipulated penalty against the Army. A stipulated penalty may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this Part occurs.

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

C. The annual reports required by Section 120(e)(5) of CERCLA shall include, with respect to each final assessment of a stipulated penalty against the Army under his Agreement, each of the following:

1. The facility responsible for the failure;
2. A statement of the facts and circumstances giving rise to the failure;

3. A statement of any administrative or other corrective action taken at the relevant facility, or a statement of why such measures were determined to be inappropriate;
4. A statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure; and
5. The total dollar amount of the stipulated penalty assessed for the particular failure.

D. Stipulated penalties assessed pursuant to 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.

E. In no event shall this Part give rise to a stipulated penalty in excess of the amount set forth in Section 109 of CERCLA.

F. This Part shall not affect the Army's ability to obtain an extension of a timetable, deadline or schedule pursuant to Part XXVI of this Agreement.

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

H. The stipulated penalties assessed pursuant to this Part are payable by the Army only to U.S. EPA. The limitations on these penalties were negotiated between the Federal Parties and were not subject to negotiation by ADEM. These limitations do not reflect any ADEM position as to the appropriateness of these limits, either as between the Federal Parties to this Agreement or, under provisions of Alabama Statute or regulation, as to the Parties to this Agreement or any other person or legal entity subject to such stipulated penalties.

I. U.S. EPA and ADEM agree, to the extent allowed by law, to share equally any stipulated penalties paid by the Army between the Hazardous Substances Superfund and an appropriate State fund.

#### XXV. DEADLINES

A. Within twenty-one (21) days of the effective date of this Agreement, the Army shall provide deadlines for completion of the following draft primary documents:

- (1) RI/FS Work Plan, including Sampling and Analysis Plan and QAPP
- (2) Community Relations Plan
- (3) Risk Assessment
- (4) RI Report
- (5) Initial Screening of Alternatives
- (6) FS Report (Including Public Health Evaluation)
- (7) Proposed RA Plan
- (8) Proposed ROD

Within fifteen (15) days of receipt, U.S. EPA and ADEM shall review and provide comments to the Army regarding the proposed deadlines. Within fifteen (15) days following receipt of the comments, the Army shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. If the Parties agree on the proposed deadlines, the finalized deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree within thirty (30) days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Part XXVIII of this Agreement (Dispute Resolution).

The final deadlines established pursuant to this Paragraph shall be published by U.S. EPA, in conjunction with ADEM.

B. Within twenty-one (21) days of the issuance of the Record of Decision, the Army shall propose deadlines for the completion of the following draft primary documents:

1. Remedial Design
2. Remedial Action Work Plan

These deadlines shall be proposed, finalized and published utilizing the same procedures set forth in Paragraph A, above.

C. Within twenty-one (21) days after the RI and FS Work Plans become final, the Army shall furnish target completion dates for secondary documents listed in the RI and FS Work Plans.

D. The deadlines set forth in this Part, or to be established as set forth in this Part, may be extended pursuant Part XXVI (Extensions) of this Agreement. The Parties recognize that one possible basis for extension of the deadlines for completion of the Remedial Investigation and Feasibility Study Reports is the identification of significant new Site conditions during the performance of the Remedial Investigation.

#### XXVI. EXTENSIONS

A. Either a timetable and deadline or a schedule shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by the Army shall be submitted in writing to EPA and ADEM and shall specify:

1. The timetable and deadline or the schedule that is sought to be extended;
2. The length of the extension sought;
3. The good cause(s) for the extension; and
4. Any related timetable and deadline or schedule that would be affected if the extension were granted.

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

1. An event of Force Majeure;
2. A delay caused by another party's failure to meet any requirement of this Agreement;

3. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
4. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; and
5. Any other event or series of events mutually agreed to by the Parties as constituting good cause.

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

D. Within ten days of receipt of a written request for an extension of a timetable and deadline or a schedule, U.S. EPA and ADEM shall advise the Army in writing of their respective positions on the request. If U.S. EPA or ADEM does not concur in the requested extension, they shall include in their statement of nonconcurrence an explanation of the basis for their position. Should EPA or ADEM not concur in the requested extension and should their notice of nonconcurrence not occur within ten days of receipt of the Army's written request for the extension, then the timetable and deadline or schedule which is the subject of the requested extension shall be tolled for the period of time in excess of the ten days that it took EPA or ADEM to advise the Army of their position of nonconcurrence.

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

F. Within ten days of receipt of a statement of nonconcurrence with the requested extension, the Army may invoke dispute resolution.

G. A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected timetable and deadline or schedule until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and the requested extension is denied, stipulated penalties may be assessed and may accrue from the date of the original timetable, deadline or schedule. Following the grant of an extension, an assessment of stipulated penalties or an application for judicial enforcement may be sought only to compel compliance with the timetable and deadline or schedule as most recently extended.



## XVII. FORCE MAJEURE

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

#### XXVIII. RESOLUTION OF DISPUTES

Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Part shall apply.

All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager level or the Project Manager's immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Part shall be implemented to resolve a dispute.

A. Within thirty (30) days after: (1) issuance of a draft final primary document pursuant to Part XII (Consultation with U.S. EPA and ADEM) of this Agreement, or (2) any action which leads to or generates a dispute; the disputing Party shall submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the information the disputing Party is relying upon to support its position.

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

C. The Dispute Resolution Committee (DRC) will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service [SES] or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The U.S. EPA representative on the DRC is the Waste Management Division Director of U.S. EPA's Region IV. The Army's designated member is the Deputy/Technical Director, USATHAMA. ADEM's designated member is the Deputy Director of the Alabama Department of Environmental Management. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Part XV (Notification).

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

E. The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The U.S. EPA representative on the SEC is the Regional Administrator of U.S. EPA's Region IV. The Army's representative on the SEC is the DESOH, ASA (I & L). ADEM's representative on the SEC is the Director of the Alabama Department of Environmental Management. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, U.S. EPA's Regional Administrator shall issue a written position on the dispute. The Army or ADEM may, within fourteen (14) days of the Regional Administrator's issuance of U.S. EPA's position, issue a written notice elevating the dispute to the Administrator of U.S. EPA for resolution in accordance with all applicable laws and procedures. In the event that either the Army or ADEM elect not to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, that Party shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

F. Upon escalation of a dispute to the Administrator of U.S. EPA pursuant to Paragraph E, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the U.S. EPA Administrator shall meet and confer with the Army's Secretariat

Representative and the Director of ADEM to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other Parties with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Part shall not be delegated.

G. ADEM reserves its right to maintain an action under Section 121(f)(3)(B) of CERCLA, 42 U.S.C. §9621(f)(3)(B), to challenge the selection of a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria or limitation.

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

I. When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Waste Division Director for U.S. EPA's Region IV requests, in writing, that work related to the dispute be stopped because, in U.S. EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on

human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. ADEM may request the U.S. EPA's Region IV Waste Division Director to order work stopped for the reasons set out above. To the extent possible, the Party seeking a work stoppage shall consult with the other Parties prior to initiating a work stoppage request. After stoppage of work, if a Party believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the Party requesting the work stoppage to discuss the work stoppage. Following this meeting, and further consideration of the issues, the U.S. EPA Waste Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the U.S. EPA Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

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

K. Resolution of a dispute pursuant to this Part of the Agreement constitutes a final resolution of any dispute arising under this Agreement. The Army shall abide by all terms and

conditions of any final resolution of dispute obtained pursuant to this Part of this Agreement.

XXIX. REMOVAL ACTIONS

A. Nothing in this Agreement shall alter the Army's authority with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. Section 9604.

B. The Army shall provide the U.S. EPA and ADEM with timely notice of any proposed removal action in accordance with Section 211(a)(1)(B) of SARA, 10 U.S.C. Section 2705(a).

C. Any removal action conducted on the Site shall be conducted in the manner consistent with CERCLA, the NCP, this Agreement and appropriate Alabama law.

D. Notwithstanding any other provision of this Agreement, the Army retains the right, consistent with E.O. 12580, to conduct such emergency response actions as may be necessary to alleviate immediate threats to human health or the environment from the release or threat of release of hazardous substances, pollutants or contaminants at or from ALAAP. Such actions may be conducted at any time, either before or after the issuance of the ROD. However, consistent with 10 U.S.C. Section 2705, after the Army makes any proposal to carry out such response actions and before the Army undertakes any such action, the Army shall and afford to EPA, ADEM and local officials an adequate opportunity for timely review and comment. This opportunity for review and comment need not be provided if the action to be taken is an emergency removal taken because of imminent and

substantial endangerment to human health or the environment and consultation would be impractical.

E. The Army shall provide EPA and ADEM with oral notice immediately after the Army determines that an emergency action is necessary. In addition, within ten days of initiating such action, in the event consultation was impractical, the Army shall provide written notice to the other Parties explaining why such action was necessary to abate an imminent and substantial endangerment to human health or the environment as well as why consultation was impractical. This notice shall include any requested factual, technical, and scientific bases for such action and available supporting documents. Upon completion of such an emergency action, the Army shall notify the other Parties in writing that the emergency action has been implemented. Such notice shall state whether, and to what extent, the emergency action varied from that described in any prior notice.

#### XXX. TRANSFER OF PROPERTY

A. In the event the Army determines to enter into any contract for the sale or transfer of any portion of the Site, the Army will comply with the requirements of CERCLA Section 120(h), 42 U.S.C. Section 9620(h), in effectuating the sale or transfer, including all notice requirements. In addition, the Army shall include notice of this Agreement in any document transferring ownership or operation of any such portion of the



Site to any subsequent owner and/or operator and shall notify EPA and ADEM of any such sale or transfer at least ninety (90) days prior to such sale or transfer.

B. No conveyance of title, easement, or other interest in the Army property on which any containment system, treatment system, monitoring system or other response action(s) is required, installed or implemented pursuant to this Agreement shall be consummated by the Army without provision for performance under the Agreement, including continued maintenance of any such system or other response action(s). At least thirty (30) days prior to any conveyance, the Army shall notify U.S. EPA and the ADEM Director of provisions made for any additional remedial action measures, if required, including the continued operation and maintenance of any response action(s) or systems installed or implemented pursuant to this Agreement.

C. No change in ownership of the Site or any portion thereof, or notice pursuant to Section 120(h)(3) of CERCLA, 42 U.S.C. Section 9620(h)(3), shall relieve the Army of its obligation to perform pursuant to this Agreement.

#### XXXI. PUBLIC PARTICIPATION

A. The Parties agree that work conducted under this Agreement and any subsequent proposed remedial action alternative(s) and subsequent plan(s) for remedial action at the Site arising out of this Agreement shall comply with the administrative record and public participation requirements of

CERCLA/SARA, including Section 117 of CERCLA/SARA, the NCP, and U.S. EPA guidances on public participation and administrative records.

B. The Army shall develop and implement a Community Relations Plan (CRP) which responds to the need for an interactive relationship with all interested community elements, both on ALAAP and off, regarding activities and elements of work undertaken by the Army. The Army agrees to develop and implement the CRP in a manner consistent with Section 117 of CERCLA/SARA, the NCP, U.S. EPA guidelines set forth in U.S. EPA's Community Relations Handbook, and any modifications thereto.

C. Any Party issuing a formal press release to the media regarding any of the work required by this Agreement shall advise the other Parties of such press release and the contents thereof, at least 2 business days before the issuance of such press release and of any subsequent changes prior to release.

D. The Army agrees it shall establish and maintain an Administrative Record, which will include an index of all documents contained therein, at or near ALAAP in accordance with Section 113(k) of CERCLA/SARA. The Administrative Record shall be established and maintained in accordance with current and future U.S. EPA policy and guidelines. A copy of each document placed in the Administrative Record will be provided to the U.S. EPA and ADEM as it is generated. An updated index of documents

in the Administrative Record shall be provided to U.S. EPA and ADEM on a quarterly basis.

E. The Army agrees it shall follow the public participation requirements of CERCLA/SARA Section 113(k) and comply with any guidance and/or regulations promulgated by U.S. EPA with respect to such Section.

XXXII. PUBLIC COMMENT/EFFECTIVE DATE

A. Within fifteen (15) days of the date of the execution of this Agreement by all Parties, U.S. EPA shall announce the availability of this Agreement to the public for review and comment. U.S. EPA shall accept comments from the public for a period of forty-five (45) days after such announcement.

Promptly upon completion of the comment period, EPA shall transmit to the other Parties copies of all comments received within the comment period. The Parties shall review all such comments and, within thirty (30) days of the close of the comment period, shall determine either:

(1) that the Agreement should be made effective in its present form, in which case the Army shall be so notified in writing, and the Agreement shall become effective on the date that the Army receives such notification; or

(2) that modification of the Agreement is necessary, in which case the Parties shall meet either to amend the Agreement by mutual consent or, if the Parties do not mutually agree within fifty (50) days of the close of the comment period,

the Parties shall submit their written notices of position directly to the DRC and the procedures of Part XXVIII shall apply.

B. If the Agreement is modified, whether by mutual consent of the Parties or through dispute resolution, and the modifications do not require action pursuant to Paragraph C, below, EPA shall notify the Parties in writing, and the Agreement will become effective on the date that the Army receives such notification.

C. In the event of significant modification, whether by mutual consent or through dispute resolution, or significant public comment, the notice procedures of Section 117 of CERCLA and Section 211 of SARA shall be followed and a responsiveness summary shall be published by the U.S. EPA. In such a case, the EPA will notify the Parties when this Paragraph has been satisfied and the Agreement, as modified, will become effective on the date the Army receives such notification.

#### XXXIII. AMENDMENT OR MODIFICATION OF AGREEMENT

This Agreement may be amended or modified solely on written consent of all Parties.

Any Party may submit a written request for modification to the other Parties.

In the event of significant amendment or modification, the notice procedures of CERCLA Section 117 and SARA Section 211 shall be followed. The effective date of the amendment or modification to the Agreement shall be the date the written

agreement is signed by the Parties, or the date of conclusion of any required comment procedures pursuant to CERCLA Section 117, whichever is later.

#### XXXIV. RESERVATION OF RIGHTS

By entering into this Agreement, ADEM does not implicitly or expressly waive any of its rights or authority, under any law, but expressly reserves herein all of its rights and authority it may have thereunder, including, but not limited to, any rights or authority under provisions of Alabama Code Section 22-22A-1 et seq., or any provision of any other state, federal or local law, including any laws pursuant to a federally authorized program.

Likewise, the Army reserves the right to raise or assert any defense, whether procedural or substantive, in law or equity, or to raise any issue as to jurisdiction, or standing of any Party, or any other matter in any proceeding related or not related to this Agreement, which the Army might otherwise be entitled to raise or assert.

However, all Parties expressly agree to exhaust any applicable remedies provided in Paragraph XII (Consultation) and Paragraph XXVIII (Dispute Resolution), as provided in Paragraph XXXV (Enforceability), prior to exercising any such rights or authority noted in this Part or any right to judicial or administrative review or enforcement.

XXXV. ENFORCEABILITY

A. The Parties agree that:

1. Upon the effective date of this Agreement, any standard, regulation, condition, requirement or order which has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person pursuant to Section 310 of CERCLA, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under Sections 310(c) and 109 of CERCLA; and

2. All timetables or deadlines associated with the RI/FS shall be enforceable by any person pursuant to Section 310 of CERCLA, and any violation of such timetables or deadlines will be subject to civil penalties under Sections 310(c) and 109 of CERCLA;

3. All terms and conditions of this Agreement which relate to operable unit or final remedial actions, including corresponding timetables, deadlines or schedules, and all work associated with the operable unit or final remedial actions, shall be enforceable by any person pursuant to Section 310(c) of CERCLA, and any violation of such terms or conditions will be subject to civil penalties under Sections 310(c) and 109 of CERCLA; and

4. Any final resolution of a dispute pursuant to Part XXVIII of this Agreement which establishes a term, condition, timetable, deadline or schedule shall be enforceable by any person pursuant to Section 310(c) of CERCLA, and any violation

of such term, condition, timetable, deadline or schedule will be subject to civil penalties under Sections 310(c) and 109 of CERCLA.

5. Consistent with this Agreement, ADEM agrees to exhaust fully the remedies provided in Paragraph XII (Consultation) and Paragraph XXVIII (Dispute Resolution) of this Agreement prior to taking any other enforcement action it may have the authority to exercise relative to the Site.

B. Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any action or work where review is barred by any provision of CERCLA, including Section 113(h) of CERCLA.

C. Nothing in this Agreement shall be construed as a restriction or waiver of any rights which the U.S. EPA or ADEM may have under CERCLA, including but not limited to any rights under Sections 113 and 310, 42 U.S.C. §§9613 and 9659. The Army does not waive any rights it may have under CERCLA Section 120, SARA Section 211 and Executive Order 12580.

D. The Parties agree to exhaust their rights under Paragraph XXVIII (Dispute Resolution) prior to exercising any rights to judicial review that they might have.

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

#### XXXVI. TERMINATION

The provisions of this Agreement shall be deemed satisfied and terminated upon receipt by the Army of written notice from

U.S. EPA and ADEM that the Army has demonstrated, to the satisfaction of the U.S. EPA and ADEM, that all the terms of this Agreement have been completed. The Army may propose in writing the termination of this Agreement upon a showing that the objectives of this Agreement have been satisfied. A Party opposing termination of this Agreement shall notify the Army, in writing, and provide a copy of the objection to the other Party, within ninety (90) days of receipt of the Army proposal. No Party shall unreasonably withhold approval of the Army's termination proposal.

#### XXXVII. FUNDING

A. It is the expectation of the Parties to this Agreement that all obligations of the Army arising under this Agreement will be fully funded. The Army agrees to seek sufficient funding through the DOD budgetary process to fulfill its obligations under this Agreement.

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

C. Any requirement for the payment or obligation of funds, including stipulated penalties, by the Army, established by the terms of this Agreement, shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted



to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

D. If appropriated funds are not available to fulfill the Army's obligations under this Agreement, U.S. EPA and the State of Alabama reserve the right to initiate an action against any other person, or to take any other response action which would be appropriate absent this Agreement.

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

IT IS SO AGREED:

FOR THE U.S. DEPARTMENT OF THE ARMY:

11/13/89  
Date

Lewis D. Walker  
Lewis D. Walker  
Deputy for Environment, Safety  
and Occupational Health  
Office of the Assistant Secretary  
of the Army

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

DEC - 4 1989  
Date

Greer C. Tidwell  
Greer C. Tidwell  
Regional Administrator  
Region IV

FOR THE ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT:

12-7-89  
Date

Leigh Pegues  
Leigh Pegues  
Director  
Alabama Department of  
Environmental Management