FORT ORD REMEDIATION SERVICES AGREEMENT

THIS FORT ORD REMEDIATION SERVICES AGREEMENT, made effective as of the 30th day of March, 2007 (hereinafter referred to as "**Agreement**"), by and between **FORT ORD REUSE AUTHORITY** (hereinafter defined and referred to as "**FORA**") and **LFR Inc.**, a Massachusetts corporation (hereinafter referred to as "**LFR**"). For purposes hereof, (a) FORA and LFR (hereinafter individually referred to as "**Party**" and collectively as the "**Parties**"), and (b) capitalized terms used herein shall have the meanings given to them in Section 1 hereof or as defined in the other sections of this Agreement.

RECITALS

A. The United States Department of Defense, under the authority of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. §§ 2687 et seq., as amended and the implementing regulations of the Department of Defense (32 CFR Part 91) intends to dispose of certain real property located at the former Fort Ord, in Monterey, California pursuant to an Early Transfer (as hereinafter defined) and under an ESCA (as hereinafter defined).

B. Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9620(h)(3)(C), federal property may be transferred prior to the completion of all remedial action necessary to protect human health and the environment (hereinafter referred to as "**Early Transfer**").

C. The United States Army and FORA have entered or will enter into an Environmental Services Cooperative Agreement with respect to the ACES (as hereinafter defined) dated March 30, 2007 (hereinafter defined and referred to as "**ESCA**"), pursuant to which, and in consideration of a grant of funds pursuant to 10 U.S.C. 2701(d) by the Army to FORA to fund related costs, FORA will assume responsibility for conducting certain investigative and removal activities for munitions and explosives of concern and other pollutants that may be discovered during the implementation of such work, on the ACES and FORA will take title to the ACES, which ACES are more fully described on **Exhibit A** attached hereto.

D. LFR, using grant funds provided to it by FORA, with the consent of FORA and the Army, will purchase a blended integrated risk environmental insurance policy with respect to the ACES to fund the cost of and to mitigate certain risks associated with the performance of the Environmental Services at the ACES, all as more fully set forth herein.

E. The United States Environmental Protection Agency, the California Department of Toxic Substances and Control and FORA entered into an Administrative Order on Consent with respect to the ACES, published on December 29th, 2006 (number 09-2007-03), which establishes, among other things, the process and requirements for Site Closeout (as hereinafter defined) that FORA must follow in connection with the performance of the Environmental Services following the Early Transfer of the ACES discussed more fully herein.

F. FORA desires to retain LFR, and LFR desires to be retained, to undertake certain portions of the Environmental Services at the ACES in accordance with the substantive and procedural requirements of the ESCA, the AOC and all applicable environmental laws and

regulations and professional engineering practices in order to achieve Site Closeout (as hereinafter defined).

G. The Parties desire to enter into this Agreement providing for LFR to be paid a guaranteed fixed price by FORA to perform certain of the Environmental Services as provided herein.

H. Pursuant to the terms of this Agreement, LFR is accepting and assuming considerable risk relating to the performance of and payment for the Remediation Services (as hereinafter defined), including without limitation, the following risks: (1) the risk that the Remediation Services will take longer than anticipated to perform and complete; (2) the risk that the Insurer will not reimburse LFR for the properly incurred costs of the Remediation Services or that the Insurer will dispute one or more of such costs and may deny payment for the same; (3) the risk that the Remediation Services will exhaust the Commutation Account (as hereinafter defined) and, pursuant to the terms of the Environmental Insurance Policy (as hereinafter defined), LFR will not thereafter receive profit on such work through Site Closeout; and (4) the risk that certain portions of the Remediation Services will be excluded from coverage under the terms of the Environmental Insurance Policy but LFR will nonetheless be obligated to perform such Remediation Services under the terms of this Agreement.

I. In consideration of LFR's assumption of the above-referenced and other risks, LFR shall be entitled, pursuant to this Agreement and the terms of the Environmental Insurance Policy, to payment from the Environmental Insurance Policy, to commute Coverages B and C of the Policy at Site Closeout and retain any funds remaining in the Commutation Account and further, to retain any portion of the Contract Price (as hereinafter defined) that does not constitute premium for the Environmental Insurance Policy or related brokerage fees and surplus lines taxes.

NOW, THEREFORE, for and in consideration of the foregoing and the agreements hereinafter contained, the receipt and sufficiency of which is acknowledged, and intending to be legally bound as of the Effective Date (as hereinafter defined), FORA and LFR hereby agree as follows:

1. **Definitions**. As used in this Agreement, the following terms have the meanings specified below:

1.1 "**AOC**" means the agreement entitled Administrative Order on Consent, between and among EPA, DTSC and FORA, a copy of which is attached marked as **Exhibit B**.

1.2 "**ACES**" means the Areas Covered by Environmental Services, as defined in the ESCA and AOC described on **Exhibit A** hereto.

1.3 "**Approved Change Orders**" shall have the meaning given to such term in Section 8.1 hereof.

1.4 "**Army**" means the U.S. Department of the Army.

1.5 "**Army Obligations**" means the "Army Obligations" as that term is defined in the ESCA and includes "Army Continuing Responsibilities" and "Army-Retained Conditions" as such terms are respectively defined in the ESCA.

1.6 "**CERCLA**" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq.

1.7 "**Commutation Account**" shall mean the General Notional Commutation Account referenced in the Environmental Insurance Policy.

1.8 "**Contract Price**" shall have the meaning as such term is defined in Section 2.1 hereof.

1.9 "**CPLI**" shall have the meaning as such term is defined in Section 21.4 hereof.

1.10 "**CRUP**" means the Covenant to Restrict the Use of Property and Environmental Protection Provisions, as such terms are defined in the ESCA.

1.11 "**DTSC**" means the California Department of Toxic Substance Control.

1.12 "**DDESB**" means the "Department of Defense Explosive Safety Board" as that term is defined in the ESCA.

1.13 "**Early Transfer**" shall have the meaning given to such term in Recital (B) of this Agreement.

1.14 "**Effective Date**" means March 30, 2007, which date shall also be set forth on the first page hereof.

1.15 "**Environmental Insurance Policy**" or "**Insurance Policy**" means the Environmental Protection Program insurance policy (otherwise known as the Fort Ord Pollution Legal Liability Select Clean-Up Cost Cap Manuscript Insurance Policy) to be obtained by LFR as provided in Section 7.1 hereof, a copy of which is attached hereto as **Exhibit C**.

1.16 "**Environmental Services**" means the Environmental Services as that term is defined in the ESCA.

1.17 "**EPA**" means the United States Environmental Protection Agency.

1.18 "**ESCA**" means the agreement entitled "Environmental Services Cooperative Agreement" between the Army and FORA, dated March 30, 2007, a copy of which is attached hereto as **Exhibit D**.

1.19 **"FFA"** means the agreement entitled "Federal Facilities Agreement," dated November 19, 1990, between and among the Army, EPA, DTSC, and the California Regional Water Quality Control Board, as amended by the amendment to the FFA entitled "First Amendment to Federal Facility Agreement" to be executed by and between the aforesaid parties (the **"FFA Amendment"**).

1.20 **"FORA"** means the Fort Ord Reuse Authority, its successors and assigns.

1.21 **"FORA Default"** shall have the meaning as such term is defined in Section 9.3 hereof.

1.22 **"Force Majeure"** shall have the meaning as such term is defined in Section 26 hereof.

1.23 **"Institutional Controls"** shall have the meaning as such term is defined in the AOC.

1.24 **"Insurer"** means American International Specialty Lines Insurance Company.

1.25 **"Known Conditions"** means Known Conditions as that term is defined in the ESCA.

1.26 **"LFR"** means LFR Inc.

1.27 **"LFR Default"** shall have the meaning as such term is defined in Section 9.2 hereof.

1.28 **"LFR Excluded Matters"** mean those matters identified and listed in Section 4 hereof.

1.29 **"LFR Transfer"** shall have the meaning as such term is defined in Section 9.5 hereof.

1.30 **"LFR Transfer Period"** shall have the meaning as such term is defined in Section 9.5 hereof.

1.31 **"LFR Work Conditions"** means collectively: (i) the execution and effectiveness of the ESCA, (ii) the receipt by FORA of the first installment of the grant of funds to be provided by the Army pursuant to the ESCA, and (iii) the binding of the Environmental Insurance Policy and the receipt by LFR of the first installment of the Contract Price as set forth in Section 4.2 hereof sufficient to enable LFR to pay all premiums then due for the Environmental Insurance Policy (together with all applicable surplus lines taxes).

1.32 **"LFR Work Product"** shall have the meaning as such term is defined in Section 22.1 hereof.

1.33 **"Long-Term Obligations"** means Long-Term Obligations as that term is defined in the ESCA.

1.34 **"MC"** means "Munitions Constituents" as that term is defined in the ESCA.

1.35 **"MEC"** means "Munitions and Explosives of Concern" as that term is defined in the ESCA.

1.36 **"NRD"** shall have the meaning as such term is defined in Section 4.1.5 hereof.

1.37 **"PLI"** shall have the meaning as such term is defined in Section 21.5 hereof.

1.38 **"Post Closeout Technical Support"** means certain limited technical support to be provided by LFR to FORA after achievement of Site Closeout in connection with the two (2) five year reviews as more particularly described in paragraph 33 of the AOC.

1.39 **"Regulatory Response Costs"** means "Regulatory Response Costs" as that term is defined in the ESCA.

1.40 **"Related FORA Entities"** shall have the meaning as such term is defined in Section 22.1 hereof.

1.41 **"Remedial Plan"** shall mean the "Remedial Plan" as defined in the Environmental Insurance Policy describing the performance of the contemplated services to be provided by LFR hereunder; provided, however, that the Remedial Plan shall in no event be construed as a limitation on LFR's obligations hereunder.

1.42 **"Remediation Services"** means all of FORA's obligations under the ESCA and AOC except for LFR Excluded Matters.

1.43 **"Reuse Plan"** means "Reuse Plan" as that term is defined in the ESCA.

1.44 **"Site Closeout"** means "Site Closeout" for all of the ACES, as that term is defined in the ESCA.

1.45 **"Site Development Activities"** shall have the meaning as such term is defined in Section 20 hereof.

1.46 **"State Land Use Covenant"** means State Land Use Covenant as that term is defined in the AOC.

1.47 **"TSRS"** means the "Technical Specifications and Requirements Statement" as that term is defined in the ESCA.

1.48 **"Unknown Insured Conditions"** means "Unknown Insured Conditions" as that term is defined in the ESCA.

2. **Fixed-Priced Contract and Effectiveness of Agreement**.

2.1 Subject only to the express limitations of this Agreement with respect to any Approved Change Orders, LFR shall provide, and FORA shall procure, the Remediation Services for the guaranteed fixed-price lump sum of Eighty Nine Million Eight Hundred Five Thousand One Hundred Thirty-One and 00/100 Dollars ($89,805,131.00) (hereinafter referred to as the "**Contract Price**"). Notwithstanding the foregoing, the Contract Price shall be subject to a downward adjustment in the event that: (a) FORA pays the second installment of the Contract Price to LFR prior to June 1, 2008, in which event the amount of the second installment of the Contract Price shall be reduced by $5,283.00 for each day prior to June 1, 2008 that FORA pays such funds to LFR pursuant to this Agreement; and/or (b) FORA pays the third installment of the Contract Price to LFR prior to June 1, 2009, in which event the amount of the third installment of the Contract Price shall be reduced by $4,064.00 for each day prior to June 1, 2009 that FORA pays such funds to LFR pursuant to this Agreement. The proceeds of the ESCA grant, including without limitation, the Contract Price, shall be paid by FORA and allocated between LFR and FORA in accordance with the allocation agreement attached hereto as **Exhibit F** and made a part hereof.

2.2 At all times prior to payment of the full Contract Price to LFR, LFR shall have no obligation to perform Remediation Services if the cost of the same exceeds the sum of (A) the balance of the Commutation Account and (B) Five Million and 00/100 Dollars ($5,000,000.00).

2.3 LFR acknowledges and covenants that, upon payment of the full Contract Price, LFR shall be obligated to perform all of the Remediation Services.

2.4 Except as otherwise expressly set forth herein with respect to any Approved Change Orders, if the Remediation Services have not been fully performed by LFR at the time when the entire Contract Price has been paid to LFR, LFR shall nonetheless be obligated to complete the applicable Remediation Services in accordance with this Agreement at its sole cost and expense, subject only to the express limitations of this Agreement with respect to any Approved Change Orders and the limitations set forth in Section 4.1.2 herein.

The Parties acknowledge and agree that LFR shall have no obligation to perform Remediation Services hereunder until the satisfaction of all of the LFR Work Conditions. Notwithstanding anything to the contrary contained herein, prior to the satisfaction of the LFR Work Conditions, LFR's activities shall not include any work on or under the ACES (including without limitation, ground penetrating activities) without the prior approval of FORA, EPA and DTSC. The Parties further acknowledge and agree that any activities undertaken by LFR prior to the satisfaction of the LFR Work Conditions shall be at the sole risk and expense of LFR, subject to LFR's right to receive payment therefor from the Environmental Insurance Policy if and to the extent the premium for the same is paid, and that all other terms and conditions of this Agreement,

including without limitation, Section 15 hereof, shall be applicable to such activities. In the event of termination of this Agreement due to a failure to satisfy LFR Work Conditions no action for damages shall accrue to either party based upon any provision of this contract or any other theory of law. In the event the LFR Work Conditions are not satisfied on or before March 31, 2007 for any reason, either Party shall have the right, at its option, to terminate this Agreement on or before 5:00 p.m. Pacific Time on the day that is ten (10) calendar days after such date by providing the other Party with written notice of termination, in which event this Agreement shall terminate and the Parties shall have no further obligations hereunder other than any that expressly survive termination. The failure of a Party to provide written notice of termination within the time period provided for herein shall constitute a waiver of such Party's right to terminate pursuant to this Section 2.4, unless the Parties otherwise mutually agree.

3. **Scope of Services**.

3.1 Except for the LFR Excluded Matters and subject to Sections 2.2 and 2.3 regarding payment of the Contract Price, LFR shall, until such time as Site Closeout is achieved, assume responsibility for and perform (or provide for the performance of) the Remediation Services. Except for LFR's continuing obligations under Section 15 hereof and with respect to Post-Closeout Technical Support, LFR's obligation to perform or provide for the performance of the Remediation Services as provided herein shall terminate at Site Closeout.

3.2 LFR shall perform or cause to be performed the Remediation Services at the same time and to the same extent FORA is required to perform those services under the ESCA, and LFR's performance of the Remediation Services shall be consistent with those activities necessary to achieve Site Closeout and otherwise comply with the AOC. The Parties agree that all work to be performed by LFR pursuant to this Agreement will be performed in a manner consistent with the National Contingency Plan. Further, the Parties agree that all requirements, services, obligations, studies, reports, remedial activities or other responsibilities of FORA which are included in or imposed upon FORA as a result of FORA's obligations under the ESCA, the AOC or the TSRS are the contractual responsibility of LFR, except to the extent that any such requirement, service, obligation, report, study, remedial activity or other responsibility is specifically excluded herein.

3.3 LFR shall have the right, at its option, to utilize subcontractors in connection with the performance of the Remediation Services. In connection with the foregoing, FORA acknowledges that LFR has elected to subcontract portions of the Remediation Services to Weston Solutions, Inc. and to Westcliffe Engineers, Inc.

4. **Payment Terms; Exclusions**.

4.1 **LFR Excluded Matters**. Notwithstanding anything to the contrary contained herein, LFR shall not be responsible for, and the Remediation Services shall expressly exclude, each of the following:

4.1.1. Army Obligations. Any changes to the definition or scope of the "Army Obligations" (as such term is defined in the ESCA as of the effective date of this Agreement) arising as a result of changes made by the EPA to the definition of "Army Obligations" in the AOC during the AOC public comment period shall not change the definition of Army Obligations for purposes of this Agreement, it being expressly understood that the "Army Obligations" as such term is defined in the ESCA as of the effective date of this Agreement shall at all times apply to and be used for purposes of identifying and determining the LFR Excluded Matters.

4.1.2. Costs for Remediation Services in excess of $143,000,000; provided, however: (A) FORA acknowledges and agrees that the limits of the Environmental Insurance Policy are $128,000,000 and that the Army has agreed to provide a maximum of $15,000,000 of Army Contingent Funding (as such term is defined in the ESCA) for Remediation Services in excess of $128,000,000, in which event LFR shall perform such Remediation Services as an Approved Change Order under Section 8 of this Agreement and LFR shall not charge any contractor's profit with respect to the same as if the "direct cost endorsement" of the Environmental Insurance Policy were still in full force and effect. FORA shall forward to LFR all such Army Contingent Funding received by FORA pursuant to the ESCA in accordance with the terms and conditions set forth in such Approved Change Order; and (B) LFR shall provide written notice to FORA when the aggregate cost of the Remediation Services has reached $120,000,000, whereupon FORA shall proceed in good faith to negotiate the terms and conditions of the Army Contingent Funding with the Army and the terms of any required Approved Change Order, including without limitation, applicable payment terms, to this Agreement with LFR. In the event that FORA fails or is unable (due to any reason including lack of receipt of Army Contingent Funding) to pay LFR the costs of such Remediation Services when the same are due after the execution and delivery of an Approved Change Order relating to the same, LFR shall have the right to immediately stop work and initiate an orderly demobilization, and the costs of such demobilization and any remobilization thereafter shall be paid by FORA.

4.1.3. Any delays or cost increases in the Remediation Services resulting from development or redevelopment of the ACES

by FORA (or its agents, employees, licensees, tenants, contractors and invitees) or by third party contractors engaged by FORA, or from changes made by FORA in or to land uses of the ACES or any portion thereof from those set forth in the Reuse Plan.

4.1.4. Any delays or cost increases in the Remediation Services resulting from changes in or removal of CRUPS, State Land Use Covenants (as defined in the AOC) or Institutional Controls, except to the extent that the same arise out of the performance of the Remediation Services or are otherwise imposed by a governmental authority under the AOC.

4.1.5. All claims and settlements of natural resource damages (hereinafter referred to as "**NRD**") pertaining to releases of hazardous substances, pollutants or contaminants, except to the extent such environmental damages were caused or contributed to by LFR's activities on the ACES.

4.1.6. Any Regulatory Response Costs, other than any additional liability imposed upon FORA pursuant to the ESCA or AOC for Regulatory Response Costs (that would not have otherwise applied) that are caused by acts or omissions of LFR.

4.1.7. FORA's internal legal, technical or management costs or expenses.

4.1.8. Any liabilities or obligations related to or arising out of third party personal injury or property damage claims, except to the extent LFR would otherwise be liable as a matter of law.

4.1.9. Except for Post-Closeout Technical Support, any liabilities or obligations, including without limitation, any additional investigation, work, operations or maintenance activities or other Remediation Services that may, in each case, be required by any governmental agency or authority after Site Closeout, except to the extent such requirements result from any negligence, fraud or willful misconduct of LFR in the performance of the Remediation Services.

4.1.10. Civil, administrative or criminal fines and/or penalties, stipulated or otherwise, to the extent arising from FORA's acts or omissions.

4.1.11. Costs for Remediation Services arising out of a FORA Default hereunder.

4.2 **Payment of Contract Price**. It is acknowledged and agreed that the Contract Price shall be paid by the Army to FORA in three (3) installments, all as more fully set forth in the ESCA. Upon receipt of the first payment installment from the Army, but in no event later than March 31, 2007, FORA shall pay $6,100,000.00 of the Contract Price to LFR and $32,380,000.00 of the Contract Price to the Insurer pursuant to the terms of the allocation agreement attached hereto as **Exhibit F**. Upon receipt of the second funding installment from the Army but in no event later than June 1, 2008, FORA shall pay up to $28,500,000.00 of the Contract Price to LFR, subject to reduction as set forth in Section 2.1 hereof, whereupon LFR shall immediately pay the same to the Insurer pursuant to the terms of the Insurance Policy. Upon receipt of the final funding installment from the Army but in no event later than June 1, 2009, FORA shall pay the balance of the Contract Price to LFR, subject to reduction as set forth in Section 2.1 hereof in the event the payment is made prior to June 1, 2009, as applicable, whereupon LFR shall immediately remit and pay to the Insurer all sums then remaining due on account of the premium for the Insurance Policy. The Insurer shall, from time to time, release to LFR funds necessary to perform the Remediation Services from the Commutation Account or from the Environmental Insurance policy, as applicable.

4.3 **ESCA or AOC Termination**. In the event that the ESCA is terminated pursuant to Section D.8 of the ESCA, at the request of FORA, LFR shall reasonably assist FORA in meeting its obligations under Section 4.1.1 of the ESCA; provided, however, LFR shall only be obligated to perform Remediation Services to the extent that the Environmental Insurance Policy remains in effect and funds are available from the Commutation Account thereunder to pay the cost of such Remediation Services. In such event, LFR shall be entitled to seek payment from the Environmental Insurance Policy for all work performed up to the date of termination, and for demobilization work at the ACES (up to an aggregate cost of $750,000 for such demobilization work). In the event that the Environmental Insurance Policy is cancelled or otherwise commuted by its terms following a termination of the ESCA, LFR shall have no further obligations hereunder, except with respect to such obligations that expressly survive such termination, including without limitation, LFR's obligations under Section 15 of this Agreement.

4.4 **Payment from Environmental Insurance Policy**. Unless otherwise agreed to in writing, LFR shall submit invoices to the Insurer for payment of portions of the Remediation Services pursuant to and as provided for in the Environmental Insurance Policy; provided, however, that LFR shall submit copies of all payment submissions and requests to FORA concurrently with the submission of the same to the Insurer. Notwithstanding anything to the contrary contained herein, FORA acknowledges and agrees that LFR shall be entitled to receive payment hereunder for all or any portion of an LFR invoice chargeable against the Commutation Account or otherwise covered under Coverages B and C of the Environmental Insurance Policy to the extent approved by the Insurer and actually paid out of the Environmental Insurance Policy. It is the express intention of the Parties that the Remediation Services to be

performed by LFR hereunder shall be paid by the Insurer out of the Commutation Account or from the Environmental Insurance Policy, as applicable, and that LFR shall have no recourse to or against FORA with respect thereto except to the extent that the costs attributable to such Remediation Services result from a FORA Default or are the subject of an Approved Change Order hereunder.

4.5 **Commutation of Coverages B and C**. Upon achievement of Site Closeout, LFR shall provide at least five (5) days advance written notice to FORA of its intention to commute Coverages B and C of the Environmental Insurance Policy. In such event, any sums remaining in the Commutation Account shall be released and remitted to LFR pursuant to the terms of the Environmental Insurance Policy in recognition of the risks assumed by LFR under this Agreement.

5. **Obligations of FORA**.

5.1 FORA shall perform its obligations under this Agreement, including but not limited to, the payment of the Contract Price to the extent that funds for such payment are received by FORA from the Army.

5.2 FORA shall cooperate with LFR in planning and implementing the Remediation Services, and shall coordinate activities in order to facilitate the conduct and completion by LFR of its work hereunder. Such cooperation and coordination shall include, but not be limited to (a) cooperating with LFR to facilitate its right to exercise FORA's rights under the ESCA, TSRS and AOC; (b) coordinating efforts to obtain funding from the Army for Remediation Services and, as applicable, Army Obligations; and (c) exercising and enforcing FORA's rights under the ESCA and the TSRS to the extent they affect LFR or the performance of the Remediation Services.

5.3 In addition to the payment obligations set forth in Section 4.2 of this Agreement, FORA shall, on or before March 31, 2007, remit to LFR a lump sum payment in the amount of $477,344 concurrent with but in addition to the first installment of the Contract Price to LFR, which sum shall be used by LFR to purchase contractor's pollution legal liability insurance coverage (hereinafter referred to as the "**CPL Policy**") with respect to the ACES and to pay a portion of the applicable surplus lines tax with respect to such CPL Policy. The CPL Policy shall insure LFR and Weston and shall have coverage limits and terms substantially similar to those outlined in that certain quotation from American International Specialty Lines Insurance Company dated March 27, 2007. The CPL Policy shall also list FORA as an additional insured.

5.4 FORA shall be responsible for complying with all record-keeping, reporting, and public participation and outreach obligations and requirements under the ESCA, AOC, and TSRS; provided, however, LFR shall be responsible for providing FORA backup data and copies of all reports provided to the Insurer by LFR and shall be responsible for community outreach activities to the extent set forth in the Remedial Plan.

5.5 Except with respect to access rights reserved to the Army or its agents, contractors, licensees and invitees to regulatory authorities under the AOC or to emergency responders, FORA shall provide, and ensure that LFR obtains, unfettered, exclusive and unrestricted access to the portions of the ACES where Remediation Services are being conducted.

5.6 FORA shall comply with all applicable terms and conditions of the ESCA and the AOC, including without limitation all terms and conditions applicable to the LFR Excluded Matters; provided, however, FORA shall not be obligated to file or pursue any litigation against the Army.

5.7 FORA expressly agrees that FORA shall not submit any "Statement of Removal of MEC" to DDESB in connection with obtaining Site Closeout as provided for in the ESCA, which Statement of Removal of MEC shall be submitted by LFR on FORA's behalf only after reasonable advance notice to and consultation with FORA.

6. **LFR Responsibilities**.

6.1 Except for the LFR Excluded Matters, LFR shall diligently perform or cause the performance of the Remediation Services, shall furnish all labor and materials necessary for the performance of the Remediation Services, and in connection with the use of subcontractors for the performance of the Remediation Services, shall require that all such subcontractors be competent and maintain all licenses and insurance required or appropriate for the services to be provided.

6.2 LFR will promptly deliver written notice to FORA regarding the discovery or occurrence of any LFR Excluded Matters identified during performance of the Remediation Services.

6.3 (a) LFR shall comply with requirements of the ESCA and AOC applicable to the Remediation Services and shall be responsible for communicating with EPA and DTSC with respect thereto at all times in accordance with the terms of this Agreement. LFR will be generally responsible for coordinating and determining phasing of Remediation Services, provided that LFR shall proceed with the Remediation Services pursuant to the Phasing Schedule attached hereto as Exhibit E (hereinafter referred to as the **"Phasing Schedule"**) and made a part hereof and shall not materially deviate from or significantly amend the sequencing of events set forth in the Phasing Schedule without the consent of FORA. LFR shall reasonably cooperate with FORA to respond to any reasonable phasing changes requested by FORA to the extent that such changes do not impact budget and/or successful completion of the project, either from a time delay or from a regulatory approval perspective, and to the extent that such changes are otherwise acceptable to the Insurer and in compliance with the terms of the Environmental Insurance Policy.

(b) Except as provided herein, LFR shall seek to complete the Remediation Services in accordance with the Phasing Schedule. If the LFR Work

Conditions are not satisfied on or before March 31, 2007, the dates in the Phasing Schedule shall be extended by one day for each of the days that are after that date and prior to the date on which the LFR Work Conditions are satisfied.

(c) FORA acknowledges that the time periods shown on the Phasing Schedule are estimates only and are subject to change to reflect, among other things, conditions encountered during the Remediation Services and the requirements of governmental authorities. Except for the obligation to exercise commercially reasonable efforts to adhere to the Phasing Schedule, LFR shall have no liability for any delays in completing any of the milestones in the Phasing Schedule or delays in performance of the Remediation Services, including delays caused by force majeure events or by FORA.

6.4 Notwithstanding anything contained herein or in any other agreement to the contrary, the Parties acknowledge and agree that, as between the Parties, LFR shall not be deemed to assume the status of generator or owner of any hazardous materials or wastes. In connection with the generation and off-site disposal of any hazardous materials or wastes, unless the Army opts to do so, FORA shall select the non-owned disposal facility or facilities, shall complete and sign manifests, and shall be deemed to be the generator of the wastes.

6.5 LFR shall use reasonable good faith efforts to cooperate with the Army in connection with the Army's oversight obligations and other duties under the ESCA and AOC.

6.6 LFR shall concurrently provide FORA copies of all reports required to be provided to the Insurer pursuant to the terms of the Environmental Insurance Policy in support of FORA's performance reporting requirements under the ESCA and the AOC.

6.7 LFR hereby covenants and agrees that, unless the premium for Insurance Policy has been paid in full, at all times prior to the completion of the Pilot Project (as such term is defined in the ESCA), the Commutation Account of the Insurance Policy shall have a balance of at least $5,000,000.00.

7. **Environmental Insurance Policy**.

7.1 FORA shall pay the Contract Price to LFR from the ESCA grant funds, whereupon LFR shall immediately purchase the Environmental Insurance Policy and shall pay all applicable surplus lines taxes and fees associated with the same.

(a) FORA and LFR understand and agree that: (i) LFR shall be the "Named Insured" under Coverages B and C of the Environmental Insurance Policy, LFR, Weston Solutions, Inc. and Westcliffe Engineers, Inc. shall be "Scheduled Contractors" under the cost cap coverages of the Environmental Insurance Policy, and LFR and Weston shall be an "additional insured" under Coverage A of the Environmental Insurance Policy; (ii) the Environmental Insurance Policy shall contain a "cost cap additional insured" provision allowing

for FORA to replace LFR as the Named Insured under Coverages B and C in the event an LFR Default is established hereunder and this Agreement is terminated as a result thereof; (iii) this Agreement, the AOC, the ESCA, and amendments thereto shall be listed and endorsed onto the Environmental Insurance Policy as "Insured Contracts"; (iv) payments to LFR for the Remediation Services shall be made by the Insurer out of the Commutation Account or otherwise pursuant to Coverages B and C under the Environmental Insurance Policy; and (v) with respect to any Remediation Services that are chargeable against the Commutation Account or that are otherwise subject to coverage under Coverages B and C of the Environmental Insurance Policy, the amount that LFR shall receive in satisfaction for its charges for such Remediation Services shall be determined exclusively pursuant to the payment and dispute resolution provisions established by the Insurer under the Environmental Insurance Policy, and FORA shall have no responsibility to LFR for any cost, fee, or other charge not paid by the Insurer from the Commutation Account or otherwise under Coverages B and C of the Environmental Insurance Policy for such services except to the extent the same relate to or otherwise arise out of Approved Change Orders or a FORA Default hereunder. Notwithstanding anything to the contrary contained herein, except in the event of a FORA Default or with respect to LFR Excluded Matters, LFR shall be obligated to perform Remediation Services through and including Site Closeout up to the aggregate coverage limit of the Environmental Insurance Policy and LFR shall be entitled to draw funds from the Environmental Insurance Policy to pay the costs therefor subject only to the express terms, limitations and restrictions set forth therein.

(b) In the event the Insurer timely disputes, in the manner provided for in the Environmental Insurance Policy, all or any portion of an LFR invoice for Remediation Services submitted by LFR to the Insurer for payment, LFR shall have the right, at its sole cost and expense, to prosecute all dispute resolution proceedings provided for under the terms of the Environmental Insurance Policy.

7.2 Issuance of the Environmental Insurance Policy shall be a condition precedent to LFR's obligations under this Agreement.

7.3 LFR and FORA have agreed to a joint brokerage arrangement with respect to the Environmental Insurance Policy. LFR has selected Aon Environmental as its "broker of record" and FORA has selected Marsh USA as its "broker of record."

8. **Changes in Services; Change Orders**.

8.1 In the event that, during the course of the performance of the Remediation Services: (a) LFR encounters, discovers or identifies one or more environmental conditions, events or circumstances that constitute LFR Excluded Matters and, pursuant to the terms hereof, notifies FORA of the same; (b) if, as a result of any development or other activity (including without limitation, Army Obligations) in any ACES, FORA requests LFR to perform activities that are not Remediation

Services; or (c) LFR is obligated pursuant to Section 4.1.2 of this Agreement to perform Remediation Services in excess of the limits of the Environmental Insurance Policy, then in each such case, FORA may request a proposal for a change order covering such additional activities (each, hereinafter referred to as an "**Approved Change Order**"). Upon receipt of a request for an Approved Change Order, LFR shall consult with the Insurer with respect to the same (provided that Coverage B and C of the Insurance Policy is then in full force and effect) in order to determine whether such Approved Change Order will require revisions to the Remedial Plan or additional funding into the Commutation Account or the Environmental Insurance Policy, and LFR and FORA shall negotiate the terms and conditions of such Approved Change Order, including without limitation, appropriate payment terms, in good faith. Upon agreement on the terms and conditions of the Approved Change Order and execution of the same by LFR and FORA, FORA shall pay to LFR any funds, if required to be paid pursuant to the terms of such Approved Change Order, to compensate LFR for: (a) the costs of such additional services to be provided by LFR related to the LFR Excluded Matter or ACES development activity giving rise to the Approved Change Order, and/or (b) any increased costs or fees associated with increases in costs as a result of such Approved Change Order. No Approved Change Order shall be in effect or applicable hereunder unless and until it is approved and signed by both Parties. Any change or adjustment in the compensation by virtue of such Approved Change Order shall be specifically stated in such Approved Change Order.

8.2 With respect to all Unknown Insured Conditions, LFR shall promptly tender claims for payment of costs relating to or arising out of such activities to the Insurer under the Environmental Insurance Policy, and LFR shall proceed diligently with the performance of the Remediation Services.

8.3 Notwithstanding anything to the contrary contained herein, Approved Change Orders may be on a "time and materials" basis or on a "fixed price" basis, as may be mutually acceptable to LFR and FORA. In the event that LFR and FORA fail to agree on the terms of any Approved Change Order after good faith negotiations, FORA reserves the right to engage another contractor to perform the same, and LFR agrees to cooperate with such alternate contractor to effectuate the prompt performance of the tasks covered by such Approved Change Order, provided that such alternate contractor does not unreasonably interfere with LFR's ability to perform the Remediation Services. Notwithstanding anything to the contrary contained herein, in the event such contractor unreasonably interferes with the performance of the Remediation Services or otherwise causes a delay in the performance of the same and the Insurer thereafter denies payment to LFR for costs attributable to such delay or interference pursuant to the terms of the Environmental Insurance Policy, FORA shall immediately upon demand therefor, pay to LFR the cost of such Remediation Services denied by the Insurer.

9. **Termination of Agreement; Default**.

9.1 Neither Party may terminate the Agreement in the absence of a default identified herein by the other Party; provided, however, both Parties may jointly

elect to terminate this Agreement by executing a written document evidencing such termination at any time.

9.2 The occurrence and continuation of any of the following after the providing of the applicable notice and the expiration of the cure period provided herein shall constitute a default of this Agreement by LFR (each hereinafter referred to as an "**LFR Default**"):

(a) LFR has materially breached its representations or warranties, or covenants under this Agreement; or has materially failed to perform its obligations hereunder;

(b) LFR is in material violation of any applicable laws relating to the performance of the Remediation Services;

(c) LFR has declared bankruptcy, or is the debtor in an involuntary bankruptcy filing (that has not been dismissed, stayed or bonded over within thirty (30) days of filing), or has been declared insolvent by a court exercising appropriate jurisdiction;

(d) Any act or omission on the part of LFR that causes a breach or default under or the termination of, the ESCA or the AOC; or

(e) The Environmental Insurance Policy is cancelled as a direct result of LFR's acts or omissions.

9.3 The occurrence and continuation of any of the following after the providing of the applicable notice and the expiration of the cure period provided herein shall constitute a default of this Agreement by FORA (each hereinafter referred to as a "**FORA Default**"):

(a) Failure of FORA to fully pay any portion of the Contract Price which FORA has received, when due pursuant to this Agreement, or the failure of FORA to fund or pay in the time and in the manner required hereunder and to the extent duly executed by FORA and LFR, any Approved Change Order, it being understood that the cure period applicable to any such failure to pay shall be limited to fifteen (15) days notwithstanding any terms herein providing for a longer cure period;

(b) FORA has materially breached its representations or warranties, or covenants under this Agreement; or has materially failed to perform its obligations hereunder;

(c) FORA materially fails to perform its obligations under the Environmental Insurance Policy;

(d) The Environmental Insurance Policy is cancelled for any reason, other than as a direct result of LFR's act or omissions;

(e) The Insurer or FORA has been adjudged bankrupt or legally insolvent by a court of competent jurisdiction and such order has not been stayed, dismissed or bonded over within thirty (30) days of the date it was entered; or

(f) Any act or omission on the part of FORA that causes a breach or default under or the termination of, the ESCA or the AOC.

9.4 In order to terminate this Agreement for cause, the Party seeking to terminate the Agreement must provide the other Party with written notice of its intent to terminate and the reasons therefor. The defaulting Party shall have sixty (60) days from the date of such notice in which to cure the alleged default or to immediately commence activities necessary to correct the default if the same cannot reasonably be completed within the sixty (60) day period; provided however such cure period shall be limited to fifteen (15) days with respect to any failure to pay money or if the defaulting Party fails to commence such cure within the aforesaid fifteen (15) day period. Except with respect to bankruptcy and insolvency events set forth in Section 9.2(c) and 9.4(e) and except for the failure to pay money, so long as the other Party is diligently pursuing a cure, the Party seeking to terminate shall not be permitted to do so.

9.5 Except as otherwise expressly provided in this Agreement, upon a termination of this Agreement pursuant to this Section 9, neither Party shall have any further obligation to the other Party pursuant to this Agreement, except FORA shall maintain LFR and Weston as additional insureds on Coverage A of the Environmental Insurance Policy and on any additional pollution legal liability policy purchased by FORA pursuant to Section 5.3 hereof. In the event that FORA terminates this Agreement as a result of an LFR Default that has been established pursuant to the dispute resolution process, FORA shall, within sixty (60) days of the date of termination (hereinafter referred to as the "**LFR Transfer Period**") designate a replacement or substitute contractor to replace LFR and to complete the Remediation Services. LFR shall continue to diligently perform the Remediation Services and to comply with the terms of this Agreement until the end of the LFR Transfer Period or such earlier date as may be selected by FORA by written notice to LFR. During the LFR Transfer Period, LFR shall be entitled to continue to draw funds from the Environmental Insurance Policy and LFR shall, immediately upon the request of FORA, execute any and all agreements, documents or materials reasonably requested by FORA or the Insurer to: (1) remove LFR and Weston as "Scheduled Contractors" under the Policy; and (2) assign or transfer to the new or replacement contractor all of LFR's right, title and interest in and to all materials, processes, work-in-place and other documents necessary to complete the Remediation Services (collectively, the "**LFR Transfer**"). Upon the completion of the LFR Transfer, this Agreement shall be terminated and the Parties shall have no further obligations hereunder other than any that survive termination.

9.6 Upon termination of this Agreement for any reason, and except as otherwise set forth in Section 9.5 hereof with respect to any LFR Transfer, LFR shall:

(a) stop work and initiate an orderly demobilization;

(b) take commercially reasonable steps if necessary to protect human health or environment against imminent and substantial endangerment and to preserve and protect the ACES; and

(c) terminate existing subcontracts, and place no further subcontracts or orders.

10. **Independent Contractor**. LFR shall be an independent contractor in performing the Remediation Services and shall not act as an agent or an employee of FORA. LFR shall be solely responsible for its employees, subcontractors, and agents and for their compensation, benefits, contributions, and taxes, if any.

11. **Taxes, Fees, and Other Charges**. FORA shall pay all conveyance, transfer and recording fees and taxes, if any, and all sales, use, value added, gross receipts, franchise and like taxes, and tariffs and duties, applicable to the performance of the Remediation Services. LFR shall pay all permit fees and waste disposal fees and charges applicable to the Remediation Services.

12. **Documentation, Records**.

12.1 All documents, records, data, reports, presentation materials, bid materials, correspondence, other written or electronic communications, computerized data files, computer models or other information or laboratory or field equipment supplied to LFR by FORA and/or FORA's agents, employees, directors, officers, or representatives, shall remain the property of FORA but shall be made available to LFR to perform the Remediation Services. All documents, records, data, reports, presentation materials, bid materials, material correspondence, other material written or electronic communications, computerized data files, computer models or other material information generated or created by LFR in the course of preparation or performance of the Remediation Services shall be the property of FORA and shall be provided to FORA upon request in the form reasonably requested by FORA, including, without limitation, transmittal through an electronic medium but shall be made available to LFR to perform the Remediation Services. Upon termination of this Agreement, LFR shall make no further use of such information, except as necessary to enforce the terms of this Agreement. LFR shall be permitted, at its sole cost, to retain a copy of such information for archival purposes only.

12.2 Without in any way limiting the foregoing, LFR shall provide to FORA, upon FORA's request, copies of all documents relating to the Remediation Services that are filed or maintained by LFR under any federal, state, or local law, including, without limitation, any hazardous waste manifests.

12.3 The rights and obligations of this Section 12 shall survive the termination of this Agreement.

13. **Risks and Allocation**. FORA hereby acknowledges, understands and agrees that: (a) there are risks inherent to environmental investigation, analysis, management, remediation, and removal, many of which cannot be ascertained or anticipated prior to or during the course of the Remediation Services; for example, sampling activities (e.g., borings) and excavation trenches may spread contaminants through geologic formations despite the use of accepted professional standards; (b) due to the inherently limited nature and amount of the data resulting from environmental investigation methods, complete analysis of conditions is not always possible, and, therefore, conditions frequently vary from those anticipated earlier; for example, borings in one location may miss contaminants only a few feet away; and (c) technology, methods, accepted professional standards as well as law and policy, are undefined and/or constantly changing and evolving. In light of all of the foregoing and LFR's lack of responsibility for creating the conditions requiring the Remediation Services, as a material inducement to and consideration for LFR's agreement to perform the Remediation Services herein provided for, FORA SPECIFICALLY AGREES THAT LFR'S LIABILITY SHALL BE STRICTLY LIMITED AS AND TO THOSE CAUSES AND AMOUNTS PROVIDED IN SECTION 19 OF THIS AGREEMENT OR, IF NOT SO SPECIFIED, TO THE MAXIMUM EXTENT OTHERWISE PERMITTED BY LAW.

14. **LFR's Warranties, Representations and Covenants**.

14.1 LFR warrants, represents, and covenants that: (a) LFR has the capability, experience, and means required to perform the Remediation Services; (b) LFR shall perform the Remediation Services using personnel, equipment, and material qualified, suitable and licensed (whenever a license is required) therefor; (c) within the limits and reasonable rules and regulations prescribed by FORA from time to time, LFR will perform the Remediation Services in a diligent manner consistent with accepted professional practices and standards for nationally recognized firms engaged in similar work, as in effect at the time the Remediation Services are performed; and (d) any subcontractors selected by LFR to perform any part of the Remediation Services shall be fully qualified to perform the work for which they are retained and shall hold all required governmental licenses or approvals to perform such work.

14.2 LFR warrants, represents, and covenants that: (a) LFR will perform the Remediation Services in compliance with: (i) the ESCA, the AOC and all applicable federal, state, and local laws, regulations, and ordinances as in effect and construed at the time the Remediation Services are performed; (b) LFR shall utilize, for the treatment, storage and disposal of all waste materials, the licensed or permitted treatment, storage, or disposal facility or facilities designated by FORA and approved by the Insurer; (c) LFR shall avoid infringements, as set forth in Section 23 hereof; and (d) LFR shall maintain confidentiality, as set forth in Section 24 hereof.

14.3 LFR shall: (a) comply in a timely manner with all duties and obligations imposed under the Environmental Insurance Policy relating to preparation and submission of payment requests and "Clean-Up Cost Progress Reports" under the

Environmental Insurance Policy and the reporting of "Clean-Up Costs" (as such terms are defined and used in the Policy); and (b) comply with all reasonable requests by the Insurer, regulatory agencies or governmental authorities having jurisdiction over the ACES to FORA or LFR relating to the Remediation Services, including, without limitation, any requests by the Insurer or any regulatory agency or municipal entity to inspect the ACES or to observe the performance of any of the Remediation Services, or a request by the Insurer or FORA to audit LFR's books and records relating to the Remediation Services. LFR shall timely provide to FORA copies of all material reports, correspondence, claim information requests or other electronic or written communications submitted to or received from the Insurer. LFR shall provide FORA with advance notice of, and the opportunity to attend and participate in any material meetings, conferences, discussions or telephone calls with the Insurer; provided, however, that without first consulting with LFR and providing LFR a reasonable opportunity to accommodate FORA's concerns, FORA shall not take any action in any communication with the Insurer that would materially increase the cost of the Remediation Services or would otherwise materially interfere with LFR's performance of the Remediation Services or LFR's ability to draw funds for the same from the Environmental Insurance Policy.

14.4 To the extent practicable, LFR shall provide or make available to FORA: (a) all material analytical data generated or received by LFR with respect to the ACES as soon as practicable upon receipt of the same; (b) the opportunity to review and comment upon any drafts of material data, analyses, work plans, reports, presentation materials, public notices, bid materials, material correspondence or other material written or electronic communications to be submitted to the Army, EPA or the DTSC, or presented at any public forum or meeting respecting the Remediation Services or any work to be performed at the ACES by LFR sufficiently prior to submission or presentation to provide a meaningful opportunity for FORA to have its comments incorporated therein; (c) reasonable advance notice of all public hearings, or material meetings, conferences, discussions or telephone calls between LFR and the EPA, the DTSC, the Army, or the Insurer relating to the Remediation Services; (d) an opportunity for FORA to participate in such hearings, meetings, conferences, discussions, or telephone calls; provided, however, in all such instances, FORA and LFR agree to confer in advance with respect to the agenda for such meetings or calls and both parties agree to utilize commercially reasonable efforts to minimize the cost of the Remediation Services and to complete the same in a cost-effective manner; (e) notice and the opportunity, as reasonably requested by FORA, for FORA to inspect and observe all activities conducted on the ACES as part of the Remediation Services or any Remediation Services equipment or systems, monitoring wells or staged waste materials placed on or off the ACES or generated in connection with the performance of the Remediation Services; and (f) copies of all final material data, analyses, work plans, reports, presentation materials, public notices, bid materials, material correspondence or other material written or electronic communications submitted by LFR to the EPA, or the DTSC or that are presented at any public forum or meeting relating to the Remediation Services.

14.5 LFR shall deliver to FORA and the Insurer any and all material notices and correspondence received from the EPA, the DTSC, the Army, or the Insurer relating to the Remediation Services within five (5) business days after receipt thereof. Notwithstanding the foregoing, in the event that LFR receives a notice or correspondence from the EPA, the DTSC, the Army, or the Insurer relating to the Remediation Services and FORA is obligated pursuant to applicable law to respond to such notice in fewer than five (5) business days, then LFR shall immediately deliver a copy of such notice to FORA and shall coordinate and cooperate with FORA in responding to the same.

14.6 LFR shall make its personnel available to meet, confer or otherwise communicate with FORA, and shall otherwise keep FORA apprised of the status of the performance of the Remediation Services on a regular and periodic basis, as reasonably requested by FORA. LFR hereby designates Kristie Reimer as the Project Manager of the Remediation Services and its designated representative for ongoing day to day communications with FORA. Notwithstanding the foregoing, LFR may replace Kristie Reimer at any time by delivering written notice thereof to FORA.

14.7 As FORA reasonably requests, LFR shall reasonably assist FORA with: (a) any claim whether before or after Site Closeout under the Environmental Insurance Policy or any pollution legal liability policy purchased by FORA relating to the ACES; or (b) any claim asserted by FORA against third-parties alleged to be responsible for the environmental conditions addressed through the Remediation Services, in each case including, without limitation, providing documents and testimony. FORA acknowledges that LFR's charges with respect to providing such assistance are not included as part of the Remediation Services and agrees that such reasonable charges shall be addressed through an Approved Change Order hereunder.

14.8 In the event that LFR engages subcontractors to perform any part of the Remediation Services or any other obligation of LFR under this Agreement, LFR shall notify each such subcontractor of the requirements of this Agreement that are applicable to the Remediation Services for which such subcontractor is engaged. Notwithstanding the foregoing, at all times during this Agreement, LFR shall be fully responsible to FORA for the acts or omissions of its subcontractors to the same extent as LFR's responsibility for its own acts and omissions.

15. **Indemnity by LFR**. Subject to the limitations contained herein, LFR shall defend (with counsel reasonably acceptable to FORA), indemnify and hold harmless (and does hereby release) FORA (including its affiliates, officers, directors, members, employees, and agents) from and against any and all losses, liabilities, claims, demands, damages, liens, fines and penalties, and costs and expenses (including, without limitation, reasonable legal fees and costs and expert and consultant fees and expenses) to the extent (and only to the extent) resulting from, attributable to, or arising out of:

15.1 Any material breach by LFR of any warranties, representations, covenants or other provisions of this Agreement that results in a material adverse impact to FORA;

15.2 Any penalties or fines, including stipulated penalties, to the extent caused by the negligence, misconduct or other failure of LFR, or to the extent covered by the Environmental Insurance Policy, including without limitation, stipulated penalties imposed under the AOC.

15.3 Third-party bodily injury and property damage to the extent caused directly by the negligence, fraud or willful misconduct of LFR or any of its subcontractors in connection with or related to the performance of the Remediation Services.

15.4 Any negligence or willful misconduct by LFR or any of its subcontractors in the performance of LFR's obligations under this Agreement.

15.5 Detonation or blast effects occurring prior to Site Closeout for which LFR is liable as a matter of law.

The terms of this Section 15 shall survive Site Closeout and any termination of this Agreement.

16. **FORA Warranties, Representations, and Covenants**. FORA warrants, represents, and covenants as follows:

16.1 As between LFR and FORA, title and risk of loss with respect to all waste materials shall remain with FORA.

16.2 FORA has not intentionally concealed from LFR any material information reasonably available or known to it concerning, without limitation, the composition, quantity, toxicity, or potentially hazardous properties of any materials known or believed to be present at the ACES.

16.3 FORA has not materially concealed or materially misrepresented to the Insurer or to LFR any information actually known to FORA relating to the environmental conditions at the ACES or surrounding areas.

16.4 FORA shall, at its cost, reasonably cooperate with LFR to achieve the successful, timely, and expeditious completion of the Remediation Services, including as follows:

(a) To the extent set forth in Section 5.5 hereunder, FORA shall provide to LFR timely uninterrupted access to the ACES and all areas and facilities thereof reasonably necessary or desirable for performance of the Remediation Services, and an adequate area or areas for LFR's equipment storage and shall make available, at LFR's cost and expense, all utilities already present or accessible by FORA at the ACES and reasonably necessary for the performance of the Remediation Services, and FORA shall be responsible to repair promptly any damage FORA causes to any of them.

(b) FORA shall execute applications or other documents prepared by LFR to assist in obtaining all permits and licenses required to be taken out in FORA's name which are necessary or desired by LFR for the Remediation Services; provided, however, that the costs of such permits and licenses shall be part of the Remediation Services, except to the extent the same arise out of an Approved Change Order hereunder.

(c) FORA agrees to cooperate with LFR from time to time and upon request therefor, to place Institutional Controls on the ACES as may be required by the EPA, DTSC or any other governmental agency or authority to achieve Site Closeout; provided, however, LFR shall not seek to impose any Institutional Controls that are not consistent with the Reuse Plan without FORA's prior written consent except to the extent the same are expressly required by a governmental authority under the AOC or otherwise. In the event that LFR and FORA cannot agree on the terms of any Institutional Controls and the placement of the same is the only remaining condition precedent to achieving Site Closeout, FORA agrees that, for purposes of this Agreement, Site Closeout shall be deemed to have occurred and FORA shall, subject only to the express limitations set forth in the Environmental Insurance Policy, cooperate with LFR to effectuate the distribution to LFR of any remaining funds in the Commutation Account in accordance with the terms of the Environmental Insurance Policy.

(d) Except as provided herein, FORA shall comply in all material respects with all duties imposed on it by the Environmental Insurance Policy. FORA shall promptly supply LFR with copies of any correspondence or notices it receives from or provides to the Insurer. FORA shall not enter into any agreements with third parties regarding the Site Development Activities that could materially increase the requirements for or the cost of any Remediation Services, except to the extent the same are otherwise consented to in advance by LFR (which consent by LFR will not be unreasonably withheld) and the Insurer, are imposed by EPA or DTSC pursuant to the AOC or are otherwise an Approved Change Order hereunder.

(e) Other than with respect to any data, reports, documents, correspondence, information or communications relating only to LFR Excluded Matters, FORA shall promptly, but in not more than five (5) days after generation or receipt, as the case may be, deliver to LFR a copy of all written data, reports, documents, correspondence, information and other communications which it generates or receives and which are related to the Environmental Services. Notwithstanding the foregoing, in the event that FORA receives a notice or correspondence from any governmental authority relating to the Remediation Services and FORA is obligated to respond to such notice by applicable law in fewer than five (5) business days, then FORA shall immediately deliver a copy of such notice to LFR and the Insurer, and shall coordinate and cooperate with LFR and the Insurer in responding to the same.

(f) FORA shall promptly enforce, at its cost and effort, all material provisions of the ESCA and the AOC, including without limitation, those responsibilities of FORA under the ESCA that pertain to Army Obligations. FORA shall use commercially reasonable efforts in good faith to ensure that Army Obligations are timely and expeditiously performed and do not delay or hamper the performance of the Remediation Services or LFR's ability to obtain Site Closeout.

(g) FORA shall provide LFR and its subcontractors, including Weston, with reasonable on-site office and storage (including equipment storage) space at the ACES in connection with the Remediation Services in existing improvements at the ACES, which LFR acknowledges and agrees will be provided for use in their current "as is" condition. FORA makes no representations or warranties as to the office and storage space to be provided by FORA, including without limitation any representations or warranties to its condition or suitability for intended use. LFR shall return possession of such space to FORA upon completion of LFR's use thereof in substantially the same condition as existed at the time LFR commenced occupancy of the same reasonable wear and tear based on the intended use and damage by casualty, and acts of third parties excepted. Notwithstanding the foregoing, in no event shall LFR have any obligation to repair, maintain or improve such space or improvements during its use and occupancy thereof.

16.5 FORA understands and agrees that its timely review and comment are important elements of LFR's efforts to perform Remediation Services on a timely and cost-efficient basis. FORA shall not unreasonably delay submitting comments to LFR or approving proposed submittals and other communications prepared by LFR.

16.6 Other than with respect to any meeting or communication relating only to LFR Excluded Matters, FORA will provide reasonable advance notice to LFR of any meetings or communications with EPA, DTSC, the Army or the Insurer, and agrees to not engage in such meetings or communications without providing LFR a reasonable opportunity to participate.

17. **Indemnity by FORA**. Subject to the limitations expressly set forth herein, any indemnity by LFR shall not apply to, and FORA shall defend, indemnify, and hold harmless (and does hereby release) LFR (including its parent, subsidiary and affiliated companies and their officers, directors, shareholders, employees, and agents) from and against, any and all liabilities, claims, demands, losses, damages, fines and penalties, and related expenses (including reasonable legal fees and reasonable costs of investigation, and reasonable expert and consultant fees and expenses), to the extent (and only to the extent) resulting from, attributable to, or arising out of:

17.1 Any material breach by FORA of any warranties, representations, covenants or other provisions of this Agreement that results in a material adverse impact to LFR.

17.2 FORA's or FORA's contractors' (other than LFR), representatives' or agents' negligence or willful misconduct.

17.3 Any material breach or default by FORA of any warranties, representations, covenants or other provisions of the ESCA or the AOC.

17.4 Third-party bodily injury and property damage relating to the ACES, except to the extent caused by the negligence, fraud or willful misconduct of LFR or any of its subcontractors or except to the extent covered by insurance; it being understood that in the event of any such third-party claim (including those containing allegations of LFR negligence), FORA shall defend the claim at its cost, subject to FORA's right to obtain reimbursement of the same from LFR in the event and to the extent the claim at issue is conclusively determined to result from LFR's negligence, fraud or willful misconduct.

17.5 Any changes in the use of any portion of the ACES from the uses identified in the Reuse Plan to the extent that they result in loss or damage to LFR or loss or denial of any coverage to LFR pursuant to the Environmental Insurance Policy.

17.6 Any LFR Excluded Matters; provided, however, that the applicability of this Section 17 with respect to any LFR Excluded Matters shall not include indemnification of LFR for such LFR Excluded Matters except to the extent such matters are otherwise expressly set forth in Section 17.1 through 17.5 hereof, and with respect to such matters not expressly included therein, shall be limited only to providing LFR with the release of LFR set forth in this Section 17 above.

The terms of this Section 17 shall survive any termination of this Agreement.

18. **Indemnification Notice/Defense**. A Party entitled to indemnity hereunder shall be the "Indemnitee" and the Party obligated to provide such indemnity shall be the "Indemnitor." The Indemnitee shall promptly provide written notice to the Indemnitor upon the earlier of: (a) any assertion of any claim falling within the Indemnitor's duties to indemnify, or (b) learning of facts which may give rise to a duty by Indemnitor to defend, indemnify, or hold harmless pursuant to this Agreement. The failure of an Indemnitee to provide notice to the Indemnitor in accordance with this Section 18 shall not relieve the Indemnitor of its obligation to indemnify the Indemnitee unless and only to the extent the Indemnitor is actually prejudiced by such failure. In the event an Indemnitor is required, during the course of an action or other proceeding, to pay any sum pursuant to this Agreement, as the case may be, which results from, is attributable to or arises out of any cause other than one for which the Indemnitor is required to defend, indemnify or hold harmless, the Indemnitor shall be entitled to recover from the Indemnitee and others to the extent such sums are in excess of those sums which the Indemnitor is required to pay pursuant to this Agreement, as the case may be. In no event shall the Indemnitor settle or compromise an indemnified third-party claim in a manner that could subject the Indemnitee to an obligation of any kind (including an obligation to make a payment) without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld, denied or delayed. Notwithstanding anything to the contrary contained herein, in the event that LFR receives notice from FORA of any claim giving rise to an indemnification obligation hereunder, LFR may elect, at its option, and to the extent practicable, to satisfy such obligation by performing additional

Remediation Services (at its own cost and expense) to cure the circumstances giving rise to such claim for indemnification and the Parties shall cooperate with each other in good faith to effectuate the same.

19. **LIMITATION OF LIABILITY**. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT:

19.1 IN NO EVENT SHALL LFR OR FORA BE RESPONSIBLE FOR ANY INCIDENTAL, INDIRECT, OR CONSEQUENTIAL LOSSES OR DAMAGES OF THE OTHER PARTY (INCLUDING LOSS OF RENTS OR PROFITS OR INCREASED FINANCING COSTS), INCURRED BY SUCH OTHER PARTY AS A RESULT OF LFR'S OR FORA'S PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT, AS THE CASE MAY BE, AS A RESULT OF THE ENVIRONMENTAL CONDITIONS OR RELEASES OF POLLUTANTS OR CONTAMINANTS IN, ON, UNDER OR ABOUT THE ACES OR SURROUNDING AREAS, OR BY APPLICATION OR USE OF REPORTS PREPARED OR OTHER SERVICES PERFORMED PURSUANT TO THIS AGREEMENT, EVEN IF FORESEEABLE, AND IRRESPECTIVE OF WHETHER LIABILITY OF LFR OR FORA IS CLAIMED, OR FOUND TO BE BASED IN CONTRACT (INCLUDING BREACH OF WARRANTY OR CONTRACT), TORT (INCLUDING NEGLIGENCE OR NEGLIGENT MISREPRESENTATION OF LFR, FORA, OR OTHERS), STRICT LIABILITY, OR OTHERWISE. THE FOREGOING NOTWITHSTANDING, NOTHING HEREIN SHALL LIMIT THE INSURER'S LIABILITY UNDER ANY INSURANCE POLICY.

19.2 EXCEPT WITH RESPECT TO THE LIABILITY OF LFR FOR NEGLIGENT ACTS OR OMISSIONS, FRAUD OR INTENTIONAL MISCONDUCT OR OTHER LIABILITY OF LFR UNDER SECTION 15 HEREUNDER, THE LIABILITY AND OBLIGATIONS OF LFR UNDER THIS AGREEMENT SHALL NOT EXCEED THE AGGREGATE APPLICABLE COVERAGE LIMIT OF ANY INSURANCE POLICY, AFTER WHICH LFR SHALL HAVE NO FURTHER OBLIGATIONS AND THIS AGREEMENT SHALL AUTOMATICALLY BE VOID AND OF NO FURTHER FORCE OR EFFECT, EXCEPT WITH RESPECT TO SUCH MATTERS THAT EXPRESSLY SURVIVE THE TERMINATION AND EXPIRATION OF THIS AGREEMENT.

19.3 FORA WAIVES ANY CLAIM THAT IT HAS OR MAY HAVE IN THE FUTURE THAT LFR IS LIABLE UNDER ENVIRONMENTAL LAWS FOR THE ENVIRONMENTAL CONDITION OF THE ACES OR SURROUNDING AREAS INCLUDING, WITHOUT LIMITATION, ANY CLAIM THAT LFR IS AN OWNER, OPERATOR, RESPONSIBLE PARTY OR LIABLE PERSON OF THE ACES OR SURROUNDING AREAS, AS THOSE TERMS ARE USED UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT, 42 U.S.C. §9601 ET SEQ. OR CAL. HEALTH AND SAFETY CODE §§ 25300 ET SEQ., EXCEPT IN THE EVENT OF, AND THEN ONLY TO THE EXTENT ARISING OUT OF, LFR'S MATERIAL

BREACH OF THIS AGREEMENT, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

19.4 THE PROVISIONS OF THIS SECTION 19 SHALL SURVIVE THE COMPLETION OF THE REMEDIATION SERVICES PERFORMED HEREUNDER OR THE EXPIRATION, CANCELLATION, OR TERMINATION OF THIS AGREEMENT, AND SUCH PROVISIONS SHALL APPLY TO THE FULL EXTENT PERMITTED BY LAW.

20. **Site Development Activity**. LFR understands that the reason that FORA has contracted with LFR for the performance of the Remediation Services is because FORA intends to redevelop the ACES ("**Site Development Activities**"). The Parties acknowledge and agree that reasonable communication and cooperation shall be required in the scheduling and performance of the Remediation Services and Site Development Activities. LFR and FORA further acknowledge that they shall use reasonable good faith efforts to reasonably coordinate their respective activities on the ACES through project managers for the Site Development Activities and the Remediation Services as FORA and LFR, respectively, shall designate. FORA agrees to make available, promptly upon their preparation, drawings, technical details, specifications and other information with respect to such plans and the Site Development Activities and to provide copies of the same to LFR, at LFR's request.

21. **Insurance**. LFR shall, at all times while Remediation Services are provided hereunder, maintain in full force and effect all insurance coverages required to be maintained by FORA as the "Recipient" pursuant to the terms of the ESCA, including without limitation, the following insurance coverages, provided that such coverages continue to be commercially available in the insurance marketplace:

21.1 Workers' Compensation, providing statutory benefits and Employer's Liability Insurance, covering the employees of the LFR engaged in operations hereunder in compliance with the state having jurisdiction over each such employee. The limit for Employer's Liability Insurance shall be $1,000,000 per occurrence.

21.2 Comprehensive General Liability Insurance including products and contractual liability (hereinafter referred to as "**CGL**") with a combined single limit per occurrence of at least $5,000,000 for bodily injury and property damage.

21.3 Automobile Liability Insurance with a combined single limit per occurrence of $5,000,000 for bodily injury and property damage. Such policy shall include non-owned and hired vehicle coverage.

21.4 Contractor's Pollution Liability Insurance (hereinafter referred to as "**CPLI**") coverage, with combined single limits of $5,000,000/$5,000,000 per occurrence and in the aggregate, which policy shall be primary insurance with respect to any acts or omissions of LFR covered thereby. The combined single limits of $5,000,000/$5,000,000 apply jointly to the coverage stated in this subsection 22.4 and

the coverage stated in subsection 22.5 as the total amount of coverage for both CPLI and PLI.

21.5 Professional Liability Insurance (hereinafter referred to as "**PLI**") coverage, with combined single limits of $5,000,000/$5,000,000 per claim (which shall be written on a claims made basis), which coverage shall cover the types of services to be performed hereunder by LFR.

The insurance policies provided for in subsection 21.2 and 21.4 above shall name FORA as an additional insured, and each insurance policy listed in this Section 21 shall contain a provision stating that the respective insurer shall waive all rights of subrogation in favor of FORA. LFR shall deliver appropriate evidence of the required insurance coverages and endorsements to FORA prior to commencement of the Remediation Services. Such certificates or other evidence of coverage shall provide that the insurers shall provide FORA with thirty (30) days prior written notice of any cancellation of any policy(ies) under which the same are issued. With respect to all coverages required pursuant to the ESCA, LFR shall comply with the requirements and provisions in the ESCA with respect to such coverage.

22. **Use of Reports; Patents and Inventions**.

22.1 Any and all reports, documents and correspondence prepared by LFR for FORA prior to, or under this Agreement, including but not limited to any due diligence report (hereinafter referred to as "**LFR Work Product**"), were or will be prepared exclusively for FORA, as applicable. "**Related FORA Entities**" (which, for purposes of this Agreement shall mean any municipal entities with land use jurisdiction over the ACES, lenders of FORA and any successor to FORA, in each case with respect to all or any portion of the ACES) shall have the same rights as FORA to rely on LFR Work Product as if such LFR Work Product were generated pursuant to the terms hereof for the benefit of such Related FORA Entities. No other third party(s) shall have the right to rely on LFR Work Product unless (i) LFR grants such third party the right to rely, and (ii) such third party agrees to the terms of and executes a form of reliance letter agreement reasonably acceptable to the third party and LFR.

22.2 FORA affirms that it has not previously granted any Related FORA Entities the right to rely on any LFR Work Product. FORA may, for informational purposes only, provide all LFR Work Product to any third-party including, without limitation, governmental authorities, the Insurer, the EPA, the DTSC, the Army, contractors engaged to perform Site Development Activities or other contractors or consultants engaged to assist with the performance of investigation or Remediation Services work at the ACES, FORA's auditors, potential or actual insurers of FORA, parties potentially or actually providing financing to FORA or in connection with any aspect of the Site Development Activities, potential or actual purchasers of the ACES, potential or actual tenants of the ACES and potentially responsible parties with respect to the contamination of the ACES; provided however that FORA acknowledges and agrees that only Related FORA Entities shall have the right to rely on the LFR Work Product as set forth in this Section 22. The rights and obligations of this Section 22 shall survive any termination of this Agreement.

23. **Intellectual Property**. LFR shall provide Remediation Services that do not infringe on any valid patent, copyright, trademark or involve the use of any confidential information that is the property of others unless LFR is licensed or otherwise has the right to use and dispose thereof.

24. **Confidentiality**.

24.1 In the course of performing the Remediation Services, to the extent that FORA discloses to LFR, or LFR otherwise acquires, business or technical information that FORA clearly marks as confidential or proprietary, LFR will receive and maintain in confidence such information and will exercise all reasonable efforts to avoid the disclosure of such information to others to the extent reasonably necessary in connection with the efficient and timely performance of the Remediation Services. LFR will not use such information for any purpose other than the performance of Remediation Services to FORA.

24.2 FORA shall treat as confidential, to the extent that such material or information is marked as confidential, LFR's technology, formulae, procedures, processes, methods, trade secrets, inventions, and/or computer programs; and FORA shall not disclose such information to any third-party, except to a Related FORA Entity which has first agreed in writing with LFR to an obligation of confidentiality identical to the obligations of FORA as set forth in this Section 24.

24.3 The foregoing notwithstanding, nothing herein is meant to prevent nor shall this Section 24 be interpreted as preventing either LFR or FORA from disclosing and/or using said information (i) required to be submitted to any governmental authority or agency for the purpose of obtaining Site Closeout or when requested by the Insurer, otherwise to the extent reasonably necessary in connection with the efficient and timely performance of the Remediation Services, subject only to the terms and conditions of this Agreement; or (ii) when the information or data is actually known to the receiving party before being obtained or derived from the transmitting party; or (iii) when the information or data is generally available to the public without the receiving or transmitting party's fault at any time before or after it is acquired from the transmitting party; or (iv) where the information or data is obtained or acquired in good faith at any time by the receiving party from a third-party who has the same in good faith and who is not under any obligation to the transmitting party in respect thereof; or (v) where a written release is obtained by the receiving party from the transmitting party; or (vi) when otherwise permitted by this Agreement; or (vii) when required by law; provided, however, upon service of any legal process, the recipient thereof shall notify the other party and afford it an opportunity to resist such process.

24.4 The rights and obligations of this Section 24 shall survive any termination of this Agreement.

25. **Force Majeure**. The Parties shall perform the requirements of this Agreement except to the extent performance is prevented or delayed by events that constitute force majeure.

A force majeure is defined as any event arising from causes which are beyond the reasonable control of a party and which cannot be overcome with due diligence, and include but are not limited to war, terrorism, riots, strikes and other labor issues, severe weather, legal action by private citizens or organizations that result in injunctions, acts of God, and Endangered Species Responsibilities as provided in the ESCA, to the extent such events result in delays or cessation of Remediation Services (such causes are referred to herein as events of "**Force Majeure**"). The applicability of any rights in connection with an event of Force Majeure shall be limited to the ACES or portion of the Remediation Services impacted by the event.

26. **Assignment**. Except as provided in this Section 26, neither Party shall assign any right or delegate any duty under this Agreement without the prior written consent of the other. LFR may, upon providing FORA with written notice of such assignment and obtaining FORA's consent, not to be unreasonably withheld, conditioned or denied, assign its rights and obligations hereunder to any successor to LFR pursuant to any merger or acquisition of LFR or substantially all of its assets. FORA may, upon providing LFR with written notice of such assignment, assign its rights and obligations hereunder pursuant to the provisions of Cal. Gov. Code §67700. In the event of a permitted assignment, such assignment right shall be expressly conditioned on each assignee's agreement in writing to be bound by the terms of this Agreement. LFR agrees to not permit Weston Solutions, Inc. or Westcliffe Engineers, Inc., in their capacity as subcontractors to LFR with respect to the Remediation Services, to assign their obligations pursuant to their applicable subcontract agreements without FORA's reasonable consent, not to be unreasonably withheld, conditioned or denied. Notwithstanding the foregoing, any qualified subsidiary or affiliate of LFR or other persons or entities designated by LFR may perform some or all of the Remediation Services, and LFR may, upon notice to FORA, assign, pledge or otherwise hypothecate the cash proceeds and accounts receivable resulting from the performance of any Remediation Services pursuant to this Agreement; provided, however, that no such designation, assignment, pledge or hypothecation shall in any way release LFR from its liabilities and obligations pursuant to this Agreement. Subject to the foregoing, this Agreement shall inure to the benefit of, and be binding upon, the Parties' respective successors and assigns.

27. **Governing Law**. This Agreement shall be governed by and interpreted pursuant to the law of the State of California without regard to California's principles of conflict of laws.

28. **Notices**. All notices, consents and other communications under this Agreement shall be in writing and shall be deemed to have been duly given when: (i) delivered by hand (so long as the delivering party shall have received a receipt of delivery executed by the party to whom such notice was delivered); (ii) sent by facsimile, provided that a copy is mailed by first-class United States mail; (iii) received by the addressee, if sent by recognized overnight delivery service; or (iv) mailed by United States certified or registered mail, postage pre-paid, return receipt requested. All such notices shall be given at the appropriate addresses and facsimile numbers as follows:

As to LFR:

Frank Lorincz
Chief Executive Officer
LFR Inc.
1900 Powell Street, 12th Floor
Emeryville, CA 94608-1827
Tel: 510-596-9554
Fax: 510-652-2246

With a copy to:

Curtis B. Toll, Esquire
Greenberg Traurig, LLP
2700 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
Tel: 215-988-7804
Fax: 215-988-7801

As to FORA:

Michael A. Houlemard
Executive Officer
Fort Ord Reuse Authority
100 12th Street
Building 2880
Marina, CA 93933
Tel: 831-883-3672
Fax: 831-883-3675

With a copy to:

Barry P. Steinberg, Esquire
Kutak Rock LLP
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036-4374
Tel: 202-828-2316
Fax: 202-828-2488

And a copy to:

Gerald Bowden, Esquire
Dawson, Passafuime, Bowden & Martinez
4665 Scotts Valley Drive
Scotts Valley, CA 95066
Tel: 831-438-1221
Fax: 831-438-2812

Notices, consents and other communications under this Agreement to the Insurer shall conform to this Section 29 and shall be given at the address and facsimile number as FORA shall designate. FORA, LFR or the Insurer may designate other addresses or facsimile numbers by giving five (5) days notice to the other parties subject to this Section 29.

29. **Entire Agreement**. The terms and conditions set forth herein constitute the entire understanding of the Parties relating to the provision of Remediation Services by LFR to FORA and shall be deemed incorporated in all Remediation Services and in each invoice therefor unless otherwise agreed in writing by LFR. In the event of conflict between this Agreement and any invoices hereunder, this Agreement shall govern. Any modifications or revision of any provisions hereof or any additional provisions contained in any purchase order, acknowledgement or other form of FORA is hereby expressly objected to by LFR and shall not operate to modify this Agreement. This Agreement may be amended only by a written instrument signed by both Parties.

30. **Waiver of Terms and Conditions**. The failure of LFR or FORA in any one or more instances to enforce one or more of the terms or conditions of this Agreement or to exercise any right or privilege in this Agreement or the waiver of any breach of the terms or conditions of this Agreement by either Party shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no such failure to enforce had occurred.

31. **Severability and Survival**. Each provision of this Agreement is severable from the others. Should any provision of this Agreement be found invalid or unenforceable, such provision shall be ineffective only to the extent required by law, without invalidating the remainder of such provision or the remainder of this Agreement. Further, to the extent permitted by law, any provision found invalid or unenforceable shall be deemed automatically redrawn to the extent necessary to render it valid and enforceable consistent with the Parties' intent. The terms and conditions hereof shall survive any termination of this Agreement.

32. **Prevailing Wage; ESCA Requirements**. LFR shall comply with all prevailing wage and other laws, ordinances, regulations and policies of applicable governmental authorities to the extent the same relate to the Remediation Services or the performance thereof, including without limitation, the requirements of the Department of Defense Grant and Agreement Regulations, DOD 3210.6-R, Part 33.

33. **Dispute Resolution**. Disputes arising under this Agreement shall be resolved as follows:

a. Prevention of Claims/Meet and Confer (5 days). The Parties agree that they share an interest in preventing misunderstandings that could become claims against one another under this Agreement. The Parties agree to attempt to identify and discuss in advance in good faith any areas of potential misunderstanding that could lead to a dispute. If either party identifies an issue of disagreement, the parties agree to engage in a face-to-face or immediate telephonic discussion of the matter within five (5) calendar days of the initial request. If the Parties are unable to amicably resolve such disagreements or misunderstandings, they agree to proceed immediately to binding arbitration.

b. Arbitration (45 days). The Parties may select an arbitrator by mutual agreement, but the Parties agree to use commercially reasonable efforts to identify an arbitrator with a technical understanding of and relevant experience with insured remediation projects and, to the extent possible, MEC remediation. Failing such agreement, the arbitration will be conducted by the Judicial Arbitration and Mediation Services (hereinafter referred to as "JAMS") or such other national arbitration firm mutually acceptable to the Parties. Arbitration shall be concluded within forty-five (45) days of the arbitration demand and a decision issued within fifteen (15) days thereafter.

If the matter in dispute concerns the amount of money due to or from the Parties, the arbitration shall follow the so-called "baseball arbitration" rule, in which the arbitrator will be required to select an award from among the final offers presented by the contending parties. The arbitrator may not render an award that compromises between the final offers. With respect to any arbitration pertaining to the occurrence of a FORA Default or LFR Default hereunder, the arbitrator shall clearly and unequivocally determine whether such a default has occurred pursuant to the terms of this Agreement and shall clearly set forth in such decision the basis for such findings and conclusions.

The arbitration shall be conduced under the JAMS Endispute Streamlined Arbitration Rules and Procedures. Upon mutual agreement, the parties may agree to arbitrate under an alternative scheme or statute. The arbitrator may decide any justiciable issue. Judgment may be entered on the arbitrator's award.

NOTICE: IN AGREEING TO THE FOREGOING PROVISION, YOU ARE WAIVING YOUR RIGHT TO HAVE YOUR RIGHTS UNDER THIS AGREEMENT TRIED IN A COURT OF LAW OR EQUITY. THAT MEANS YOU ARE GIVING UP YOUR RIGHT TO TRIAL BY JUDGE OR JURY. YOU ARE ALSO GIVING UP YOUR RIGHT TO DISCOVERY AND APPEAL EXCEPT AS PROVIDED IN THE ARBITRATION RULES. IF YOU REFUSE TO ARBITRATE YOUR DISPUTE AFTER A PROPER DEMAND FOR ARBITRATION HAS BEEN MADE, YOU CAN BE FORCED TO ARBITRATE OR HAVE AN AWARD ENTERED AGAINST YOU BY DEFAULT. YOUR AGREEMENT O ARBITRATE IS VOLUNTARY.

BY INITIALING THIS PROVISION BELOW, THE PARTIES AFFIRM THAT THEY HAVE READ AND UNDERSTOOD THE FOREGOING ARBITRATION PROVISIONS AND AGREE TO SUBMIT ANY DISPUTES UNDER THIS AGREEMENT TO NEUTRAL BINDING ARBITRATION AS PROVIDED IN THIS AGREEMENT.

FL **Initials (LFR)** **Initials (FORA)**

c. Attorneys Fees. Each party shall bear its own costs and attorneys fees for the dispute resolution process set forth herein, except that the prevailing party in any arbitration may recover attorneys fees and costs of suit relating to any judicial proceeding to enforce the terms of such arbitration award in a court of competent jurisdiction. If either party initiates litigation without having exhausted the arbitration process provided herein, such initiating party shall be deemed to have consented to have judgment entered against it and in favor of the other party with respect to all matters which are fairly encompassed in such litigation.

34. **Counterparts**. This Agreement may be executed simultaneously in two counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument.

35. **Headings**. The headings in the sections of this Agreement are inserted for convenience of reference only and will not constitute a part hereof.

IN WITNESS WHEREOF, FORA and LFR agree to the foregoing (INCLUDING THE LIMITATIONS ON LIABILITY IN SECTION 19) and have caused this Agreement to be executed by their respective duly authorized representatives as of the date set forth below.

Executed this 29th day of March, 2007.

LFR INC.

By: _____

Title: Chief Executive Officer

Address: 1900 Powell Street. Emeryville, CA. 94608

FORT ORD REUSE AUTHORITY

By: _____

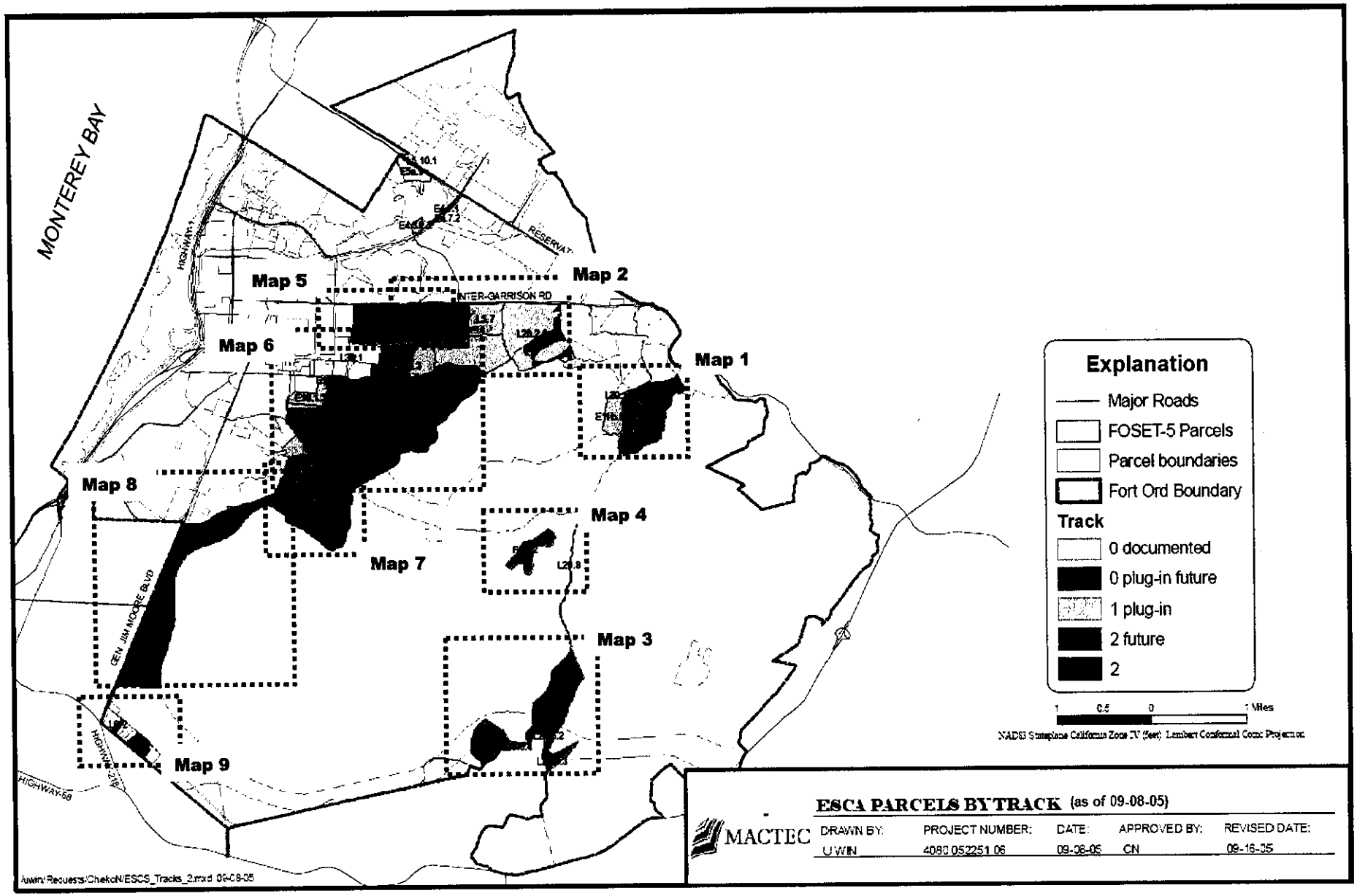
Title: Executive Officer

Fort Ord Reuse Authority
100 12th Street
Building 2880
Marina, CA 93933

LIST OF EXHIBITS

Exhibit A	Areas Covered by Environmental Services
Exhibit B	AOC
Exhibit C	Environmental Insurance Policy
Exhibit D	ESCA
Exhibit E	Phasing Schedule
Exhibit F	Allocation Agreement

EXHIBIT A

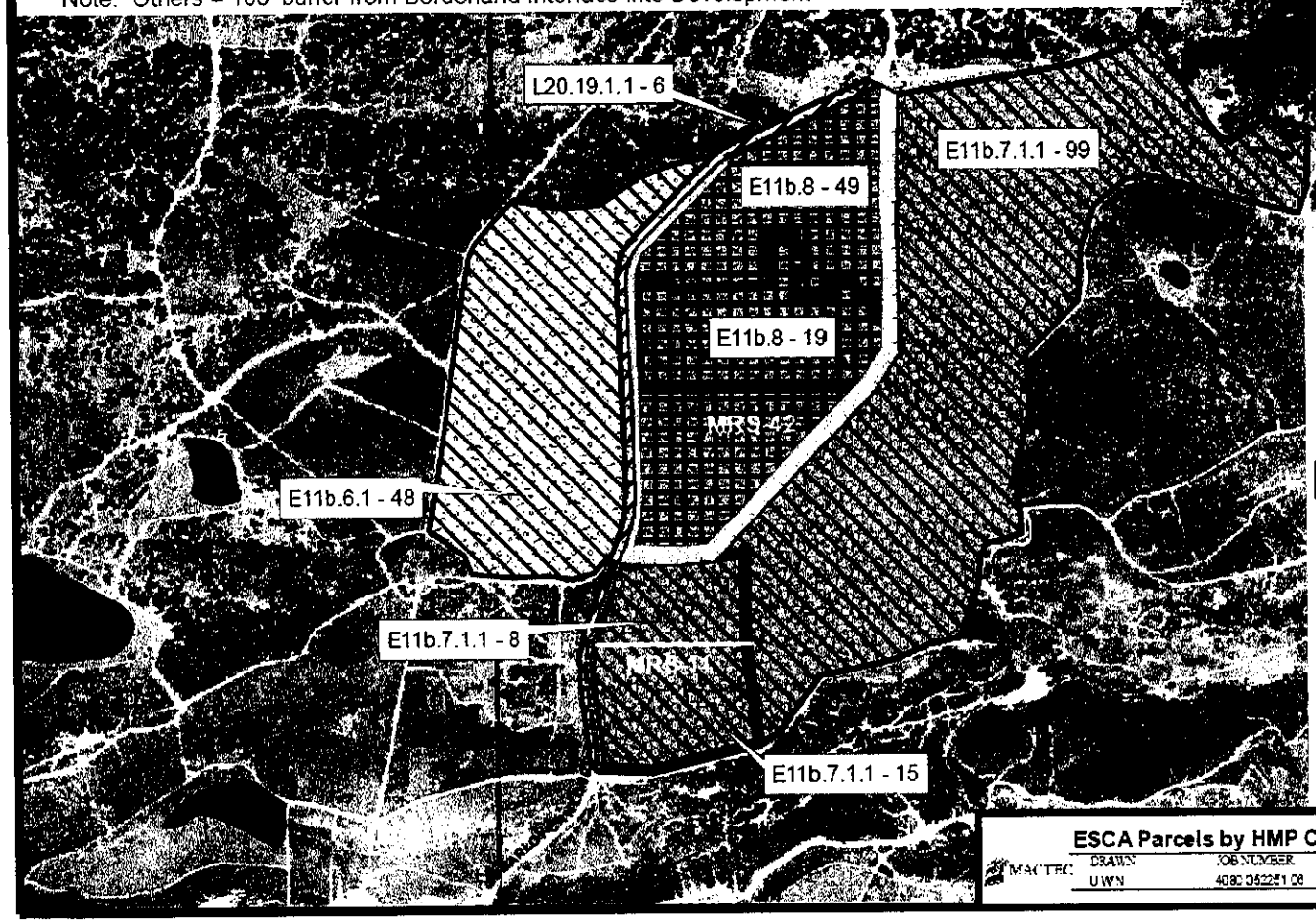


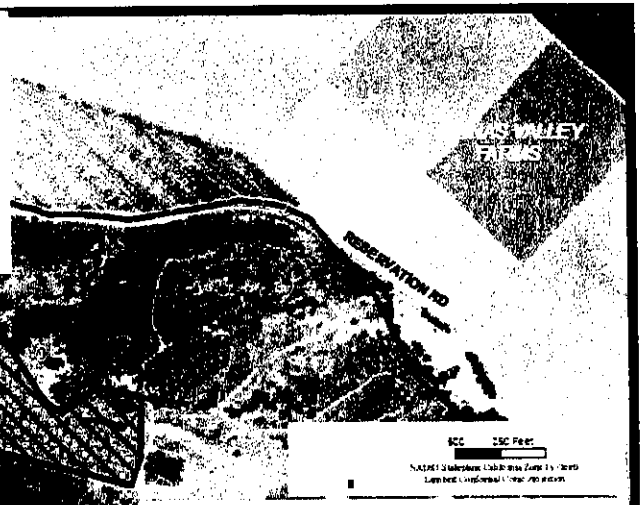
Modifications by LFR, Inc. – 3/26/07

Acreages by HMP Categories (Map-1)

Parcel ID	Development			Habitat Reserves	Habitat Corridor	Development with Reserve/Restrictions
	Residential	Road	Others			
E11b.6.1	-	-	-	48	-	-
E11b.7.1.1	-	-	-	122	-	-
E11b.8	58	-	10	-	-	-
L20.19.1.1	-	6	-	-	-	-

Note: Others = 100' buffer from Borderland Interface into Development





Explanation

- Borderland Interface
- 100' buffer from Borderland Interface
- Fort Ord boundary
- FOSET-5 Parcels
- Munitions Response Sites
- Residential
- Development
- Habitat Reserve
- Pools & Ponds

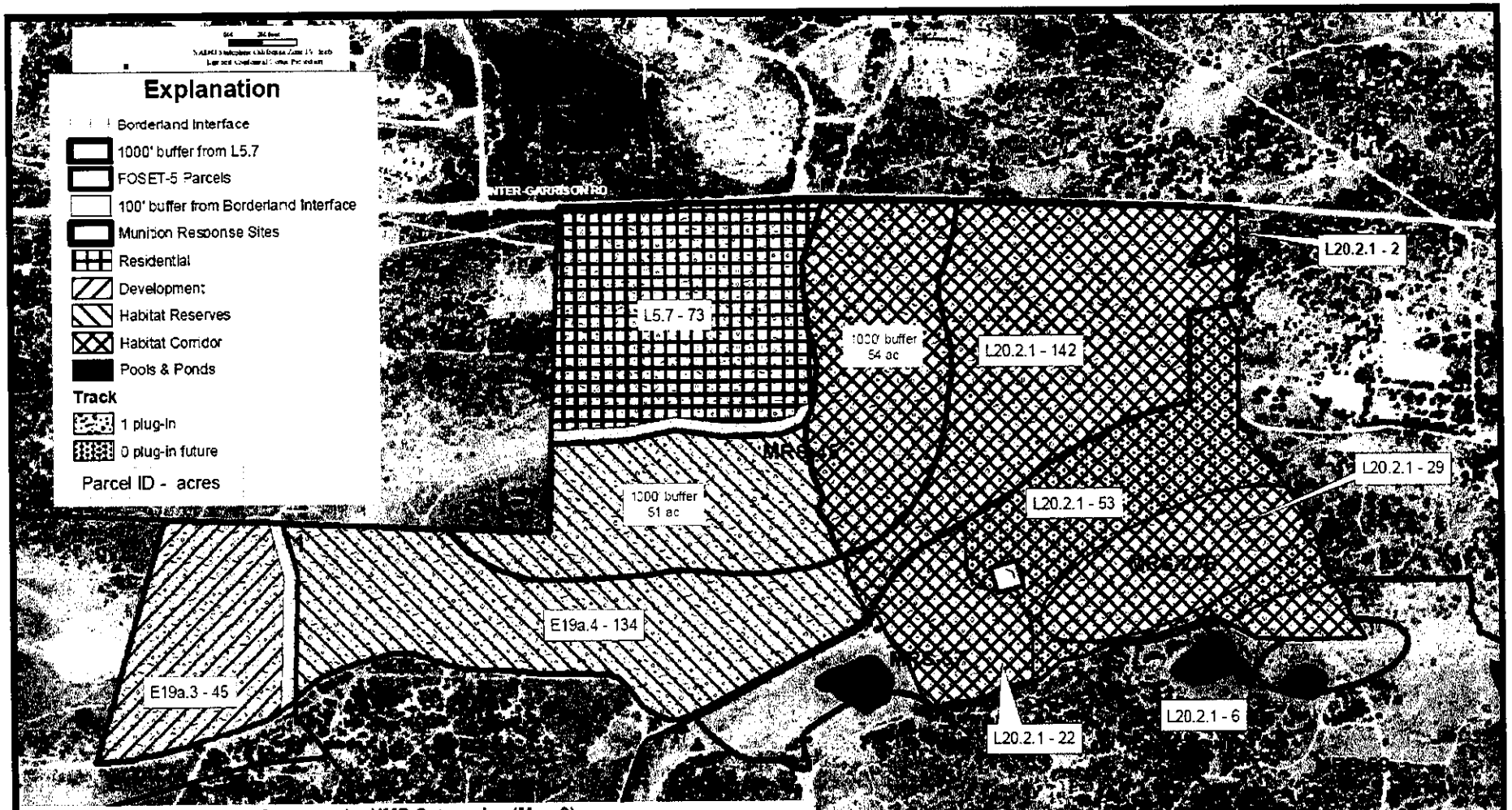
Track

- 2 future

Parcel ID - acres

ESCA Parcels by HMP Categories -- Map - 1

DRAWN	JOB NUMBER	APPROVED	DATE	REVISED DATE	
UWN	4080.052251.08	CN	10-25-05		v.3



Acreages by HMP Categories (Map-2)

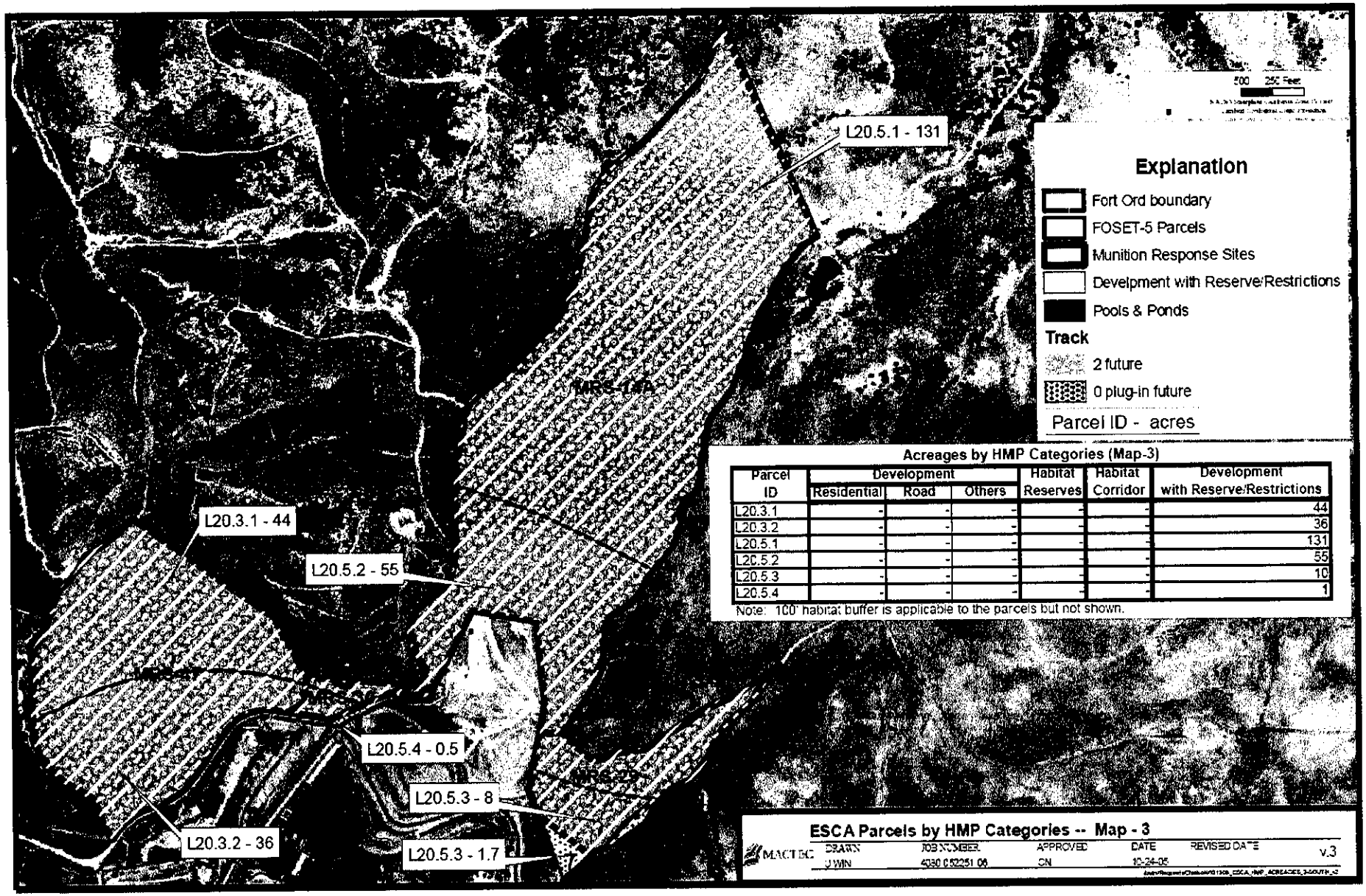
Parcel ID	Development			Habitat Reserves	Habitat Corridor	Development with Reserve/Restrictions
	Residential	Road	Others			
E19a.3	-	-	45	-	-	-
E19a.4	-	-	-	-	134	-
L5.7	68	-	5	-	-	-
L20.2.1	-	-	-	254	-	-

Note: Others = including 100' buffer from Borderland Interface into Development (5 ac in L5.7 and 3 ac in E19A.3)

ESCA Parcels by HMP Categories -- Map - 2

MACTEC

DRAWN	JOB NUMBER	APPROVED	DATE	REVISED DATE	
D WIN	4080 052251 06	CN	10-26-05		v.4



Acreages by HMP Categories (Map-3)

Parcel ID	Development			Habitat Reserves	Habitat Corridor	Development with Reserve/Restrictions
	Residential	Road	Others			
L20.3.1	-	-	-	-	-	44
L20.3.2	-	-	-	-	-	36
L20.5.1	-	-	-	-	-	131
L20.5.2	-	-	-	-	-	55
L20.5.3	-	-	-	-	-	10
L20.5.4	-	-	-	-	-	1

Note: 100' habitat buffer is applicable to the parcels but not shown.

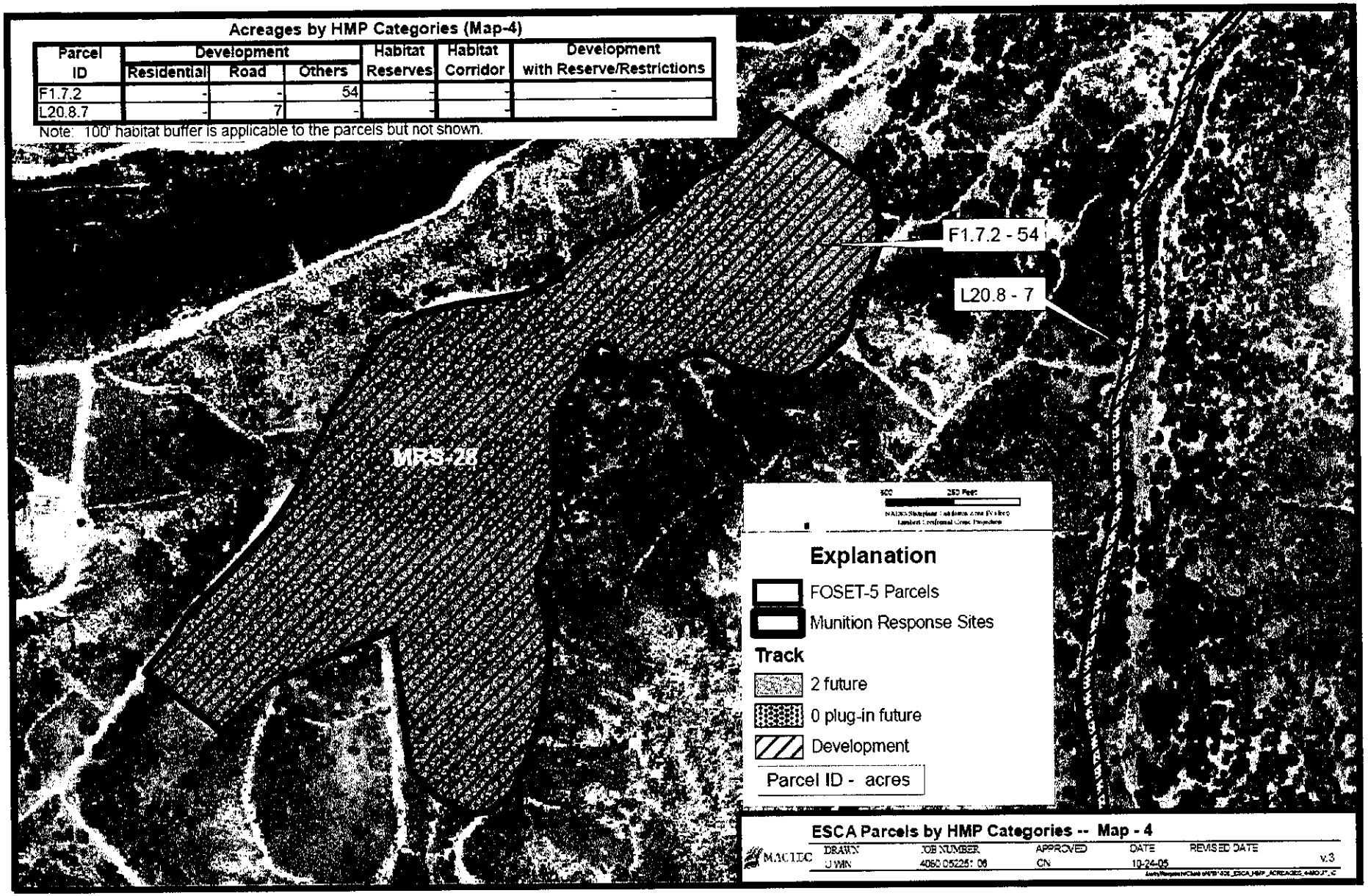
ESCA Parcels by HMP Categories -- Map - 3

MACTEC	DRAWN	JOB NUMBER	APPROVED	DATE	REVISED DATE	
	J WIN	4080 052251 06	CN	10-24-05		v.3

Acreages by HMP Categories (Map-4)

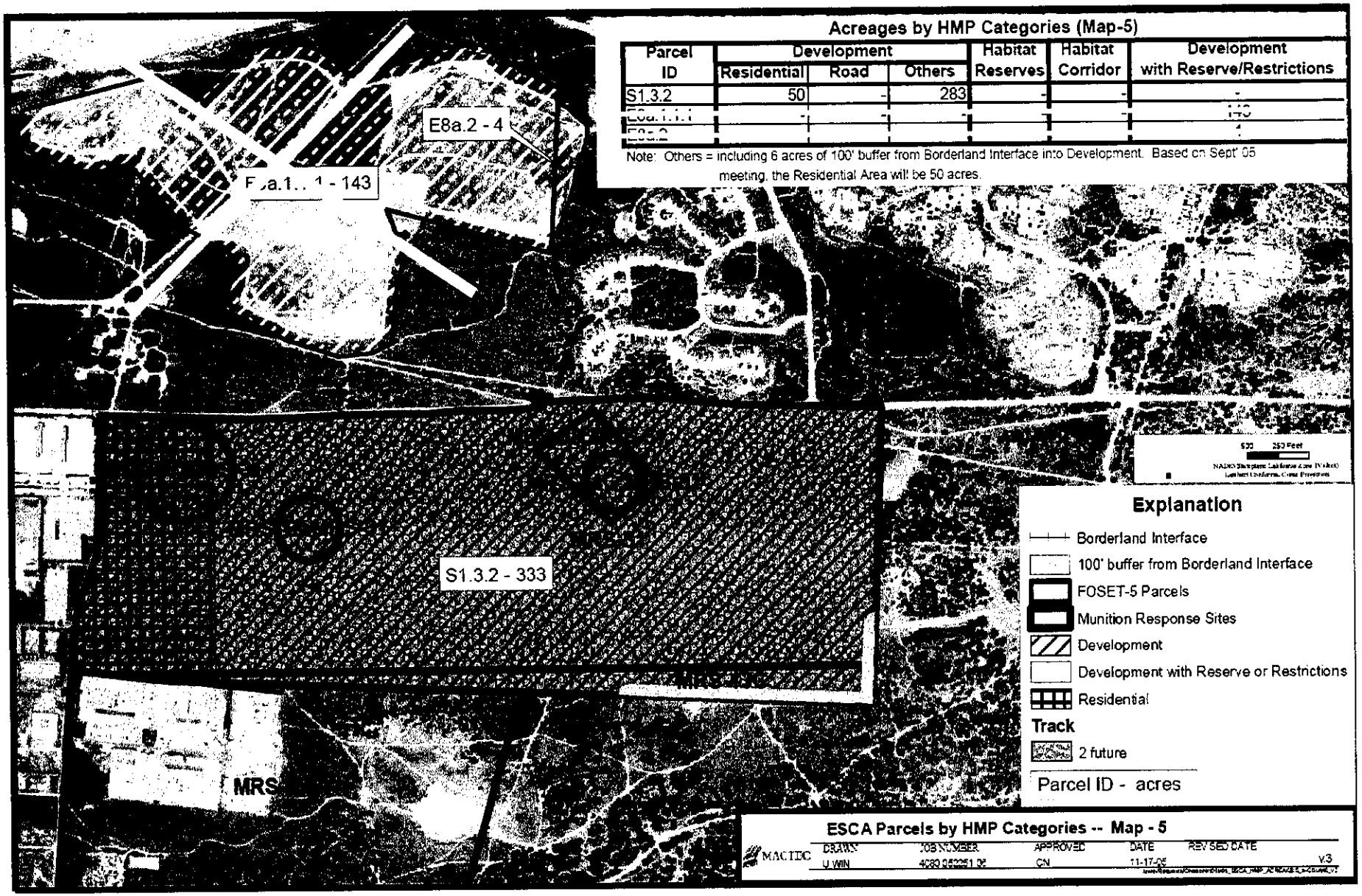
Parcel ID	Development			Habitat Reserves	Habitat Corridor	Development with Reserve/Restrictions
	Residential	Road	Others			
F1.7.2	-	-	54	-	-	-
L20.8.7	-	7	-	-	-	-

Note: 100' habitat buffer is applicable to the parcels but not shown.



ESCA Parcels by HMP Categories -- Map - 4

MACTEC	DRAWN	JOB NUMBER	APPROVED	DATE	REVISED DATE	
	J WIN	4080 05225: 06	CN	10-24-05		v.3



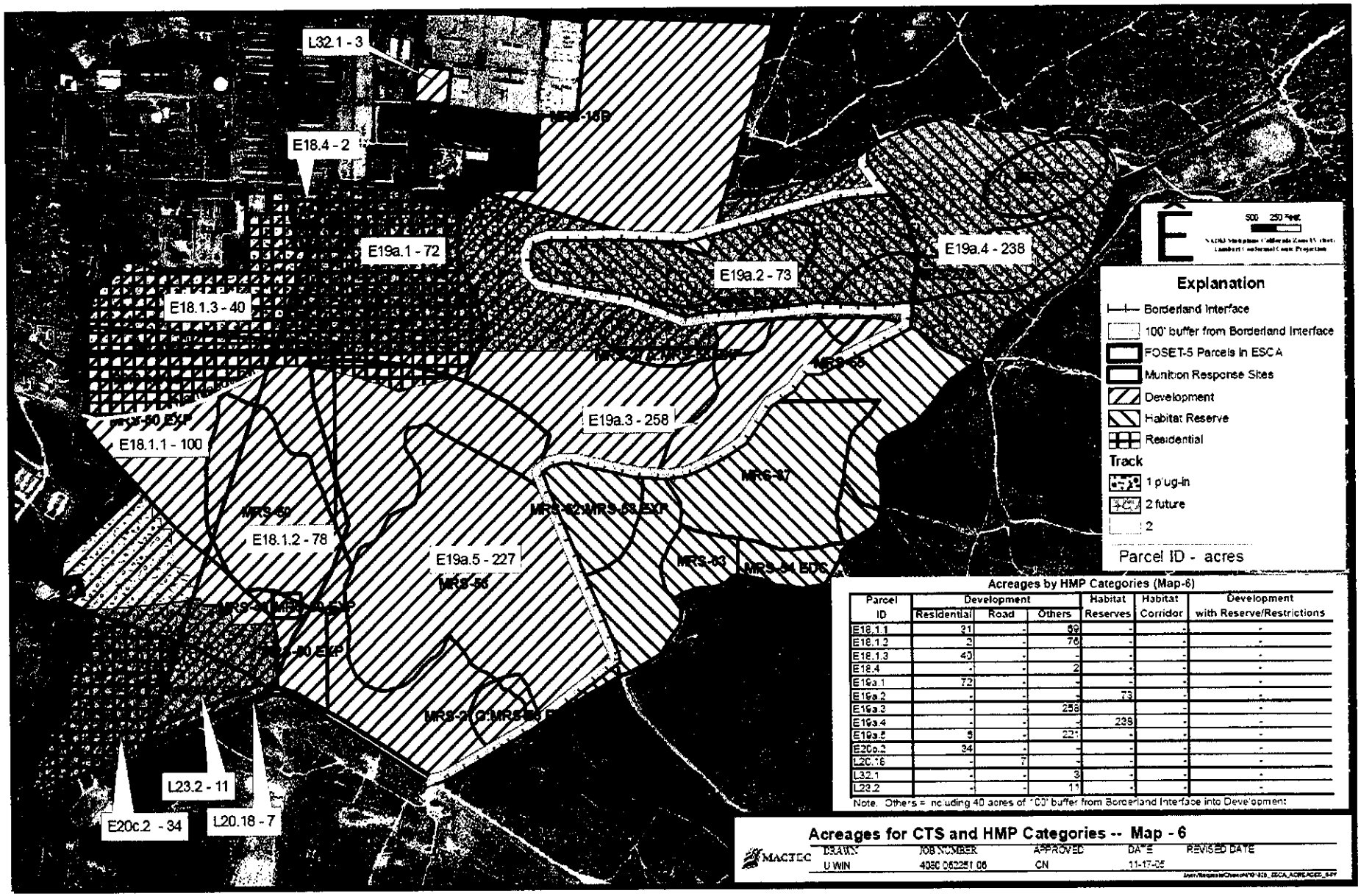
Acreages by HMP Categories (Map-5)

Parcel ID	Development			Habitat Reserves	Habitat Corridor	Development with Reserve/Restrictions
	Residential	Road	Others			
S1.3.2	50	-	283	-	-	-
E8a.1.1.1	-	-	-	-	-	170
E8a.2						4

Note: Others = including 6 acres of 100' buffer from Borderland Interface into Development. Based on Sept' 05 meeting, the Residential Area will be 50 acres.

Note: E8a.1.1.1 (143 acres) and E8a.2 (4 acres) are NOT included in the ESCA. These parcels are an Army retained condition.

Modifications by LFR, Inc. – 3/26/07



Acreages by HMP Categories (Map-6)

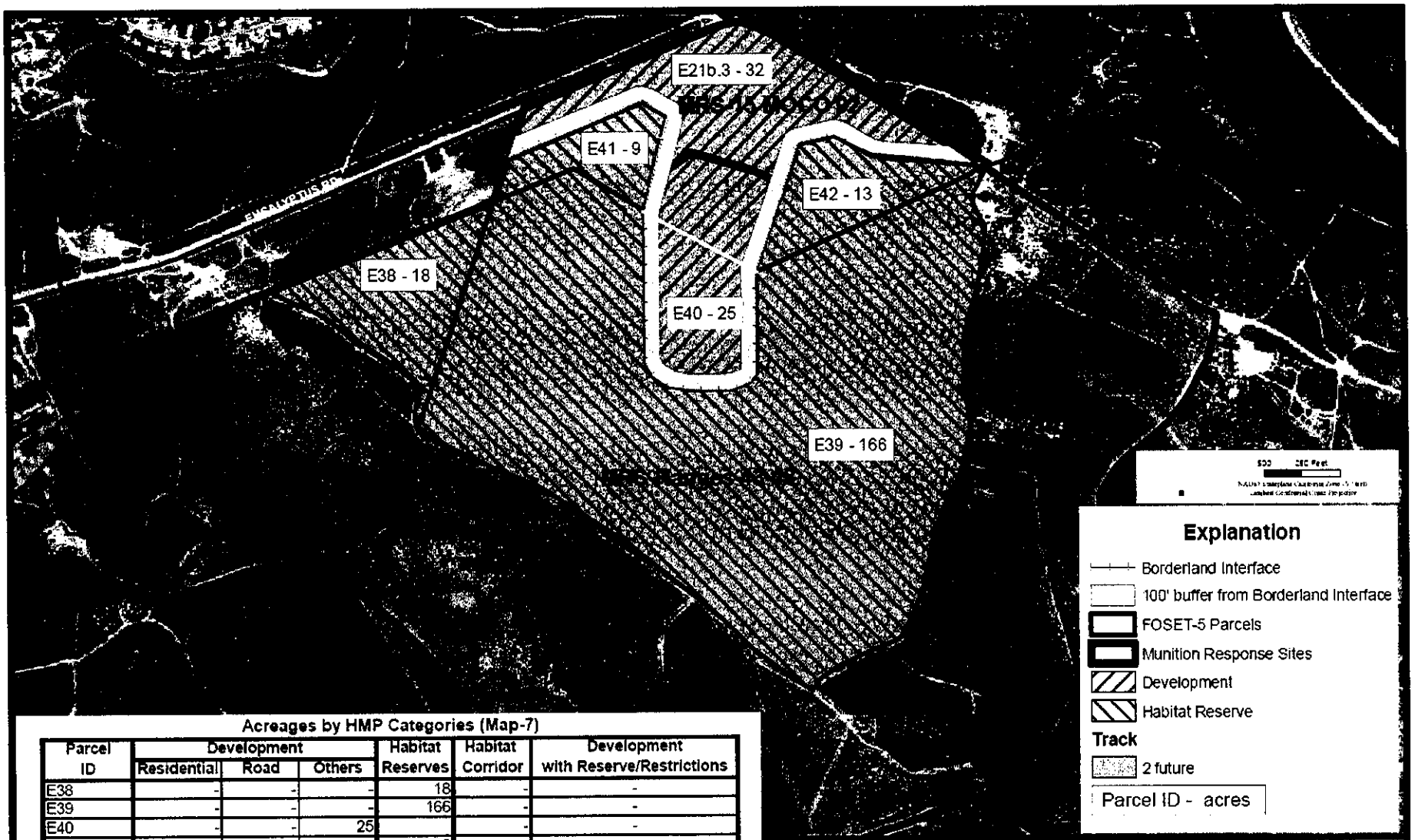
Parcel ID	Development			Habitat Reserves	Habitat Corridor	Development with Reserve/Restrictions
	Residential	Road	Others			
E18.1.1	31	-	69	-	-	-
E18.1.2	2	-	76	-	-	-
E18.1.3	40	-	-	-	-	-
E18.4	-	-	2	-	-	-
E19a.1	72	-	-	-	-	-
E19a.2	-	-	-	73	-	-
E19a.3	-	-	258		-	-
E19a.4	-	-	-	238	-	-
E19a.5	5	-	221	-	-	-
E20c.2	34	-	-	-	-	-
L20.18	-	7	-	-	-	-
L32.1	-	-	3	-	-	-
L23.2	-	-	11	-	-	-

Note. Others = including 40 acres of 100' buffer from Borderland Interface into Development

Acreages for CTS and HMP Categories -- Map - 6

MACTEC

DRAWN	JOB NUMBER	APPROVED	DATE	REVISED DATE
U WIN	4050 062251 06	CN	11-17-05	



Acreages by HMP Categories (Map-7)

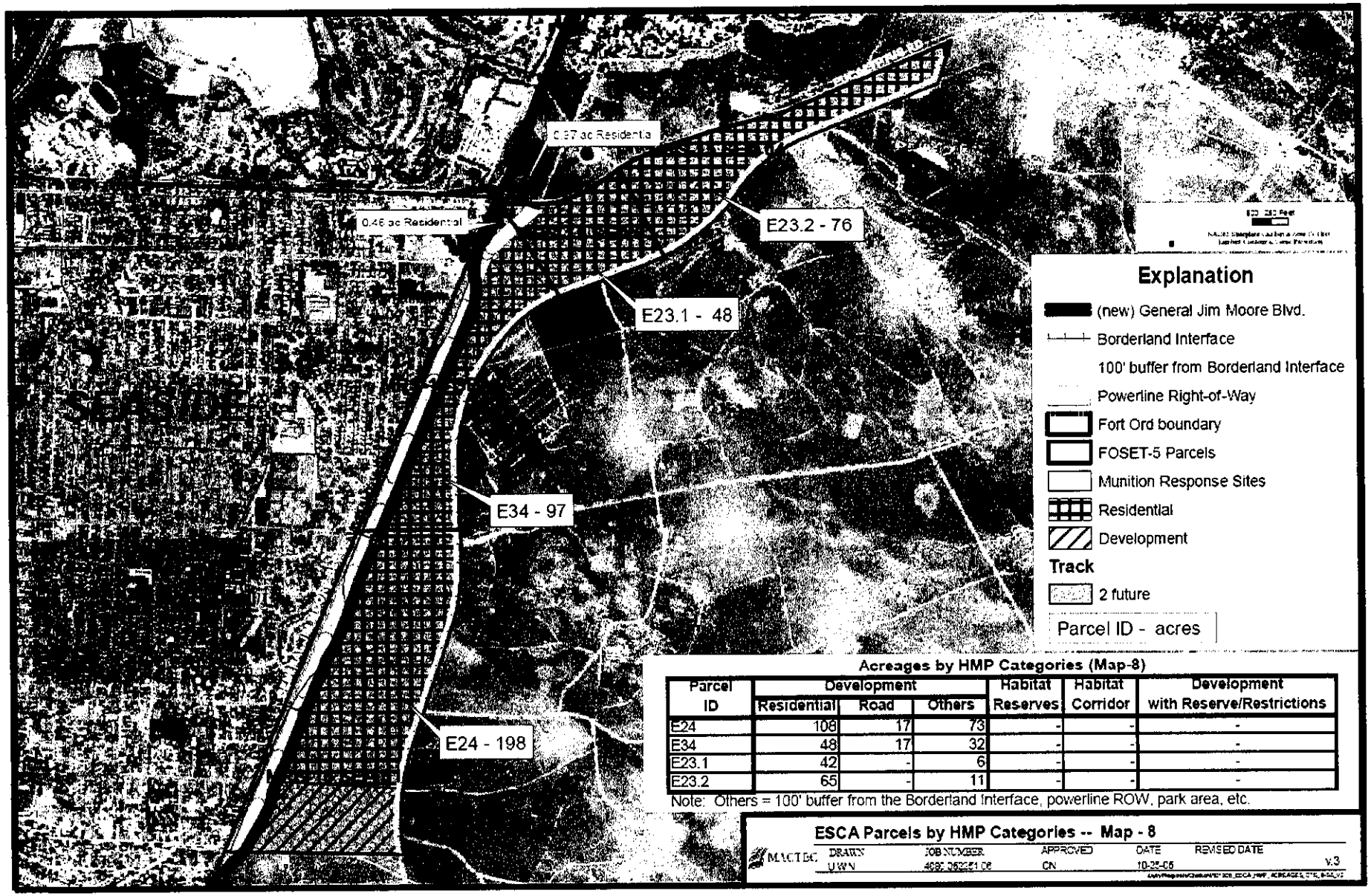
Parcel ID	Development			Habitat Reserves	Habitat Corridor	Development with Reserve/Restrictions
	Residential	Road	Others			
E38	-	-	-	18	-	-
E39	-	-	-	166	-	-
E40	-	-	25		-	-
E41	-	-	-	9	-	-
E42	-	-	-	13	-	-
E21b.3	-	-	32		-	-

Note: Others = including 14 acres of 100' buffer from Borderland Interface into Development

ESCA Parcels by HMP Categories -- Map - 7

MACTEC

DRAWN	JOB NUMBER	APPROVED	DATE	REVISED DATE	
J WIN	4068 052251.06	CN	10-26-05		v.3



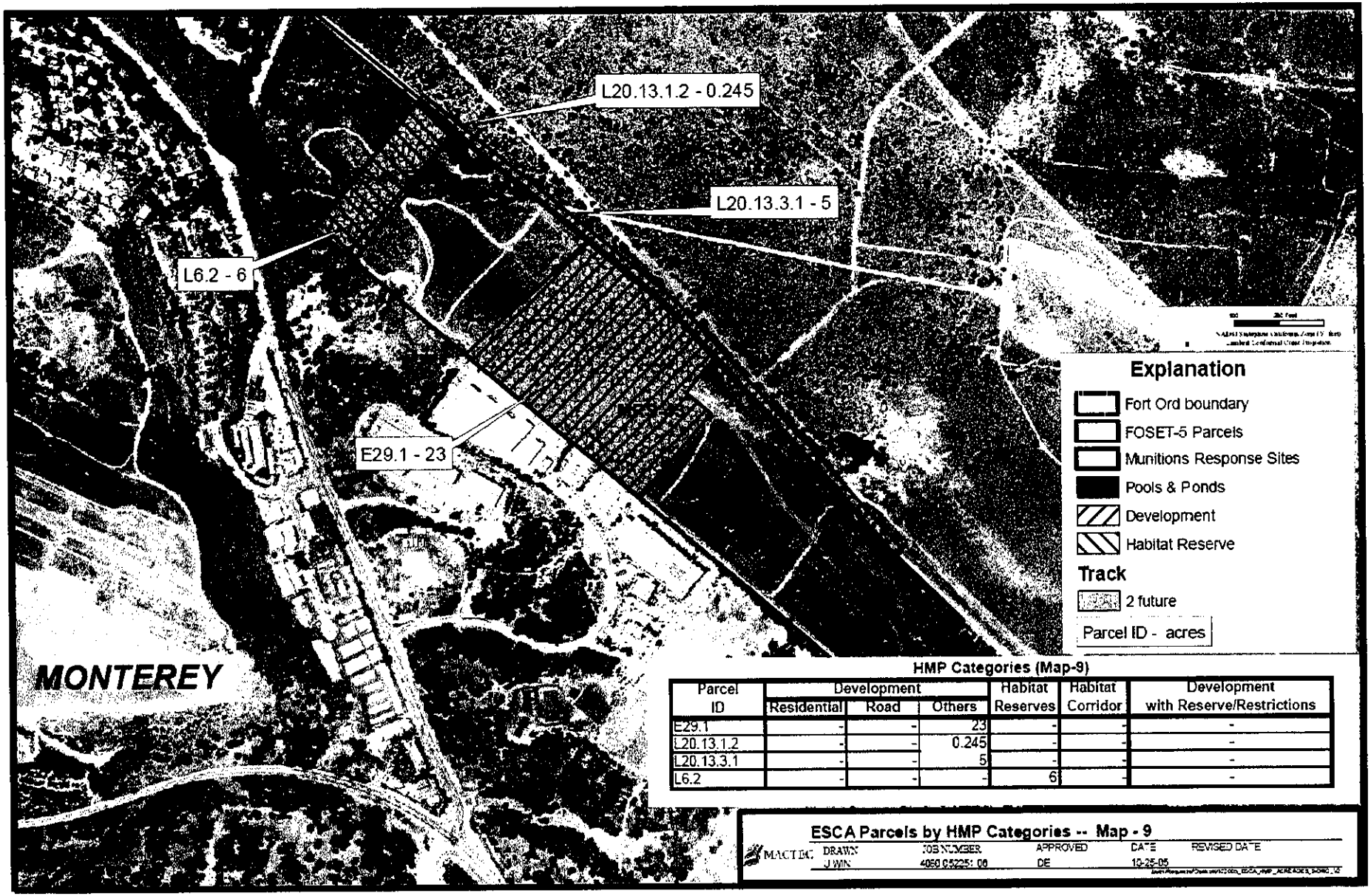
Acreages by HMP Categories (Map-8)

Parcel ID	Development			Habitat Reserves	Habitat Corridor	Development with Reserve/Restrictions
	Residential	Road	Others			
E24	108	17	73	-	-	-
E34	48	17	32	-	-	-
E23.1	42	-	6	-	-	-
E23.2	65	-	11	-	-	-

Note: Others = 100' buffer from the Borderland Interface, powerline ROW, park area, etc.

ESCA Parcels by HMP Categories -- Map - 8

MACTEC	DRAWN	JOB NUMBER	APPROVED	DATE	REVISED DATE	
	UWN	4087 052251 08	CN	10-25-05		v.3



HMP Categories (Map-9)

Parcel ID	Development			Habitat Reserves	Habitat Corridor	Development with Reserve/Restrictions
	Residential	Road	Others			
E29.1	-	-	23	-	-	-
L20.13.1.2	-	-	0.245	-	-	-
L20.13.3.1	-	-	5	-	-	-
L6.2	-	-	-	6	-	-

ESCA Parcels by HMP Categories -- Map - 9

MACTEC	DRAWN	JOB NUMBER	APPROVED	DATE	REVISED DATE
	J WIN	4050 05225: 06	DE	10-25-05	

Taylor, Michelle D.

From: Steinberg, Barry P.
Sent: Thursday, March 29, 2007 7:05 PM
To: Taylor, Michelle D.
Subject: FW: Latest version of the AOC
Attachments: Fort Ord FORA AOC Complete 021507.doc

open and print

From: Carr.Robert@epamail.epa.gov [mailto:Carr.Robert@epamail.epa.gov]
Sent: Thu 3/29/2007 4:45 PM
To: Steinberg, Barry P.
Subject: Fw: Latest version of the AOC

Per your request, attached is the version which is awaiting DoJ signiture

Robert Carr
415 972 3913
FAX 415 947 3570/71
----- Forwarded by Robert Carr/R9/USEPA/US on 03/29/2007 01:41 PM -----

Judy Huang/R9/USEPA/US
03/29/2007 01:37 PM

To
Robert Carr/R9/USEPA/US@EPA
cc
Subject
Latest version of the AOC

Hi Bob:

This is the latest version of the AOC I e-mailed to you and Michelle.

Judy

(See attached file: Fort Ord FORA AOC Complete 021507.doc)

Judy C. Huang, P.E.
Remedial Project Manager
Superfund Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street (SFD-8-3)

San Francisco, CA 94105
Phone: 415-972-3681
FAX: 415-947-3520
Email: huang.judy@epa.gov

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

IN THE MATTER OF THE FORMER FORT ORD Monterey County, California	ADMINISTRATIVE ORDER ON CONSENT FOR CLEANUP OF PORTIONS OF THE FORMER FORT ORD
FORT ORD REUSE AUTHORITY, Respondent	U.S. EPA Region 9 CERCLA Docket No. R9-2007-03
	Proceeding under Sections 104, 106 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§9604, 9606, and 9622.

TABLE OF CONTENTS

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

ADMINISTRATIVE ORDER ON CONSENT

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

I. JURISDICTION

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

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

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

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

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

II. PARTIES BOUND

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

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

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

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

III. STATEMENT OF PURPOSE

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

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

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

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

IV. DEFINITIONS

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

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

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

a. Endangered Species Act Consultation

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

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

b. Parker Flats

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

c. Groundwater Contamination

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

d. Other Settlement Agreement Obligations

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

(i) Settlement Agreement between Monterey Bay Unified Air Pollution Control District (the "District") and the United States Army ("Army") and DOD, dated May 22, 1998; and

(ii) Settlement Agreement between Plaintiff's Curt Gandy, Patricia Huth, Richard Bailey, Michael Weaver, Edward Oberweiser, Linda Millerick, and the Ft. Ord Toxics Project and the Army and DOD, dated April 28, 2004.

e. Basewide Range Assessment

The Army shall address all environmental conditions arising from, associated with, or identified in the *Draft Final Comprehensive Basewide Range Assessment Report, Former Fort Ord California*, prepared by Mactec Engineering and Consulting Services, Inc., dated November 24, 2006, except to the extent that such environmental conditions involve MEC. "Army Retained-Conditions" shall mean any of the following conditions, for which the Army has full responsibility and for which the Respondent assumes no responsibility, except as provided herein:

a. Radiological Material;

b. Chemical or biological warfare agents;

c. Natural resource injuries or damages occurring as a result of contamination releases that have occurred due to Army ownership or activities on the Site except to the extent such injuries are a direct result of the Respondent activities on the Site;

d. Unknown Uninsured Conditions;

e. Perchlorate contamination in soil or groundwater;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Parties" shall mean the United States, DTSC, and the Respondent.

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

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

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

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

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

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

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

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

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

"State" shall mean the State of California.

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

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

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

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

"United States" shall mean the United States of America.

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

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

V. FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

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

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

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

VII. ORDER

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

VIII. GENERAL PROVISIONS

16. Commitments by Respondent

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

17. Specific Agreements Concerning Unavailability of Funding under the ESCA

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

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

18. Compliance with Applicable Law

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

19. Permits

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

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

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

IX. PERFORMANCE OF THE WORK BY RESPONDENT

20. Selection of Supervising Contractor

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

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

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

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

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

21. Time-Critical Removal Actions

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

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

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

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

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

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

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

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

23. Non-Time-Critical Removal Actions - Design

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

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

24. Non-Time Critical Removal Actions - NTCRA Actions

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

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

25. Remedial Investigations and Feasibility Studies

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

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

26. Remedy Selection

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

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

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

27. Remedial Design

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

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

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

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

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

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

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

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

28. Remedial Action

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

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

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

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

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

31. Out-of-State Waste Shipments

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

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

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

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

X. REMEDY REVIEW

33. Periodic Review

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

34. EPA Selection of Further Response Actions

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

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

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

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

XI. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

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

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

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

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

XII. ACCESS AND INSTITUTIONAL CONTROLS

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

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

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

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

action or the Work required by this AOC in the event of Default by Respondent;

(8) Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Respondent or its agents, consistent with Section XXXIV (Access to Information);

(9) Assessing Respondent's compliance with this AOC; and

(10) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted by, or pursuant to this AOC.

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

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

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

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

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

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

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

CERCLA, RCRA and any other applicable statutes or regulations.

XIII. REPORTING REQUIREMENTS

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

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

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

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

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

XIV. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

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

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

51. Resubmission of Plans

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

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

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

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

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

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

XV. PROJECT COORDINATORS

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

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

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

XVI. ASSURANCE OF ABILITY TO COMPLETE WORK

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

XVII. CERTIFICATION OF COMPLETION

58. Completion of the Remedial Action

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

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

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

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

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

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

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

60. Completion of the Work

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

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

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

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

XVIII. EMERGENCY RESPONSE

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

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

XIX. PAYMENTS FOR RESPONSE COSTS

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

a. Payments for EPA Response Costs

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

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

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

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

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

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

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

64. Reimbursement of DTSC Response Costs

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

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

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

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

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

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

XX. INDEMNIFICATION AND INSURANCE

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

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

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

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

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

single limit, and automobile liability insurance with limits of 1 million dollars, combined single limit, naming the United States and the State of California as additional insureds. In addition, for the duration of this AOC, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this AOC. Prior to commencement of the Work under this AOC, Respondent shall provide to EPA and DTSC certificates of such insurance and a copy of each insurance policy. Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Respondent demonstrates by evidence satisfactory to EPA and DTSC that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondent need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XXI. FORCE MAJEURE

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

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

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

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

delay. Within 14 days thereafter, Respondent shall provide in writing to EPA and DTSC an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Respondent' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Respondent shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known.

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

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

XXII. EPA AND DTSC DISPUTE PROCESS

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

XXIII. DISPUTE RESOLUTION

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

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

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

supporting that position and any position and any supporting documentation relied upon by the Respondent.

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

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

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

XXIV. STIPULATED PENALTIES

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

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

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

Penalty Per Violation Per Day	Period of Noncompliance

$500	1st through 14th day
$1,500	15th through 30th day
$15,000	31st day and beyond

i. Compliance Milestones.

(1) Summary of Existing Data Report

(2) RI/FS Workplan(s)

(3) Remedial Investigation Report(s)

(4) Quality Assurance Project/Sampling Plans

(5) Feasibility Report(s)

(6) Remedial Design Workplan(s)

(7) Remedial Design Document(s)

(8) Construction QA/QC Plan(s)

(9) Remedial Action Workplan(s)

(10) Remedial Action Completion Report(s)

(11) Removal Action Workplan(s)

(12) Removal Action Completion Reports (After action Reports)

(13) Institutional Control Implementation Plan(s);

(14) Late Payment of EPA and DTSC Response Costs;

b. Stipulated Penalty Amounts – Reports and Other Violations

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

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

80. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XIV (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on

the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; (2) with respect to a decision by the Director of the Superfund Division, EPA Region 9, under Paragraph 77 of Section XXIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Respondent's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this AOC.

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

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

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

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

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

85. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as interest. Respondent shall pay Interest on

the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 82.

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

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

XXV. CERTIFICATION

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

XXVI. COVENANT NOT TO SUE BY EPA

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

XXVII. RESERVATION OF RIGHTS BY EPA

90. Except as specifically provided in this AOC, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this AOC, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to Section X of this AOC, CERCLA or any other applicable law.

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

a. claims based on a failure by Respondent to meet a requirement of this AOC, other than a failure resulting from an innocent default as provided in Section XXXII of this AOC;

b. liability based on Respondent's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in a ROD, this AOC, or otherwise ordered by EPA, after signature of this AOC by the Respondent;

c. criminal liability;

d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

e. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site;

f. liability for violations of federal, state, or local law or regulations which occur during or after implementation of Removal or Remedial Actions at the Site, and

g. liability, prior to the Site-Wide Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards.

XXVIII. COVENANT NOT TO SUE BY DTSC

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

XXIX. RESERVATION OF RIGHTS BY DTSC

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

(a) claims based on a failure by Respondent to meet a requirement of this AOC, other than a failure resulting from an innocent default as provided in Section XXXII of this AOC;

(b) liability for costs incurred or to be incurred by DTSC that are not reimbursed by Respondent pursuant to this Order;

(c) liability based on Respondent's transportation, treatment, storage, or disposal or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in a ROD, this AOC, or otherwise ordered by EPA, after signature of this AOC by the Respondent;

(d) criminal liability;

(e) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

(f) liability arising from the past, present, or future disposal, release, or threat of release of hazardous substances outside of the Site; and

(g) liability for violations of local, state or federal law or regulations which occur during or after implementation of Removal or Remedial Actions at the Site.

XXX. COVENANT BY RESPONDENT

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

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. subject to Paragraph 100 of this AOC, any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Work required by this AOC and the ESCA, or

c. subject to Paragraph 100 of this AOC, any claim arising out of the Work or arising out of the response actions for which the Response Costs have or will be incurred, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

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

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

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

XXXI. OTHER CLAIMS

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

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

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

XXXII. CONTRIBUTION

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

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

103. In the event Respondent were found, in connection with any action or claim it may assert to recover costs incurred or to be incurred with respect to the Site, not to be a BFPP, or to have lost its status as a BFPP, the Parties agree that this AOC shall then constitute an administrative settlement within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has resolved its liability for the Work required under this AOC and all response costs incurred or to be incurred by the United States, DTSC, or by any other person with respect to contamination existing on the Site as of the Effective Date.

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

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

XXXIII. NONCOMPLIANCE, STOP WORK AND DEFAULT DETERMINATIONS

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

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

108. a. Finding of Default EPA, after consultation with DTSC, may determine that a Default has occurred in one or more of the following situations: (i) EPA has issued to Respondent two or more Notices of Noncompliance for significant noncompliance, with or without accompanying Notices to Stop Work, pursuant to Paragraph 107: (ii) EPA determines that Respondent is implementing the Work in a manner that may cause endangerment to human health or the environment; (iii) EPA determines that Respondent effectively has ceased to perform all or a portion of the Work for any reason, including if EPA has determined that Respondent has a Force Majeure event in accordance with

Section XXI such that Respondent cannot complete performance of its obligation under this AOC; (iv) Respondent misappropriates or misuses funds received under the ESCA; (v) Respondent is seriously deficient or late in its performance of the Work; or (vi) no successor to Respondent is approved by EPA pursuant to Paragraph 5 of this AOC. Prior to issuance of a Finding of Default, EPA shall provide Respondent in writing (with copies to the Army and DTSC) with a Notice of Intent to Default and of the proposed basis for issuing a Finding of Default. Respondent may dispute the Notice of Intent to Default, in accordance with the process provided in Section XXIII (Dispute Resolution). In the event of an EPA determination that a Default has occurred, either without Respondent having invoked the Dispute Resolution process in Section XXIII, or following the conclusion of such Dispute Resolution process, EPA will send Respondent a written Finding of Default, with copies to the Army and DTSC. The Finding of Default will provide the basis for EPA's determination and will specify whether Respondent may continue to perform the Work while the Army prepares to resume Response Action activities under the FFA.

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

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

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

XXXIV. ACCESS TO INFORMATION

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

a. Business Confidential and Privileged Documents

Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA and DTSC under this AOC to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b) and California law. Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and DTSC or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e) (7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

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

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

XXXV. RETENTION OF RECORDS

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

113. At the conclusion of this document retention period, Respondent, or its successor, shall notify EPA and DTSC at least 90 days prior to the destruction of any such

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

XXXVI. NOTICES AND SUBMISSIONS

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

As to the EPA:

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

Judy Huang

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

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

As to the California Department of Toxic Substances:

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

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

As to the Respondent:

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

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

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

XXXVII. APPENDICES

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

Appendix A – Site Map

Appendix B – Statement of Work

XXXVIII. COMMUNITY RELATIONS

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

XXXVIX. MODIFICATIONS

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

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

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

XXXVIXX. PUBLIC COMMENT

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

XXXXI. EFFECTIVE DATE

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

It is so Agreed this _____ day of _____, 2_____.

_____

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

It is so Agreed this _____ day of _____, 2_____.

_____

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

It is so Agreed this ___ day of _____, 2_____.

_____

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

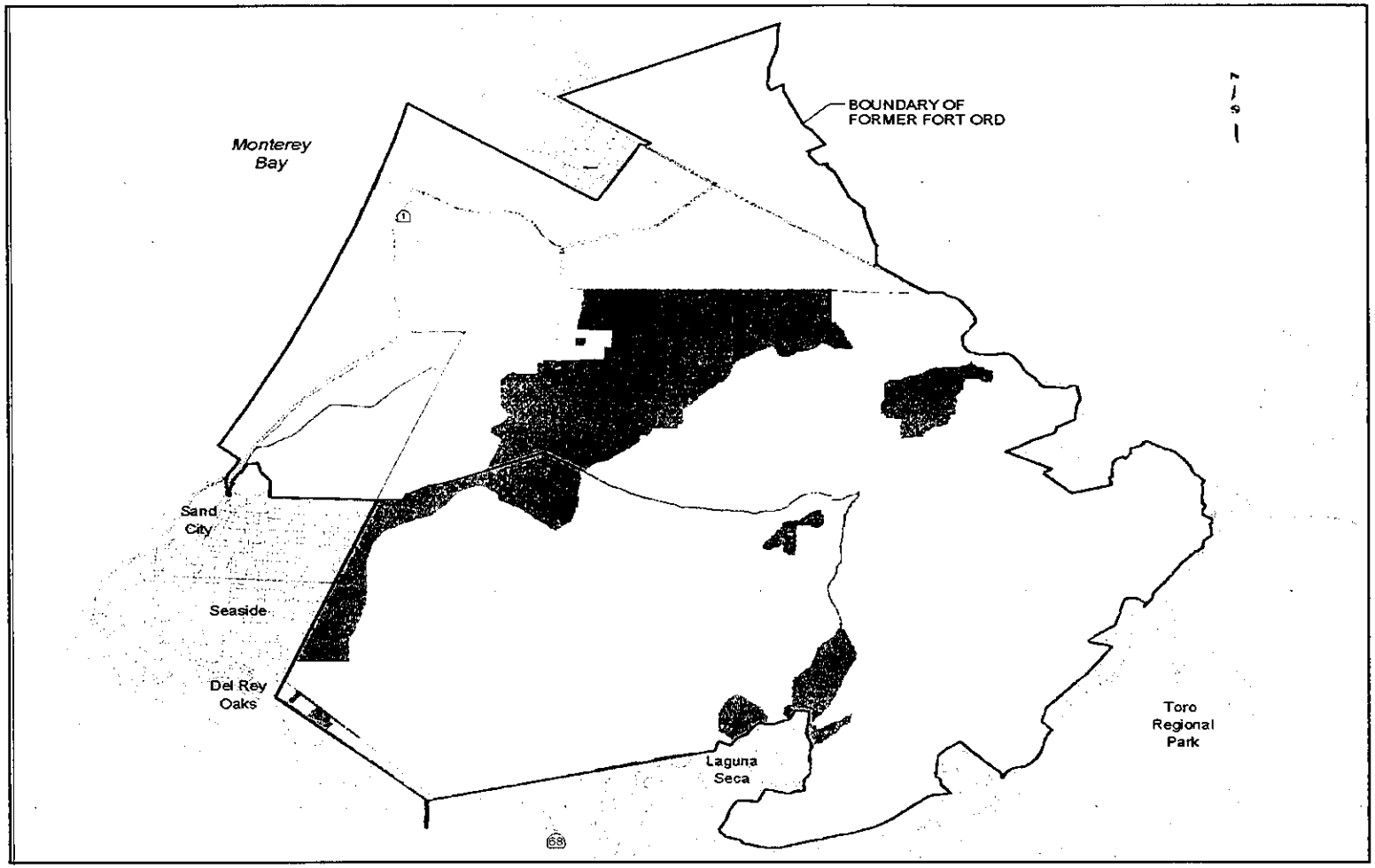
It is so Agreed this ___ day of _____, 2_____.

For Respondent _____

By: _____

Appendix A

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



Area Subject to this Administrative Order on Consent

APPENDIX B

STATEMENT OF WORK

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

PURPOSE

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

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

Task 1	**Project Scoping Meeting**	**14 days after effective date AOC**
Task 2	**Summary of Existing Data Report (SEDR)**	**60 days after scoping meeting**

Sub Task 2.1 - Site overview
Sub Task 2.2 - Site Characterization.
Sub Task 2.2 - Data Evaluation
Sub Task 2.3 - Identification of Data Gaps
Sub Task 2.4 - Preliminary Assessment of Risk
Sub Task 2.5 - Parcel Classification

Task 3	**Remedial Investigation / Feasibility Study Workplan**	**60 days after approval of SEDR**
	Sub Task 3.1	**Sampling and Analysis Plan, MEC primarily but shall provide for HTRW, if discovered or suspected (Quality Assurance/Quality Control Plan)**
	Sub Task 3.2	**Health and Safety Plan, including Occupational Hazard Assessment**
Task 4	**Remedial Investigation Report (RI)**	**180 days after approval of RI/FS Workplan**
	Sub Task 4.1 - Nature and Extent of Contamination	
	Sub Task 4.2 - Baseline Risk Assessment	
Task 5	**Feasibility Study Report**	**120 days after Final RI**
	Sub Task 5.1 Development of Alternatives	
	Sub Task 5.2 Refine & Document RAOs	
	Sub Task 5.3 Preliminary Identification of ARARs	
	Sub Task 5.4 Develop General Response Actions	
	Sub Task 5.5 Detailed Analysis of Alternatives	
	Sub Task 5.6 Scoping meeting to identify preferred alternative	

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

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

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

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

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

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

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

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

All engineering and geologic work shall be conducted in accordance with all applicable state and federal laws. If work should at any time require a so-qualified professional engineer and/or geologist or certified geophysicist, Respondent will retain a qualified professional engineer and/or geologist or certified geophysicist and submit to the EPA and DTSC:
a) the name and address of the project engineer/geologist chosen by the Respondent; and b) in order to demonstrate expertise in hazardous substance cleanup, the resume of the professional, and the statement of qualifications of the consulting firm responsible for the work. Respondent shall thereafter promptly notify the EPA and DTSC of any change in the identity of the Professional.

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

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

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

Generally, the SEDR recommendations are:

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

The SEDR should:

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

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

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

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

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

Sub Task 3.1 Sampling & Analysis Plan (RI/FS Guidance, Chap 2.3.2)
Respondent will prepare sampling and analysis plans and submit them to EPA and DTSC for review along with the RI/FS Workplan. Respondent will prepare a sampling & analysis plan (SAP) to ensure that data collection and analytical activities are conducted in accordance with best available technology protocols. The SAP provides a mechanism for planning field activities and consists of a field sampling plan (FSP) and a quality assurance project plan (QAPP). These documents may be combined.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sub Task 5.2 Refine & Document RAOs (RI/FS Guidance, Chap 4.2.1)
Based on the BRA, and the results of the RI, Respondents will review and, if necessary, modify the Site-specific RAOs. The modified RAOs will be

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Appendix A. Remedial Action Report
Appendix B Cost and Performance Summary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Title Page
Executive Summary

I. Summary of Events
   A. Site Conditions and Background
      1. Initial situation
      2. Location of hazardous substance(s)
      3. Cause of release or discharge

   B. Organization of the Response

   C. Injury/Possible Injury to Natural Resources
      1. Content and time of notice to natural resource trustee
      2. Trustee damage assessment and restoration activities

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

II. Effectiveness of Removal Actions
   A. Actions Taken by Respondent
   B. Actions Taken by State and Local Forces
   C. Actions Taken by Federal Agencies and Special Teams (Explosive Ordnance Detachment)

III. Difficulties Encountered
   A. Items that Affected the Response
   B. Issues of Intergovernmental Coordination

EXHIBIT C

AIG Environmental®
A Division of American International Companies®
2 Rincon Center
121 Spear Street, 6th Floor
San Francisco, CA 94105
Tel: (415) 836-2765
Fax: (415) 836-7236
Jeremy.Roberts@aig.com

March 28, 2007

Mr. Greg Schilz
AON Environmental
199 Fremont St, 14th Floor
San Francisco, CA 94105

RE: Fort Ord Reuse Authority/LFR Inc.
ENVIRONMENTAL PROTECTION PROGRAM
POLLUTION LEGAL LIABILITY SELECT® AND CLEAN-UP COST CAP INSURANCE
BINDER CONFIRMATION
POLICY NUMBER: EPP #778-2507

Dear Greg:

Pollution Legal Liability Select and Clean-Up Cost Cap Coverage is bound effective 12:01AM Standard Time at the address of the **Named Insured** From: March 30, 2007 To: March 30, 2022 using the American International Specialty Lines Insurance Company manuscript form entitled Former Fort Ord Pollution Legal Liability Select and Clean-Up Cost Cap Insurance Policy version 3-28-07 and all attached applicable endorsements which together are attached to this Binder Confirmation and herein are referred to as the " Policy." Terms in bold shall have the same meaning as in the Policy.

SECTION I – First Named Insured:

Named Insured:	Coverage A, Fort Ord Reuse Authority
Additional Insured:	Coverage A, LFR Inc. Weston Solutions, Inc.
Named Insured:	Coverages B & C: LFR Inc.
Cost Cap Additional Insured:	Coverages B & C: Fort Ord Reuse Authority
Scheduled Contractors:	LFR Inc. Weston Solutions, Inc. Westcliffe Engineers, Inc.

SECTION II – Insured Property/Project:

Insured Property(ies): See Insured Property Endorsement

SECTION III – Coverages Included

The following Coverage Sections are bound:

Coverage A- **ON-SITE CLEAN-UP OF PRE-EXISTING CONDITIONS**
Coverage B- **KNOWN POLLUTANTS**
Coverage C- **UNKNOWN POLLUTANTS**

SECTION IV – Premium and Policy Limits

Commission: $850,000

Coverage Sections	Self-Insured Retention	Coverage A Each Incident Limit/Coverage Section Aggregate Limit	Coverage B & C Combined Limit of Liability Lin	Policy Aggregate Limit	Term (yrs)
A	$100,000[1]	$15,000,000[2]	N/A	$128,000,000[3]	15
B & C	$0	N/A	$128,000,000[2,3]		12

PREMIUM:

The policy premium shall be paid in three installments:

a) The first premium installment of $32,380,000 shall be paid on or before March 31, 2007.

b) The second premium installment of $28,500,000 shall be paid on or before June 1, 2008; provided, however, that in the event that the second premium installment is paid prior to June 1, 2008, the amount of the second premium installment due shall be reduced by $5,283 for each day prior to June 1, 2008 that the second premium installment is received by the Company.

c) The third premium installment of $22,825,131 shall be paid on or before June 1, 2009; provided, however, that in the event that the third premium installment is paid prior to June 1, 2009, the amount of the third premium installment due shall be reduced by $4,064 for each day prior to June 1, 2009 that the third premium installment is received by the Company.

Failure to pay any policy premium installment required above when due shall constitute failure to pay premium pursuant to Section VI. G. Cancellation, of the Policy.

NOTES:

1. All **Clean-Up Costs** paid by the Company under Coverages A, B and C will first be paid from the Notional Commutation Account. Upon achieving **Project Completion, a Named Insured,** with the written consent of all other **Named Insureds** under this Policy, may elect to commute coverage under Coverages B and C for all **Clean-Up Costs.** If the **Named Insured(s)** so elects, the Company will retain 30% of the balance of the Notional Commutation Account to pay for **Loss** under Coverage A; provided, however, that such retained amount shall not exceed $500,000. Under Coverage A, upon exhaustion of the Notional Commutation account, a maintenance SIR of $100,000 per occurrence shall apply to **Pollution Conditions** arising from **Pollutants** which are not **Munitions and Explosives of Concern.** A $100,000 per parcel SIR shall apply to **Pollution Conditions** arising from **Pollutants** which are **Munitions and Explosives of Concern.**

2. Subject to the Policy Aggregate Limit of Liability and the Coverage A Coverage Section sublimit of $15,000,000, the most the Company will pay under Coverages A, B and C combined for **Clean-Up Costs** and **Loss** associated with or arising from **Pollutants** which are not **Munitions and Explosives of Concern** is $10,000,000 regardless of the number of **Pollution Conditions, Insureds, Claims** or claimants.

3. The Company's total liability for all **Loss** under Coverage A and all **Clean-Up Costs** under Coverages B and C, shall not exceed $128,000,000; provided, however, subject to notes 1. and 2. above, prior to the payment of the total outstanding premium the Policy aggregate limit of liability shall not be the entire $128,000,000, but instead, shall be limited as follows: a) upon payment of the first premium installment and until payment of the second premium installment, the Policy aggregate limit of liability shall be the balance of the Notional Commutation Account plus $5,000,000; b) upon payment of the second premium installment and until payment of the third and final premium installment, the Policy aggregate limit of liability shall be the balance of the Notional Commutation Account at the time of payment of the second premium installment plus $5,000,000.

4. **Premiums do not include surplus lines taxes and fees.**

NOTICE: PLEASE READ CAREFULLY THE ATTACHED POLICYHOLDER DISCLOSURE STATEMENT UNDER TERRORISM RISK ACT OF 2002. YOU HAVE REJECTED THIS COVERAGE.

For multi-year policies, the limit of liability stated in the chart above is shared over the policy term indicated. The limit of liability is not an annual limit of liability and is therefore not reinstated each year within the policy term.

Retroactive Date:	None
Continuity Date:	March 30, 2007
Clean-Up Progress Reports:	Provided to the Company on a monthly basis.
Termination Date:	March 30, 2019 for Coverage B & C

Notional Commutation Account. The Company shall establish a Notional Commutation Account

The Company will maintain a Notional Commutation Account, the balance of which shall be calculated as described in Section VI.R of the Policy

SECTION V – Policy Form Modifications for Coverage Sections

The attached Policy has been modified as follows. Please see endorsements attached to the Policy for exact policy wording:

1. **SCHEDULE OF INSURED PROPERTY(S) ENDORSEMENT (MANUSCRIPT)**
2. **DEFINITION OF SCHEDULED CONTRACTOR ENDORSEMENT, (MANUSCRIPT)**
3. **MODIFICATION OF CLEAN-UP COSTS TO INCLUDE ONLY DIRECT COSTS IN EXCESS OF THE SELF-INSURED RETENTION ENDORSEMENT, (MANUSCRIPT):**
4. **TERRORISM EXCLUSION ENDORSEMENT, FORM #81268 (12/02)**
5. **COVERAGE A – ADDITIONAL INSURED(S) ENDORSEMENT (MANUSCRIPT)**
6. **SCHEDULE OF INSURED CONTRACTS ENDORSMENT, FORM #72320 (7/00)**

SECTION VI – Additional Information:

Please submit the following **AS SOON AS AVAILABLE:**

1. CRUPS, DEEDS and FOSET.
2. Final Master Cooperation and Environmental Services Agreement between LFR Inc. and Weston Solutions, Inc.
3. The original (with "wet signature"), signed warranty application for Pollution Legal Liability Select and Clean-Up Cost Cap and required attachments from both LFR Inc. and FORA.

SECTION VII – Corporate Information:

AIG is the largest U.S.-based international insurance organization and has successfully serviced clients in the pollution legal liability marketplace for a longer, continuous period than any other insurance company.

The policy will be issued by American International Specialty Lines Insurance Company, which is a member company of American International Group, Inc. The premium must be remitted to American International Specialty Lines Insurance Company on the dates shown in Section IV above.

Please provide a copy of your surplus lines license. It is your responsibility to follow applicable state surplus lines laws and, in particular, to see that the appropriate premium tax (and stamping office fee, if applicable) is collected and paid.

This binder contains an outline of coverage and does not include all the terms, conditions and exclusions of the policy that may be issued. The Policy contains the full and complete agreement with regards to coverage. Please review the policy thoroughly upon receipt and notify us promptly in writing if there are any questions.

NOTICE: THIS INSURER IS NOT LICENSED IN THE STATE OF NEW YORK AND IS NOT SUBJECT TO ITS SUPERVISION.

Sincerely,

Jeremy Roberts
Manager National Accounts – San Francisco

AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY

(A Capital Stock Company, herein called the Company)
70 Pine Street
New York, N.Y. 10270

FORMER FORT ORD POLLUTION LEGAL LIABILITY SELECT®CLEAN-UP COST CAP INSURANCE

DECLARATIONS

MANY OF THE COVERAGES CONTAIN CLAIMS-MADE-AND-REPORTED REQUIREMENTS. PLEASE READ CAREFULLY.

POLICY NUMBER: **EPP #778-2507**

Item 1: NAMED INSURED FOR COVERAGE A:

FORT ORD REUSE AUTHORITY

ADDRESS: 100 12TH STREET, BUILDING 2880
MARINA, CA 93933

NAMED INSURED FOR COVERAGES B AND C:

LFR INC.

ADDRESS: 1900 POWELL ST, FL 12
EMERYVILLE, CA 94608

Item 2:

POLICY PERIOD:	**Coverage A:**	**FROM**	**MARCH 30, 2007**	**TO**	**MARCH 30, 2022**
	Coverage B & C:	**FROM**	**MARCH 30, 2007**	**TO**	**MARCH 30, 2019**

12:01 A.M. Standard Time at the address of the Named Insured shown above.

Item 3: COVERAGES AND COVERAGE SECTION LIMITS AND DEDUCTIBLES

This Policy includes only those Coverages as stated in Section I of the Policy for which deductibles and limits of liability appear below. If no deductible or limits of liability appears for a Coverage, that Coverage does not apply.

Coverage	Self-Insured Retention-Each Incident	Each Incident Limit	Coverage Section Aggregate Limit
A	$100,000 (As described in Section V.F.1 and 2 of the Policy)	$15,000,000 (Except as described in Section V.E. of the Policy and subject the Policy Aggregate Limit as described in Item 4. below)	$15,000,000 (Except as described in Section V.E. of the Policy and subject to the Policy Aggregate Limit as described in Item 4. below)

Coverage	Limit of Liability	Self-Insured Retention	Co-Insurance Participation Percentage
B and C combined	$128,000,000 (Except as described in Section V.E. of the Policy and subject to the Policy Aggregate Limit as described in Item 4. below)	$0	a) Insured 0% b) Company 100%

NOTICE: THIS INSURER IS NOT LICENSED IN THE STATE OF NEW YORK AND IS NOT SUBJECT TO ITS SUPERVISION

Item 4: **POLICY AGGREGATE LIMIT:**
$128,000,000; provided, however, that prior to the payment of the total outstanding premium, the Policy aggregate limit of liability shall not be the entire $128,000,000, but instead shall be limited as follows: a) upon payment of the first premium installment and until payment of the second premium installment, the Policy aggregate limit of liability shall be the balance of the Notional Commutation Account plus $5,000,000; b) upon payment of the second premium installment and until payment of the third and final premium installment, the Policy aggregate limit of liability shall be the balance of the Notional Commutation Account at the time of payment of the second premium installment plus $5,000,000.

Item 5: **INSURED PROPERTY(S) – COVERAGES A, B AND C**

SEE ENDORSEMENT NO. 1

Item 6: **POLICY PREMIUM:** The policy premium shall be paid in three installments:

a) The first premium installment of $32,380,000 shall be paid on or before March 31, 2007.

b) The second premium installment of $28,500,000 shall be paid on or before June 1, 2008; provided, however, that in the event that the second premium installment is paid prior to June 1, 2008, the amount of the second premium installment due shall be reduced by $5,283 for each day prior to June 1, 2008 that the second premium installment is received by the Company.

c) The third premium installment of $22,825,131 shall be paid on or before June 1, 2009; provided, however, that in the event that the third premium installment is paid prior to June 1, 2009, the amount of the third premium installment due shall be reduced by $4,064 for each day prior to June 1, 2009 that the third premium installment is received by the Company.

Item 7: **RETROACTIVE DATE:** Under Coverage A the **Pollution Conditions** must commence on or after the date shown below.

Retroactive Date: NONE
(Enter date or "none" if no Retroactive Date applies.)

Item 8: **CONTINUITY DATE:** **MARCH 30, 2007**

Item 9: **TERMINATION DATE:** **MARCH 30, 2019**

Item 10: **CLEAN-UP COST PROGRESS REPORT SUBMISSION SCHEDULE:** MONTHLY

Broker:

AON RISK SERVICES, INC.
199 FREMONT ST, 14TH FLOOR
SAN FRANCISCO, CA 94105

NOTICE: THIS INSURER IS NOT LICENSED IN THE STATE OF NEW YORK AND IS NOT SUBJECT TO ITS SUPERVISION

AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY

FORMER FORT ORD POLLUTION LEGAL LIABILITY SELECT®CLEAN-UP COST CAP MANUSCRIPT INSURANCE POLICY

MANY OF THE COVERAGES CONTAIN CLAIMS-MADE-AND-REPORTED REQUIREMENTS. PLEASE READ CAREFULLY. ADDITIONALLY, THIS POLICY HAS CERTAIN PROVISIONS AND REQUIREMENTS UNIQUE TO IT AND MAY BE DIFFERENT FROM OTHER POLICIES THE INSURED MAY HAVE PURCHASED. DEFINED TERMS, OTHER THAN HEADINGS, APPEAR IN BOLD FACE TYPE.

NOTICE: THE DESCRIPTIONS IN ANY HEADINGS OR SUB-HEADINGS OF THIS POLICY ARE INSERTED SOLELY FOR CONVENIENCE AND DO NOT CONSTITUTE ANY PART OF THE TERMS OR CONDITIONS HEREOF.

In consideration of the payment of the premium, in reliance upon the statements in the Declarations and the Warranty Application annexed hereto and made a part hereof, and pursuant to all of the terms of this Policy, the Company agrees with the **Named Insured** as follows:

Specimen

I. INSURING AGREEMENTS

1. COVERAGES:

THE FOLLOWING COVERAGES ARE IN EFFECT ONLY IF SCHEDULED IN THE DECLARATIONS.

COVERAGE A - ON-SITE CLEAN-UP OF PRE-EXISTING CONDITIONS

To pay on behalf of the **Insured**, **Loss** that the **Insured** is legally obligated to pay as a result of **Claims** by a **Governmental Authority** for **Clean-Up Costs** resulting from **Pollution Conditions** on, under, or migrating from the **Insured Property** that commenced prior to the **Continuity Date**, provided such **Claims** are first made against the **Insured** and reported to the Company in writing during the **Policy Period**.

COVERAGE B - KNOWN POLLUTANTS

To pay to or on behalf of the **Named Insured**, **Clean-Up Costs** that such **Named Insured** incurs for the **Clean-Up** of **Munitions and Explosives of Concern** pursuant to the execution of the **Remedial Plan**. For this coverage to apply:

1. The **Named Insured** under Coverages B and C must timely and routinely report the **Clean-Up Costs** to the Company prior to the **Termination Date** in accordance with Section IV. Paragraph B.5; and

2. **Clean-Up** must occur on or after the **Inception Date** and before the **Termination Date.**

COVERAGE C - UNKNOWN POLLUTANTS

To pay to or on behalf of the **Named Insured**, **Clean-Up Costs** that such **Named Insured**, incurs for the **Clean-Up** of **Pollutants** other than **Munitions and Explosives of Concern.** For this coverage to apply:

1. The **Pollutants** must be first discovered after the **Inception Date** and in the course of the execution of the **Remedial Plan;**

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2. The **Pollutants** must originate from or have migrated onto the **Insured Property**;

3. The **Named Insured** must report, in accordance with Section IV. Paragraph B.4, the discovery of **Pollutants** other than **MEC** to the Company as soon as practicable after discovery of such **Pollutants** and in any event included in the submission of the next scheduled **Clean-Up Progress Report** and during the **Policy Period**;

4. The **Named Insured** must timely and routinely report the **Clean-Up Costs** to the Company prior to the **Termination Date** in accordance with Section IV. Paragraph B.5; and

5. **Clean-Up** must occur on or after the **Inception Date** and before the **Termination Date.**

2. LEGAL EXPENSE AND DEFENSE

The Company shall have the right and the duty to defend any **Claims** covered under Coverage A. The Company's duty to defend or continue defending any such **Claim**, and to pay any **Loss**, shall cease once the applicable limit of liability, as described in Section V. (Limits of Coverage; Self-Insured Retention) has been exhausted. Defense costs, charges and expenses are included in **Loss** and reduce the applicable limit of liability, as described in Section V. and are included within the Self-Insured Retention amount for Coverage Section A.

Except to the extent a "Joint Defense" is prohibited by applicable law or would otherwise result in or create a conflict of interest between any **Insureds** and their counsel, all such **Claims** shall be defended on a "joint defense" basis, subject to applicable law, whereby:

1. The Company shall appoint one counsel to defend all **Insureds** who are or may be involved with respect to any such **Claim**; and

2. All **Insureds** shall have the obligation to cooperate with respect to the investigation and joint defense of any such **Claim(s)**.

The Company will present any settlement offers to the **Insured**, and if the **Insured** refuses to consent to any settlement within the limits of liability of this Policy recommended by the Company and acceptable to the claimant, the Company's duty to defend the **Insured** shall then cease and the **Insured** shall thereafter negotiate or defend such **Claim** independently of the Company and the Company's liability shall not exceed the amount, less the Self-Insured Retention Amount or any outstanding Self-Insured Retention Amount balance, for which the **Claim** could have been settled if such recommendation was consented to.

3. INDEPENDENT COUNSEL

In the event the **Insured** is entitled by law to select independent counsel to defend the **Insured** at the Company's expense, the attorney fees and all other litigation expenses the Company must pay to that counsel are limited to the rates the Company would actually pay to counsel that the Company retains in the ordinary course of business in the defense of similar **Claims** in the community where the **Claim** arose or is being defended.

Additionally, the Company may exercise the right to require that such counsel have certain minimum qualifications with respect to their competency, including experience in defending **Claims** similar to the one pending against the **Insured**, and to require such counsel to have errors and omissions insurance coverage. As respects any such counsel, the **Insured** agrees that counsel will timely respond to the Company's request for information regarding the **Claim**. The **Insured** may at any time, by its signed consent, freely and fully waive its right to select independent counsel.

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II. EXCLUSIONS

1. COMMON EXCLUSIONS - APPLICABLE TO ALL COVERAGES

This Policy does not apply to **Clean-Up Costs, Claims** or **Loss:**

A. CONTRACTUAL LIABILITY

to the extent arising from liability of others assumed by the **Insured** under any contract or agreement, unless the liability of the **Insured** would have attached in the absence of such contract or agreement or the contract or agreement is an **Insured Contract**.

B. TRANSPORTATION

to the extent arising out of **Pollution Conditions** or **Pollutants** that result from the maintenance, use, operation, loading or unloading of any conveyance beyond the boundaries of the **Insured Property**.

C. INTENTIONAL NONCOMPLIANCE

to the extent arising from **Pollution Conditions** or **Pollutants** based upon or attributable to any **Responsible Insured's** intentional, willful or deliberate noncompliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body. However, this exclusion does not apply to such noncompliance which resulted in the necessity for the **Remedial Plan** or to an **Insured's** unintentional acts or omissions, including those that are negligent.

D. INTERNAL EXPENSES

for costs, charges or expenses incurred by the **Insured** for goods supplied or services performed by the staff or salaried employees of the **Insured**, or its parent, subsidiary or affiliate, except if in response to an emergency or pursuant to **Environmental Laws** that require immediate remediation of **Pollution Conditions** or **Pollutants**, or unless such costs, charges or expenses are incurred with the prior written approval of the Company in its sole discretion or are incurred by a **Scheduled Contractor** pursuant to the execution of the **Remedial Plan.**

E. INSURED vs. INSURED

by any **Insured** against any other person or entity who is also an **Insured** under this Policy. This exclusion does not apply to **Claims** initiated by third parties or **Claims** that arise out of an indemnification given by one **Named Insured** to another **Named Insured** in an **Insured Contract.**

F. EMPLOYER LIABILITY

arising from **Bodily Injury** to an **Insured** or its parent, subsidiary or affiliate arising out of and in the course of employment by the **Insured** or its parent, subsidiary or affiliate. This exclusion applies whether the **Insured** may be liable as an employer or in any other capacity and to any obligation to share damages with or repay third parties who must pay damages because of the injury.

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G. PRIOR KNOWLEDGE/NON-DISCLOSURE

to the extent arising from **Pollution Conditions** or **Pollutants** existing prior to the **Inception Date** and actually known by a **Responsible Insured** and not disclosed in the warranty application for this Policy.

H. CHANGE IN USE FROM INTENDED USE

to the extent arising from a material change in use of an **Insured Parcel**(s) from the **Intended Use.**

I. VIOLATION OF USE RESTRICTIONS

to the extent arising from a violation by an **Insured** of any land use restriction, groundwater restriction, deed covenant or institutional control applicable to the **Insured Property**, including, but not limited to the "Covenant to Restrict the Use of Property" as such term is defined in the **ESCA.**

J. WAR

arising directly or indirectly as a result of or in connection with war, whether declared or not, or any act or condition incident to war. War includes civil war, insurrection, act of foreign enemy, civil commotion, factional civil commotion, military or usurped power, rebellion or revolution. This exclusion shall not apply to war(s) or any act or condition incident to war prior to the **Inception Date.**

K. OPERATIONAL IMPROVEMENTS

to the extent relating to or associated with the construction, installation, operation or maintenance of any improvement, facility, process, system or equipment at the **Insured Property**, but solely to the extent the foregoing provides a continuing benefit to the use or operation of the **Insured Property** beyond the requirements of the execution of the **Remedial Plan.**

L. ARMY OBLIGATIONS

to the extent arising from "Army Obligations" as that term is defined in Section C, ENVIRONMENTAL SERVICES OBLIGATIONS of the **ESCA.**

M. BODILY INJURY OR PROPERTY DAMAGE

arising from any **Bodily Injury** or **Property Damage.**

N. CHANGE ORDER EXCLUSION

to the extent arising from an "Approved Change Order" as defined in the **Remediation Services Agreement**, including, but not limited to, **Clean-Up Costs** resulting from the performance of the activities that are the subject of the "Approved Change Order" and consequential increases in **Clean-Up Costs** caused by any material change to the **Clean-Up Schedule** that results from an "Approved Change Order," unless otherwise approved by the Company in writing and in advance, at the Company's sole discretion.

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O. ENDANGERED SPECIES

to the extent arising from (i) any endangered or threatened species; (ii) any activities or omissions related to the protection, conservation or preservation of any such species; or (iii) compliance with any biological opinion; provided however, this exclusion shall not apply to **Clean-Up Costs** or **Loss** arising from:

1. The biological opinion dated March 14, 2005 from Diane K. Noda, of the Fish and Wildlife Service to Gail Youngblood, Environmental Coordinator, Base Realignment and Closure or any amendments, modifications or revisions thereto required by a **Governmental Authority**; or

2. The biological opinion dated October 22, 2002 from Diane K. Noda of the U.S. Fish and Wildlife Service to James M. Willison, Director, Environmental and Natural Resource Management, Department of the Army, and any revisions, amendments or modifications thereto required by a **Governmental Authority**; or

3. The biological opinion dated March 30, 1999 from Diane K. Noda of the U.S. Fish and Wildlife Service to James M. Willison, Director, Environmental and Natural Resource Management, Department of the Army, and any revisions, amendments or modifications thereto required by a **Governmental Authority**; or

4. $100,000 in the aggregate of **Clean-Up Costs** arising from any endangered or threatened species or any biological opinion other than that referred to in paragraphs 1, 2 or 3 above.

P. SCHOOL SITING

to the extent arising from **Clean-Up** beyond that which is required in the **Remedial Plan** required to be implemented to satisfy any state or local school siting standards or requirements. This exclusion shall apply notwithstanding any modification of the **Remedial Plan**.

Q. DEMOLITION

solely with respect to buildings or structures that are not required to be demolished pursuant to the **Remedial Plan**, to the extent arising from demolition, disposal of demolition debris or the investigation, remediation, treatment or monitoring of such demolition debris.

R. OFF-SITE MUNITIONS AND EXPLOSIVES OF CONCERN

To the extent arising from **Munitions and Explosives of Concern** beyond the boundaries of the **Insured Property**; provided, however, this exclusion shall not apply to off-site **MEC** caused by the detonation or explosion of **MEC** within the boundaries of the **Insured Property**.

S. DETONATION OR EXPLOSION

To the extent arising from the detonation, explosion or concussive effect of any **Munitions and Explosives of Concern**; provided, however, that this exclusion shall not apply to: (i) any such detonations or explosions which result from the execution of the **Remedial Plan**; or (ii) the **Clean-Up** of "Munitions Constituents" as such term is defined in the **ESCA**.

T. GROUNDWATER:

arising from the investigation, treatment, remediation or monitoring of groundwater.

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2. COVERAGE A EXCLUSIONS

The following exclusions apply to Coverage A:

This Policy does not apply **Clean-Up Costs, Loss** or **Claims:**

A. CRIMINAL FINES, PENALTIES, AND ASSESSMENTS:

which are due to any criminal fines, criminal penalties or criminal assessments.

B. OTHER APPLICABLE COVERAGES:

arising from **Pollution Conditions** resulting from **Pollutants**: (i) which are **MEC** discovered pursuant to the execution of the **Remedial Plan**; or (ii) which are covered under Coverage B or C; or (iii) which would be covered under Coverage B or C but for the exhaustion of the applicable limit of liability; or (iv) which would be covered under Coverage B or C but for the application of any exclusion or termination of coverage under Coverage B or C pursuant to the terms of the Policy.

However, upon receipt of an **Operable Unit Closeout Determination** for a particular **Operable Unit**, this exclusion shall not apply to **Pollution Conditions** identified above on, under or migrating from that particular **Operable Unit**.

C. ASBESTOS AND LEAD:

to the extent arising from asbestos or any asbestos-containing materials or lead-based paint installed or applied in, on or to any building or other structure. This exclusion does not apply to **Clean-Up Costs** for the remediation of soil.

3. COVERAGE B AND C EXCLUSIONS

The following exclusions apply to Coverages B and C.

This Policy does not apply to **Clean-Up Costs:**

A. CONTRACT AMENDMENT

to the extent arising out of any amendment, alteration or change, after execution, of the **Remediation Services Agreement** or the **ESCA** unless the same is approved by the Company in advance and in writing, at the Company's sole discretion.

B. THIRD-PARTY LIABILITY:

Except with respect to stipulated penalties payable under the **AOC** as provided for and as limited herein, to the extent arising from any liability to any third-party except for **Clean-Up Costs** otherwise covered under this Policy.

C. LABOR DISPUTES:

to the extent arising from delay due to labor disputes involving the **Insured**, including, but not limited to, strikes against the **Insured**.

D. LICENSE SUSPENSION:

to the extent arising from suspension, lapse, modification or cancellation of any license, permit or lease of a **Scheduled Contractor** performing work pursuant to the execution of the

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Remedial Plan which is required by the governmental entity or quasi-governmental entity responsible for supervision of the **Clean-Up**.

E. BANKRUPTCY:

to the extent arising from default, bankruptcy or insolvency of any entity(s) involved in the **Clean-Up**, but this exclusion does not apply if the entity(s) involved in the **Clean-Up** has a performance bond issued by a surety company on the Federal Register of the United States Department of the Treasury which in fact provides coverage for the **Clean-Up** at the time of such default, bankruptcy or insolvency.

F. DENIAL OF ACCESS:

to the extent arising from prohibition of access to any property by a third-party that is not an **Insured**, but this exclusion does not apply to any governmental entity or quasi-governmental entity responsible for supervision of the **Clean-Up** unless such prohibition is premised upon a suspension, lapse, modification or cancellation of any license, permit, lease or contract of a **Scheduled Contractor** as set forth in paragraph D. above.

G. UNREASONABLE DELAY OR ACCELERATION

to the extent arising from unreasonable delay or acceleration in a **Scheduled Contractor's** performance of **Clean-Up**, if such delay or acceleration is within the control of the **Scheduled Contractor** or the **Named Insured** or any owner or operator of the **Insured Property** under any Coverages but only to the extent that such delay or acceleration results in increased **Clean-Up Costs** of greater than $50,000 in the aggregate, unless such delay or acceleration is approved in advance and in writing by the Company in its sole discretion. As used in this exclusion, unreasonable delay means a material delay resulting from the failure to execute the **Remedial Plan** in a reasonable manner under the then prevailing circumstances but unreasonable delay shall not include an immaterial delay in the execution of the **Remedial Plan** resulting from the normal and customary coordination of the performance of **Clean-Up** with redevelopment activities or activities in connection with Army Obligations. As used in this exclusion, unreasonable acceleration means a material acceleration in the performance of **Clean-Up** beyond the schedule set forth in the **Clean-Up Schedule**.

H. FAULTY WORKMANSHIP:

to the extent arising from faulty workmanship or defective materials by the **Scheduled Contractor** or its subcontractors in the performance of the **Remedial Plan**.

I. MODIFICATION OF THE REMEDIAL PLAN:

arising from any modification of the **Remedial Plan** unless:

1. Such modification is required by the **Governmental Authority** responsible for supervision of the **Clean-Up** and the **Insured** has consulted with the Company in advance and selects, to the extent the **Insured** has such right, a modification which best minimizes **Clean-Up Costs** payable under this Policy and does not prejudice the rights of any **Named Insured** under this Policy; or

2. The Company has consented to such modification in advance, in writing.

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J. **OTHER APPLICABLE COVERAGES:**

for any cost covered under Coverage A as well as any cost that would otherwise be covered under Coverage A but for the exhaustion of the applicable policy limits of liability under Coverage A.

K. **FINES, PENALTIES AND MULTIPLIED DAMAGES:**

any fines, penalties, punitive damages, exemplary damages, statutory assessments or the multiplied portion of any multiplied damages or any interest payments or liquidated damages or any other penalties due pursuant to the **Remediation Services Agreement**. However, this exclusion shall not apply to $350,000 total of stipulated penalties imposed pursuant to the **AOC**

L. **REGULATORY OVERSIGHT OR RESPONSE COST**

arising from "Regulatory Response Costs" as that term is defined in Section C ENVIRONMENTAL SERVICES OBLIGATIONS of the **ESCA**.

M. **COMMUNITY OUTREACH**

arising from any community outreach activities beyond those activities required under the **Remedial Plan**.

III. NOTICE REQUIREMENTS AND CLAIM PROVISIONS

The **Insured** shall provide the Company with notice of **Pollution Conditions**, **Claims**, and the discovery of **Pollutants** as follows:

A. NOTICE OF POLLUTION CONDITIONS, CLAIMS, AND POLLUTANTS

1. With respect to Coverage A, in the event of **Claims** or the discovery of **Pollution Conditions** or, with respect to Coverage B, the discovery of any materially increased quantity, concentration or disbursement of **MEC** different from that contemplated in the **Remedial Plan** or, with respect to Coverage C, the discovery of **Pollutants** other than **MEC**, the **Named Insured** shall give written notice to:

   Manager, Pollution Insurance Products Unit
   AIG Domestic Claims, Inc.
   Environmental Claims Department
   101 Hudson Street
   Jersey City, NJ 07302
   Fax: (201) 631-5051

   or other address(s) as substituted by the Company in writing.

2. As required by Section 1 above, the **Insured** shall give written notice of **Pollution Conditions** or **Pollutants** as soon as possible. Notice under all coverages shall include, at a minimum, information sufficient to identify the **Named Insured**, the **Insured Property**, the names of persons with knowledge of the **Pollution Conditions** or **Pollutants** and all known and reasonably obtainable information regarding the time, place, cause, nature of and other circumstances of the **Pollution Conditions** or **Pollutants**.

3. The **Insured** shall give notice of **Claims** as soon as possible, but in any event during the **Policy Period**. The **Insured** shall furnish information at the request of the Company. When a **Claim** has been made, the **Insured** shall forward the following to the Company as soon as possible:

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(a) All reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the claimant(s) and available witnesses.

(b) All demands, summonses, notices or other process or papers filed with a court of law, administrative agency or an investigative body;

(c) Other information in the possession of the **Insured** or its hired experts which the Company reasonably deems necessary.

4. The **Named Insured** under Coverages B and C shall report in writing to the Company as soon as possible: (a) the potential of any amendment or change to the **Remedial Plan**, and (b) in all events (except in the case of an emergency requiring immediate action to prevent damage to human health or the environment), prior to undertaking any activities or entering into any agreements to amend or change of the **Remedial Plan**. Such reports shall be sent to the address set forth in paragraph 1.above and to the address to which the **Named Insured** is providing **Clean-Up Progress Reports**.

IV. RIGHTS OF THE COMPANY AND DUTIES OF THE INSURED IN THE EVENT OF POLLUTION CONDITIONS AND IN CONNECTION WITH REMEDIAL ACTIVITIES

A. Pollution Conditions - Coverage A

1. The Company's Rights

The Company shall have the right but not the duty to clean up or mitigate **Pollution Conditions** upon receiving notice as provided in Section III. of this Policy. Any sums expended in taking such action by the Company will be deemed incurred or expended by the **Insured** and shall be applied against the limits of coverage and self-insured retention under this Policy.

2. Duties of the Insured

The **Named Insured** shall have the duty to clean up **Pollution Conditions**, subject to the requirements of the **ESCA** and the **AOC**, to the extent required by **Environmental Laws**, by retaining competent professional(s) or contractor(s) mutually acceptable to the Company and the **Named Insured**. The Company shall have the right but not the duty to review and approve all aspects of any such clean-up. The **Named Insured** shall notify the Company of actions and measures taken pursuant to this paragraph.

B. Remedial Activities - Coverages B and C

1. The Company shall have the right, but not the duty, to review, assess and inspect all aspects of any **Clean-Up** to which Coverages B or C apply. Neither the Company's rights nor its exercise of the rights under this paragraph shall constitute an undertaking to determine or warrant that the **Clean-Up** is safe, healthful, or in conformity with applicable law.

2. The **Named Insured** under Coverages B and C shall take all reasonable and prudent steps to minimize **Clean-Up Costs**, limit access to the **Insured Property**, and prevent the spread of further contamination.

3. The **Named Insured** shall retain a **Scheduled Contractor** to undertake and complete **Clean-Up**.

4. The **Named Insured** shall report any material increased quantity, concentration or disbursement of **MEC** or **Pollutants** from those contemplated in the **Remedial Plan**, or the discovery of **Pollutants** different from those identified in the **Remedial Plan** in accordance with Section III. of the Policy.

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5. The **Named Insured** shall keep detailed records of all **Clean-Up Costs** and provide the Company with completed copies of the attached **Clean-Up Progress Report** at the time intervals prescribed in Item 10 of the Declarations; provided, however, an infrequent and immaterial delay in the submittal of **Clean-Up Progress Reports** shall not constitute a basis for denial of coverage under this Policy except to the extent such failure results in material prejudice to the Company .

6. To the extent of the **Named Insured's** legal right of access, the **Named Insured** shall permit the Company to inspect the **Insured Property**, any location identified in the **Remedial Plan**, and all financial records, drawings, plans and specifications concerning the **Clean-Up** or **Clean-Up Costs** as often as the Company chooses after providing reasonable notice.

7. The **Named Insured** shall cooperate with the Company by providing the Company with:

   (a) Access to all non-privileged information developed or discovered by the **Insured** concerning the **Clean-Up**, whether or not deemed by the **Insured** to be relevant;

   (b) Reasonable access to interview any agent, servant or employee of the **Named Insured** or any **Scheduled Contractor** or subcontractor involved in the **Clean-Up**; and

   (c) Access to other information or other responses to reasonable requests from the Company concerning the **Clean-Up**.

C. **Payment of Clean-Up Costs – Coverages B and C:** Solely with respect to **Coverages** B and C, payment requests and associated documentation of **Clean-Up Costs** shall be submitted to the Company monthly, or a frequency mutually agreed upon by the **Named Insured** under Coverages B and C and the Company, using forms provided by the Company or an agreed upon equivalent. The Company, upon receipt of such documentation of **Clean-Up Costs**, shall review and issue payment of all undisputed **Clean-Up Costs** to the **Named Insured** under Coverages B and C as follows: (a) with respect to payment requests and associated documentation of **Clean-Up Costs** for **Clean-Up Costs** that were forecasted in a **Clean-Up Costs Progress Report** submitted to the Company at least 30 days prior to the payment request, within 30 days of receipt by the Company of such payment request and associated documentation; and (b) with respect to all other payment requests and associated documentation of **Clean-Up Costs**, within 45 days of receipt by the Company of such payment request and associated documentation; which payment shall be made without prejudice or limitation to the rights of the Company with respect to any disputed amounts. Payment requests with documentation of **Clean-Up Costs** will consist of invoices detailing expenses incurred for **Clean-Up** since the last invoicing period, or such other documentation as reasonably mutually agreed upon by the Company and the **Named Insured** under Coverages B and C.

   If the Company contests any portion of the payment request of a **Named Insured** under Coverages B and C, the Company shall state the grounds for contesting such payment, which must be supported in writing, and which shall include any request for additional documentation. The **Named Insured** under Coverages B and C agrees to work in good faith with the Company to resolve any contested portions of the payment request in a timely manner. If the **Named Insured** under Coverages B and C submits additional documentation, the Company shall review the additional documentation and issue payment of all undisputed **Clean-Up Costs** to the **Named Insured** under Coverages B and C seeking payment within thirty (30) days of receipt of such additional documentation.

   The Company and the **Named Insured** under Coverages B and C agree to use commercially reasonable efforts to resolve any disputed payment requests in good faith. In the event the good faith efforts of a **Named Insured** under Coverages B and C and the Company do not resolve the dispute and any payment requests made by the **Named Insured** under Coverages B and C should remain in dispute for a period of ninety (90) days after the initial submission to the

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Company of such **Clean-Up Costs** for payment, and provided the total amount of all **Clean-Up Costs** then in dispute exceeds $25,000, the **Named Insured** under Coverages B and C seeking payment shall have the option to submit the same to binding arbitration administered by the American Arbitration Association under the Expedited Procedures of the Commercial Arbitration Rules. The **Named Insured** under Coverages B and C seeking payment shall provide notice of such arbitration to all potential beneficiaries of any disputed payment and any subcontractors. Such dispute may be submitted to arbitration regardless of whether the Company has satisfied the requirement to state the grounds for dispute or request additional documentation as required above in this Section IV. C. The decision of the arbitrator shall be final and there shall be no right to appeal the decision. Notwithstanding the foregoing, such decision shall be admissible and binding in any other pending or future proceeding involving the same **Remedial Plan** and the same **Scheduled Contractor**. Each party will pay its own expenses, including without limitation, legal fees, and the parties shall share equally the expenses of the arbitrator. Any arbitration awards to a **Named Insured** under Coverages B and C shall be paid within 10 days of the date of the award. If permitted under the law of the state where arbitration commenced, any applicable statute of limitations or repose shall be tolled from the date that the dispute is submitted to arbitration pending final resolution by the arbitrator.

Notwithstanding the foregoing, the Company shall have no obligation to pay **Clean-Up Costs** under Coverages B and C until the first premium installment is paid in full in accordance Section VI.T.

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V. LIMITS OF COVERAGE; SELF-INSURED RETENTION

Regardless of the number of **Claims**, claimants, **Pollution Conditions**, **Pollutants**, **Insureds** or **Insured Property(s)** under this Policy, the following limits of liability apply:

A. Policy Aggregate Limit

The Company's total liability for all **Loss** under Coverage A and all **Clean-Up Costs** under Coverages B and C, shall not exceed $128,000,000; provided, however, that prior to the payment of the total outstanding premium, the Policy aggregate limit of liability shall not be the entire $128,000,000, but instead shall be limited as follows: a) upon payment of the first premium installment and until payment of the second premium installment, the Policy aggregate limit of liability shall be the balance of the Notional Commutation Account plus $5,000,000; b) upon payment of the second premium installment and until payment of the third and final premium installment, the Policy aggregate limit of liability shall be the balance of the Notional Commutation Account at the time of payment of the second premium installment plus $5,000,000.

B. Each Incident Limit - Coverage A

1. Subject to Paragraph V. A above, the most the Company will pay for all **Loss** under Coverage A arising from the same, related or continuous **Pollution Conditions** is the "Each Incident" limit of coverage for that particular coverage stated in Item 3 of the Declarations

2. If the **Insured** first discovers **Pollution Conditions** during the **Policy Period** and reports them to the Company in accordance with Section III., all single, continuous or related **Pollution Conditions** reported to the Company under a subsequent Pollution Legal Liability Policy issued by the Company or its affiliate providing substantially the same coverage as this Policy shall be deemed to have been first discovered and reported during the **Policy Period.**

3. If a **Claim** for **Clean-Up Costs** is first made against the **Insured** and reported to the Company during the **Policy Period**, all **Claims** for **Clean-Up Costs**, arising from the same, continuous or related **Pollution Conditions** that are first made against the **Insured** and reported under a

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subsequent Pollution Legal Liability Policy issued by the Company or its affiliate providing substantially the same coverage as this Policy, shall be deemed to have been first made and reported during the **Policy Period**. Coverage under this Policy for such **Claims** shall not apply, however, unless at the time such **Claims** are first made and reported, the **Insured** has maintained with the Company or its affiliate Pollution Legal Liability coverage substantially the same as this coverage on a continuous, uninterrupted basis since the first such **Claim** was made against the **Insured** and reported to the Company.

C. Coverage A Section Aggregate Limit

Subject to Paragraph V.A. above, the Company's total liability for all **Loss** under Coverage A shall not exceed the "Coverage Section Aggregate" limit of coverage stated in Item 3 of the Declarations. In the event that the total amount of **Clean-Up Costs** paid by the Company under Coverages B and C combined is less than or equal to $113,000,000, the full "Coverage Section Aggregate" limit of coverage of $15,000,000 stated in Item 3 of the Declarations for Coverage A shall remain available to pay **Loss** otherwise covered under Coverage A. To the extent that the total amount of **Clean-Up Costs** paid by the Company under Coverages B and C combined is greater than $113,000,000, the then available limit of coverage for Coverage A shall be reduced by the amount of **Clean-Up Costs** paid by the Company under Coverages B and C combined in excess of $113,000,000 at the time such **Clean-Up Costs** are paid. However, in no event shall the Company be liable for any payments in excess of the Aggregate Policy Limit set forth in Item 4 of the Declarations.

D. Maximum for Clean-Up Cost Cap

1. Subject to Paragraph V.A. above, the Company's total liability for all **Clean-Up Costs** under Coverages B and C shall not exceed the applicable Limit of Liability stated in Item 3 of the Declarations.

2. Subject to, and as part of the Company's total liability under Coverages B and C described in Paragraph V.D.1. above, the most the Company will pay for costs, charges or expenses expended for the preparation of a supplementary remedial plan and the associated investigation of **Pollutants** that are not **MEC**, if any, under Coverage C, shall not exceed $8,000,000.

E. Non-MEC Clean-Up Costs Sublimit

Subject to Paragraphs V.A. through V.D. above, the most the Company will pay under Coverages A, B and C combined for **Clean-Up Costs** and **Loss** associated with or arising from **Pollutants** which are not **Munitions and Explosives of Concern** is $10,000,000 regardless of the number of **Pollution Conditions, Insureds, Claims** or claimants.

F. Self-Insured Retention

Coverage A

1. Non-MEC Pollution Conditions

Subject to Paragraphs V.A. through V.E. above, solely with respect to **Clean-Up Costs** associated or in connection with **Pollution Conditions** arising from **Pollutants** which are not **Munitions and Explosives of Concern** and upon exhaustion of the Notional Commutation Account, this Policy is to pay covered **Loss** in excess of a Self-Insured Retention amount of $100,000 Each/Every Incident, up to but not exceeding the applicable "Each Incident" limit of coverage; provided that if the same, related or continuous **Pollution Conditions** result in **Clean-Up Costs** which exhaust the Notional Commutation Account, the applicable Self-Insured Retention amount shall be the difference between the amount of such **Clean-Up**

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Costs paid from the balance of the Notional Commutation Account and $100,000. A single Self-Insured Retention shall apply to all **Loss** arising from the same, related or continuous **Pollution Conditions**. The Self-Insured Retention is to be borne by the **Insured** and is not to be insured. The insurance provided by this Policy shall be excess over the Self-Insured Retention, whether such Self-Insured Retention is collectible or not collectible by reason of the refusal or inability of the **Insured** to pay the retention amount due to insolvency, bankruptcy or any other reason. In no event shall the Company be responsible to make any payment under this Policy before the **Insured** has paid the Self-Insured Retention, and the risk of uncollectibility (in whole or in part) of such Self-Insured Retention is expressly retained by the **Insured** and is not in any way or under any circumstances insured or assumed by the Company.

The **Insured** shall promptly reimburse the Company for advancing any element of **Loss** falling within the Self-Insured Retention.

2. **MEC Pollution Conditions**

Subject to Paragraphs V.A. through V.D. above, solely with respect to **Clean-Up Costs** associated or in connection with **Pollution Conditions** arising from **Pollutants** which are **Munitions and Explosives of Concern** and upon exhaustion of the General Notional Commutation Account, this Policy is to pay covered **Loss** in excess of a Self-Insured Retention amount of $100,000 per **Insured Parcel**, up to but not exceeding the applicable "Each Incident" limit of coverage; provided that if the same, related or continuous **Pollution Conditions** result in **Clean-Up Costs** which exhaust the Notional Commutation Account, the applicable Self-Insured Retention amount shall be the difference between the amount of such **Clean-Up Costs** paid from the balance of the Notional Commutation Account and $100,000. The Self-Insured Retention is to be borne by the **Insured** and is not to be insured. The insurance provided by this Policy shall be excess over the Self-Insured Retention, whether such Self-Insured Retention is collectible or not collectible by reason of the refusal or inability of the **Insured** to pay the retention amount due to insolvency, bankruptcy or any other reason. In no event shall the Company be responsible to make any payment under this Policy before the **Insured** has paid the Self-Insured Retention, and the risk of uncollectibility (in whole or in part) of such Self-Insured Retention is expressly retained by the **Insured** and is not in any way or under any circumstances insured or assumed by the Company.

The **Insured** shall promptly reimburse the Company for advancing any element of **Loss** falling within the Self-Insured Retention.

VI. CONDITIONS

A. **Assignment** - This Policy may not be assigned, except with the prior written consent of the Company, which consent shall be unreasonably withheld or delayed, and the **Named Insured** and **FORA**. Assignment of interest under this Policy shall not bind the Company until its consent is endorsed thereon.

B. **Subrogation** - In the event of any payment under this Policy, the Company shall be subrogated to all the **Insured's** rights of recovery therefor against any person or organization and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights including without limitation, assignment of the **Insured's** rights against any person or organization who caused **Pollution Conditions** or is responsible for any **Pollutants** on account of which the Company made any payment under this Policy. The **Insured** shall do nothing to prejudice the Company's rights under this paragraph subsequent to **Loss**. Any recovery as a result of subrogation proceedings arising out of the payment of **Loss** or **Clean-Up Costs** covered under this Policy shall accrue first to the **Insured** to the extent of any payments in excess of the limit of coverage; then to the Company to the extent of its payment under the Policy and then to the **Insured** to the extent of its **Self-**

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Insured Retention. Expenses incurred in such subrogation proceedings shall be apportioned among the interested parties in the recovery in the proportion that each interested party's share in the recovery bears to the total recovery. The Company agrees to waive its rights of subrogation, as provided herein, against the U.S. Department of the Army.

C. **Cooperation** - The **Insured** shall cooperate with the Company and offer all reasonable assistance in the investigation and defense of **Claims** or the evaluation of **Clean-Up Costs** under the applicable Coverages purchased. The Company may require that the **Insured** submit to examination under oath, and attend hearings, depositions and trials. In the course of investigation or defense, the Company may require written statements or the **Insured's** attendance at meetings with the Company. The **Insured** must assist the Company in effecting settlement, securing and providing evidence and obtaining the attendance of witnesses.

D. **Changes** - Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Company from asserting any rights under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued by the Company to form a part of this Policy.

E. **Voluntary Payments** –, Except with respect to **Clean-Up Costs** incurred by the **Scheduled Contractor**, no **Insured** shall voluntarily enter into any settlement, or make any payment or assume any obligation unless in response to an emergency or pursuant to **Environmental Laws** that require immediate remediation of **Pollution Conditions** or **Pollutants**, without the Company's consent which shall not be unreasonably withheld, except at the **Insured's** own cost. However, this condition shall not apply to **Clean-Up Costs** otherwise covered under Coverages B and C.

F. **Concealment or Fraud** - Subject to Section VI P. Separation of Insureds, this entire Policy shall be void as of its inception if, whether before or after **Clean-Up Costs** are incurred or a **Claim** is first made, the **Named Insured** has willfully concealed or misrepresented any fact or circumstance material to the granting of coverage under this Policy, the description of the **Insured Property**, or the interest of the **Insured** therein.

G. **Cancellation** - This Policy may be cancelled by the **Named Insureds** listed in Item No. 1 of the Declarations by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective; provided, however, that all of the **Named Insured(s)'s** consent in advance in writing to such cancellation. The Policy may be cancelled by the Company only for the reasons stated below by mailing to the **Named Insureds** listed in Item 1 of the Declarations at the address shown in the Policy, written notice stating when not less than 60 days (10 days for nonpayment of premium) thereafter such cancellation shall be effective. Proof of mailing of such notice shall be sufficient proof of notice. The Company shall concurrently provide copies of the aforesaid notice of cancellation to all **Named Insureds** identified in Item 1 of the Declarations. If during the sixty (60) day (10 days for nonpayment of premium) notice period referenced in this Paragraph the **Insured** is able to timely cure the reasons for cancellation of this Policy, within the reasonable discretion of the Company, cancellation will be rescinded and coverage under the Policy shall remain in full force and effect:

1. Material misrepresentation by the **Insured** that prejudices the Company;

2. The **Insured's** failure to comply with the material terms, conditions or contractual obligations under this Policy that materially prejudices the Company;

3. Failure to pay any premium when due or failure to reimburse any portion of the Self Insured Retention advanced by the Company when due; or

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4. A material change in use of the **Insured Property** or any **Insured Parcel** during the **Policy Period**, which results in a use which is different from the **Intended Use**

The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice either by the **Named Insured** or by the Company shall be equivalent to mailing. Notwithstanding the foregoing, in the event that a material change in use takes place at a particular **Insured Parcel(s)**, cancellation shall only apply to such particular **Insured Parcel**; provided further that no return premium shall be due as a result of cancellation as to a particular **Insured Parcel(s)**. In the event of nonpayment of premium, the Company's sole remedy shall be cancellation of this policy pursuant to this Section VI.G.

In the event of cancellation, the return premium payable to **FORA** shall only be the balance of the Notional Commutation Account as established pursuant to Section VI.R. below minus any **Clean-Up Costs** reserved by the Company; provided, however, that in the event that the **ESCA** has been terminated pursuant to Section D.8.2(1) of the **ESCA** and the balance of the Notional Commutation Account is positive, the return premium payable to **FORA** shall be: (1) the amount credited to the Notional Commutation Account, in accordance with Section VI. R. below, less any **Clean-Up Costs** paid and reserved by the Company; plus (2) fifty percent (50%) of the difference between the amount credited to the Notional Commutation Account upon payment of the first installment premium and the amount of the first premium installment as set forth in Section VI.T.

Any return of a balance of the Notional Commutation Account by the Company pursuant to the foregoing shall only be made in return for a complete release of the Company of all liability under this Policy, whether known or unknown. Further, if this Policy has been relied upon by any **Governmental Authority** or other governmental entity as an instrument of financial assurance, the Company shall not have any obligation to pay **FORA** any remaining balance of the Notional Commutation Account as set forth above until such **Governmental Authority** or governmental entity has released the Company from any liability it has or may have under this Policy, whether known or unknown, or until the **Named Insured** has established, to the reasonable satisfaction of the Company, that alternative financial assurance has been provided.

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H. **Other Insurance** – Where other insurance or surety bonds may be available for **Loss** or **Clean-Up Costs** covered under this Policy, the **Insured** shall promptly upon request of the Company provide the Company with copies of all such policies. If other valid and collectible insurance is available to the **Insured** for **Loss** or **Clean-Up Costs** covered by this Policy, the Company's obligations are limited as follows:

1. This insurance is primary, and the Company's obligations are not affected unless any of the other insurance is also primary. In that case, the Company will share with all such other insurance by the method described in Paragraph 3. below.

2. Solely with respect to Coverages B and C, this insurance is primary, except that this insurance shall be excess over any other insurance or any surety bonds that may be primary, and the Company's obligations are not effected unless any of the other insurance is also excess. In that case, the Company will share with all such other insurance by the method described in paragraph 3. below.

3. If all of the other insurance permits contribution by equal shares, the Company will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, the Company will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

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4. Notwithstanding the foregoing subparagraphs 1. through 3., this insurance is primary to and unaffected by any contractor's pollution liability policy issued by the Company or one of its affiliates to any **Scheduled Contractor**.

I. **Right of Access and Inspection** – To the extent the **Insured** has such rights, any of the Company's authorized representatives shall have the right and opportunity but not the obligation to interview persons employed by the **Insured** and to inspect at any reasonable time, during the **Policy Period** or thereafter, the **Insured Property**. Neither the Company nor its representatives shall assume any responsibility or duty to the **Insured** or to any other party, person or entity, by reason of such right or inspection. Neither the Company's right to make inspections, sample and monitor, nor the actual undertaking thereof nor any report thereon shall constitute an undertaking on behalf of the **Insured** or others, to determine or warrant that property or operations are safe, healthful or conform to acceptable engineering practices or are in compliance with any law, rule or regulation. The **Named Insured** agrees to provide appropriate personnel to assist the Company's representatives during any inspection.

J. **Access to Information** - The **Named Insured** agrees to provide the Company with access to any information developed or discovered by the **Insured** concerning **Loss** or **Clean-Up Costs** covered under this Policy, whether or not deemed by the **Insured** to be relevant to such **Loss** or **Clean-Up Costs** and to provide the Company access to interview any **Insured** and review any documents of the **Insured**.

K. **Representations** - By acceptance of this Policy, the **Named Insured** agrees that the statements in the Declarations and the warranty application are their agreements and representations, that this Policy is issued in reliance upon the truth of such representations and that this Policy embodies all agreements existing between the **Insured** and the Company or any of its agents relating to this insurance.

L. **Action Against Company** - No third-party action shall lie against the Company, unless as a condition precedent thereto there shall have been full compliance with all of the terms of this Policy, nor, with respect to Coverage A, until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by the Policy. No person or organization shall have any right under this Policy to join the Company as a party to any action against the **Insured** to determine the **Insured's** liability, nor shall the Company be impleaded by the **Insured** or his legal representative. Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the Company of any of its obligations hereunder.

M. **Arbitration** – Upon the mutual consent of the Company and the **Named Insureds** affected by any dispute under this Policy, all disputes or differences that may arise under or in connection with this Policy, whether arising before or after termination of this Policy, including any determination of the amount of **Loss** as to the **Claim** or matter being arbitrated (other than those subject to Section IV.C. of this Policy), may be submitted to the American Arbitration Association under and in accordance with its then prevailing commercial arbitration rules. The arbitrators shall be chosen in the manner and within the time frames provided by such rules. If permitted under such rules, the arbitrators shall be three disinterested individuals having knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute.

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Subject to the mutual consent of the Company and the **Named Insured** affected by any dispute under this Policy, any party may commence such arbitration proceeding and the arbitration shall be conducted in Monterey County, California. The arbitrators shall give due consideration to the general principles of the law of the State of California in the construction and interpretation of the provisions of this Policy; provided, however that the terms, conditions, provisions and exclusions of this Policy are to be construed in an evenhanded fashion as between the parties.

The written decision of the arbitrators shall set forth its reasoning, shall be provided simultaneously to both parties and shall be binding on them. The arbitrators' award shall not include attorney fees or other costs. Judgment on the award may be entered in any court of competent jurisdiction. Each side shall bear equally the expenses of the arbitrations.

N **Service Of Suit** - It is agreed that in the event of failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the **Insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon General Counsel, Legal Department, American International Specialty Lines Insurance Company, 70 Pine Street, New York, NY 10270, or his or her representative, and that in any suit instituted against the Company upon this contract, the Company will abide by the final decision of such court or of any appellate court in the event of any appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the Company hereby designates the Superintendent, Commissioner, Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **Insured** or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above named General Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.

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O. **Acknowledgment of Shared Limits** – By acceptance of this Policy, the **Named Insureds** understand, agree and acknowledge that the Policy contains a Policy Aggregate Limit that is applicable to, and will be shared by, all **Named Insureds** and all other **Insureds** who are or may become insured hereunder. In view of the operation and nature of this shared Policy Aggregate Limit, the **Named Insureds** and all other **Insureds** understand and agree that prior to filing a **Claim** under the Policy, the Policy Aggregate Limit may be exhausted or reduced by prior payments for other **Claims** under the Policy.

P. **Separation of Insureds** - It is hereby agreed that except with respect to the Limit of Liability, Section II. 1. E. (Insured vs. Insured exclusion), and any rights and duties specifically assigned to the first **Named Insured**, this insurance applies: 1. As if each **Named Insured** were the only **Named Insured**; and 2. Separately to each **Named Insured** against whom a **Claim** is made. Misrepresentation, concealment, breach of a term or condition, or violation of any duty under this Policy by one **Named Insured** shall not prejudice the interest of coverage for another **Named Insured** under this Policy. Provided, however, that this Condition shall not apply to any **Named Insured** who is a parent, subsidiary or affiliate of the first **Named Insured**.

Q. **Financial Assurance** – This Policy may be not be used as evidence of financial assurance without the advance written consent of the Company, which consent shall be at the Company's sole discretion; provided, however that the Policy may be used as evidence of the satisfaction of the financial security requirements of Section 4.1.9 of the **ESCA**. In no event

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shall such use of the Policy confer any rights under the Policy or impose any obligation upon the Company to any third party, including, but not limited to, any **Governmental Authority** or the U.S Department of the Army.

R. **Notional Commutation Accounts.** The Company shall establish a Notional Commutation Account the balance of which shall be calculated as follows:

1. $23,057,066 upon payment of the first premium installment in accordance with Section VI.T. below; plus
2. $27,868,571 upon payment of the second premium installment in accordance with Section VI.T. below; provided, however, that in the event that the second premium installment is paid prior to June 1, 2008, the foregoing amount shall be reduced by $3,808 for each day prior to June 1, 2008 that the second premium installment is received by the Company; plus
3. $21,857,799 upon payment of the third premium installment in accordance with Section VI.T. below; provided, however, that in the event that the third premium installment is paid prior to June 1, 2009, the foregoing amount shall be reduced by $2,845 for each day prior to June 1, 2009 that the third premium installment is received by the Company; plus
4. Funds Growth credited as per below; plus
5. Subrogation recoveries for **Clean-Up Costs** paid under Coverages A, B and C; less
6. 100% of **Clean-Up Costs** and **Loss** paid by the Company under Coverages A, B or C.

Notwithstanding the foregoing, if, at the time of the payment of any premium installment, the Company has made payments of **Clean-Up Costs** and **Loss** under Coverages A, B, and/or C in excess of the balance of the Notional Commutation Account, the amount credited to the Notional Commutation Account upon payment of such premium installment shall be reduced by the amount of such payments made by the Company in excess of the balance of the Notional Commutation Account.

Funds Growth: The Notional Commutation Account, if positive, will earn interest at an annual rate equal to the 1-year Constant Maturity Treasury (CMT) Rate yield prevailing on the day the premium is paid to the Company. The CMT will be updated annually as of the anniversary date of policy inception.

Partial Commutation: Upon **Project Completion,** the **Named Insured** under Coverages B and C may elect to commute coverage under Coverages B and C for all **Clean-Up Costs** by providing written notice thereof to the Company and to the **Named Insured FORA.** If the **Named Insured** elects such partial commutation, the Company will continue to retain 30% of the balance of the Notional Commutation Account in the Notional Commutation Account; provided, however, that such retained amount shall not exceed $500,000, whereupon such retained amount shall thereafter be applied to **Loss** incurred under Coverage A pursuant to the terms of this Policy. The Company will pay the remainder of the balance of the Notional Commutation Account to the **Named Insured** under Coverages B and C. Payment by the Company shall only be made in return for a complete release of all liability for **Clean-Up Costs,** whether known or unknown, under Coverages B and C. Further, if this Policy has been relied upon by any **Governmental Authority(s)** or other governmental entity as an instrument of financial assurance, the Company shall not have any obligation to pay to the **Named Insureds** any remaining balance of the Notional Commutation Account as set forth above until the applicable **Governmental Authority(s)** and/or other governmental entity has released the Company from any obligation to pay **Clean-Up Costs,** whether known or unknown, under Coverages B and C or until the **Named Insured(s)** have established, to the satisfaction of the Company, in its sole discretion, that alternative financial assurance has been provided.

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Pilot Project Cost Savings Commutation: In the event that the **Named Insured** under Coverages B and C and the **Named Insured FORA** provide joint written notice to the Company, accompanied by supporting documentation reasonably acceptable to the Company, that that the standard MEC clearance to depth protocol has been approved by the applicable **Governmental Authority(s)**, the Company shall pay to the **Named Insured FORA** from the Notional Commutation Account balance the amount of the **Pilot Project Cost Savings** in exchange for a complete release under all coverages by all **Named Insureds** of all liability for **Clean-Up Costs** for **Clean-Up** beyond the standard MEC clearance to depth protocol, whether known or unknown. Such release will be effective regardless of whether **Clean-Up** beyond the standard MEC clearance to depth protocol is later required by any **Governmental Authority**. However, the maximum amount payable from the Notional Commutation Account balance pursuant to this provision shall be calculated as follows: $9,126.55 x (519 minus the number of acres subject to the Pilot Project, as that term is defined in the **ESCA**).

Final Commutation: At any time after the second (2nd) anniversary of the **Inception Date**, all **Named Insureds** may jointly elect to commute coverage under this Policy by providing written notice thereof to the Company. In such event, the Company will pay the balance of the Notional Commutation Account to any **Named Insured** specified in the aforesaid notice if so directed in such notice from all **Named Insureds**. Payment by the Company shall only be made in return for a complete release of the Company of all liability under this Policy, whether known or unknown. Further, if this Policy has been relied upon by any **Governmental Authority** or other governmental entity as an instrument of financial assurance, the Company shall not have any obligation to pay the **Named Insureds** any remaining balance of the Notional Commutation Account as set forth above until such **Governmental Authority** or governmental entity has released the Company from any liability it has or may have under this Policy, whether known or unknown, or until the **Named Insured** has established, to the reasonable satisfaction of the Company, that alternative financial assurance has been provided.

Final Release of Notional Commutation Account: Upon March 30, 2022, the Company shall release any remaining balance of the Notional Commutation Account to the **Named Insured FORA**.

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S. **Sale or Transfer of the Insured Property** (Coverages B and C only) - In the event that control of the **Remedial Plan** is relinquished by the **Named Insured** or an **Insured Property** is sold or ownership or operational control is transferred by the Named Insured prior to the completion of the **Clean-Up** to which this Policy applies, this Policy shall remain in full force and effect, subject to its terms and conditions only if:

1. The Company receives written notification at least forty-five (45) days prior to the effective date of such sale or transfer and consents to the sale or transfer, which consent shall not be unreasonably withheld; and

2. The new owner or operator of the **Insured Property** fully complies with all applicable conditions, duties and obligations set forth in this Policy.

T. **Payment of Premium** – The policy premium shall be paid in three installments:

a) The first premium installment of $32,380,000 shall be paid on or before March 31, 2007.

b) The second premium installment of $28,500,000 shall be paid on or before June 1, 2008; provided, however, that in the event that the second premium installment is paid prior to June 1, 2008, the amount of the second premium installment due shall

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be reduced by $5,283 for each day prior to June 1, 2008 that the second premium installment is received by the Company.

c) The third premium installment of $22,825,131 shall be paid on or before June 1, 2009; provided, however, that in the event that the third premium installment is paid prior to June 1, 2009, the amount of the third premium installment due shall be reduced by $4,064 for each day prior to June 1, 2009 that the third premium installment is received by the Company.

Failure to pay any policy premium installment required above when due shall constitute failure to pay premium pursuant to Section VI. G. Cancellation above.

U. **Cost Cap Additional Insured** -- A Cost Cap Additional Insured scheduled below shall become the **Named Insured** under Coverages B and C only in the event the Cost Cap Additional Insured becomes responsible for the execution of the **Remedial Plan** due to the occurrence of any of the following:

i) Receipt by the Company of a written request, consented to by all Cost Cap Additional Insureds scheduled below and the **Named Insured** under Coverages B and C, to remove the **Named Insured** listed in Item 1. of the Declarations from the Policy and to replace a Cost Cap Additional Insured as the **Named Insured** under Coverages B and C; or

ii) Receipt by the Company of a written certificate from the **Named Insured FORA** stating that an LFR Default by the **Named Insured LFR** under the **Remediation Services Agreement** has occurred, which certificate is either countersigned by and asserted to by the **Named Insured LFR** or is accompanied by a final judgment or a certificate from an arbitrator pursuant to the dispute resolution provisions of the **Remediation Services Agreement** confirming that such an Event of Default has occurred and was not timely cured by the **Named Insured LFR.** The Company shall be entitled to rely on such certification and shall not be held liable by any **Insured** based upon such reliance

Further, in the event any of the foregoing is satisfied and a Cost Cap Additional Insured becomes the **Named Insured** under Coverages B and C:

a) The Cost Cap Additional Insured first listed below shall become the **Named Insured** under Coverages B and C, or another Cost Cap Additional Insured agreed upon by the Company and all Cost Cap Additional Insureds scheduled below shall become the **Named Insured** under Coverages B and C.

b) The Cost Cap Additional Insured who becomes the **Named Insured** shall assume all the responsibilities of the **Named Insured** under Coverages B and C, including, but not limited to, providing **Clean-up Progress Reports,** reporting the discovery of new **Pollutants,** or increases in the concentration or disbursement of known **Pollutants,** responsibility for receipt and acceptance of endorsements to the Policy and giving and receiving notice of cancellation.

c) The Company shall have the right but not duty to perform, manage or undertake **Clean-Up** and the right to approve any new **Scheduled Contractor.** Any sums expended in taking such action by the Company will be deemed incurred or expended by the **Insured** and shall be applied against the limits of coverage under this Policy. Nothing done by the Company in executing its rights shall result in liability in excess of the Limits of Liability stated in Item 4. of the Declarations.

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The addition of any below listed entity(s) as a **Named Insured** under Coverages B and C shall not change the Limits of Liability, the **Remedial Plan** or any terms or conditions of the Policy.

Cost Cap Additional Insured(s)

FORA

V. **Default by FORA/LFR** – In the event that: (a) **FORA** becomes the **Named Insured** under Coverages B and C pursuant to Section VI.U. above and thereafter is in default of its obligation to perform **Clean-Up** as required by the **ESCA** or (b) **FORA** is unable or unwilling to become the **Named Insured** under Coverages B and C although either of the conditions (i) or (ii) for **FORA** to do so pursuant to Section VI.U. have been met, then the U.S. Department of the Army shall have the right but not the duty to request that a qualified contractor become the **Named Insured** under Coverage B and C, and such contractor shall become the **Named Insured** subject to the Company's prior written approval, which approval shall not be unreasonably denied or delayed. The contractor who becomes the **Named Insured** shall assume all the responsibilities of the **Named Insured** under Coverages B and C, including, but not limited to, providing **Clean-up Progress Reports**, reporting the discovery of new **Pollutants**, or increases in the concentration or disbursement of known **Pollutants**, responsibility for receipt and acceptance of endorsements to the Policy and giving and receiving notice of cancellation. The addition of such contractor as the **Named Insured** under Coverages B and C shall not change the Limits of Liability, the **Remedial Plan** or any terms or conditions of the Policy.

W. **Addition of Named Insureds** – Upon the written request of FORA, the Company shall add any municipality or county who has acquired title to an **Insured Parcel** as a **Named Insured** under Coverage A, but solely with respect to that **Insured Parcel**. The addition of any such entity as a **Named Insured** shall not be effective until endorsed onto the Policy.

X. **Condition of Payment** -- It is hereby agreed that any payment under this Policy shall only be made in full compliance with all United States of America economic and trade sanction laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").

Y. **Authorship** -- The Company and the **Insured** agree that this Policy reflects the joint drafting efforts of the Company and the **Insured**. In the event any dispute, disagreement or controversy arises regarding this Policy, the parties hereto agree that they shall be considered joint authors and no provision shall be interpreted against the Company or the **Insured** because of authorship. The Company and the **Insured** also agree that they are fully informed as to the meaning and intent of this Policy and have been advised by counsel in that regard.

VII. DEFINITIONS

A. **AOC** means the Administrative Order on Consent for Clean-Up of Portions of the Former Ft. Ord dated December 20, 2006.

B. **Bodily Injury** means physical injury, or sickness, disease, mental anguish or emotional distress, sustained by any person, including death resulting therefrom.

C. **Claim** means a written demand received by the **Insured** seeking a remedy or alleging liability or responsibility on the part of the **Insured** for **Loss** under Coverage A.

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D. **Clean-Up** means:

1. With respect to Coverage B, those activities undertaken by a **Scheduled Contractor** pursuant to the execution of the **Remedial Plan**, and in the event of termination of the **ESCA** pursuant to Section D.8.2(1) thereof, reasonable demobilization activities; and

2. With respect to Coverage C (i) preparation of a supplementary remedial plan including the associated investigation of **Pollutants** that are not **MEC**, subject to the sub-limit set forth in Section V. Paragraph D.2.; and (ii) habitat assessments or other related investigations or evaluations pertaining to endangered species required by a **Governmental Authority**; or (iii) activities undertaken by or on behalf of a **Scheduled Contractor** pursuant to the removal, disposal, treatment (including in situ treatment) or neutralization of **Pollutants** that are not **MEC**, to the standard governing the **Intended Use** of the **Insured Property** and anticipated in the **Remedial Plan**; and

3. **Clean-Up** also includes (a) any unscheduled activities that the Company has consented to in advance in writing at its sole discretion, (b) stipulated penalties payable pursuant to the **AOC** up to a maximum of $350,000 total for all such penalties, or (c) any unscheduled activities that are required by a modification of the **Remedial Plan** provided such modification meets the requirements of exception 1. or 2. of the exclusion set forth in Section II. 3. l.

E. **Clean-Up Costs** means:

1. With respect to Coverage A, reasonable and necessary expenses, including legal expenses incurred with the Company's written consent which consent shall not be unreasonably withheld or delayed, for the investigation, removal, remediation including associated monitoring, or disposal of soil, surfacewater, sediment, groundwater or other contamination:

   (a) To the extent required by **Environmental Laws** or required to satisfy a **Voluntary Cleanup Program**; or

   (b) solely with respect to **Munitions or Explosives of Concern**, to the extent required by the **ESCA** or the **AOC**; or

   (c) That have been actually incurred by the government or any political subdivision of the United States of America or any state thereof or Canada or any province thereof.

2. With respect to Coverage B, reasonable and necessary costs, charges, and expenses incurred for **Clean-Up**;

3. With respect to Coverage C, reasonable and necessary costs, charges, and expenses incurred for **Clean-Up**.

4. Solely with respect to Coverages B and C, **Clean-Up Costs** does not include:

   (a) Costs, charges or expenses incurred for litigation, arbitration or other form of dispute resolution in any way related to or in connection with **Clean-Up**, including fees of attorneys, consultants, investigators, adjusters and experts, unless otherwise expressly consented to in writing and in advance by the Company and specifically included in the Definition of Clean-Up Endorsement; or

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(b) Costs, charges or expenses expended in preparation of the **Remedial Plan**; provided, however, the sub-limit of liability described in Section V., Paragraph D.2, shall apply to reasonable and necessary costs, charges or expenses expended in preparation of a supplementary remedial plan and the associated investigation of **Pollutants** that are not **MEC** under Coverage C; or

(c) Personnel costs, charges or expenses in excess of those specified in the **Rate Schedule** unless such costs, charges or expenses are incurred with the prior written approval of the Company.

F. **Clean-Up Cost Progress Reports** means reports completed by the **Insured** which summarize **Clean-Up** activities performed and anticipated to be performed and the costs and estimated costs of those activities in accordance with the requirements of the **Remedial Plan.** The reports must be completed by the **Named Insured** under Coverages B and C and submitted to the Company at the time intervals prescribed in Item 10 of the Declarations.

G. **Clean-Up Schedule** means the schedule of activities and corresponding general timeframes that are to be performed by a **Scheduled Contractor** in the execution of the **Remedial Plan** as set forth in the Fort Ord ESCA Schedule dated 3/09/07, Exhibit C to the **Remedial Plan**.

H. **Continuity Date** means the **Inception Date**.

I. **Environmental Laws** means any federal, state, provincial or local laws (including, but not limited to, statutes, rules, regulations, ordinances, permits, guidance documents, and governmental, judicial or administrative orders and directives, whether issued pursuant to the **AOC** or otherwise) that are applicable to **Pollution Conditions**; provided, however, that **Environmental Laws** shall not include laws, statutes, rules, regulations, ordinances, guidance documents, and governmental, judicial or administrative orders and directives promulgated or issued by the U.S. Department of the Army, **FORA** or any county, municipality or other governmental entity which becomes a **Named Insured** under this Policy..

J. **ESCA** means the Environmental Services Cooperative Agreement between the U.S. Department of the Army and **FORA** dated March 30, 2007.

K. **FORA** means Fort Ord Reuse Authority, or, with the prior written consent of the Company, its successors or assigns as provided in Section 5.2 of the **ESCA**.

L. **Governmental Authority(s)** means the Environmental Protection Agency, the California Department of Toxic Substances Control, the US Fish and Wildlife Service, the California Department of Fish and Game and any other governmental authority with direct regulatory authority over **Clean-Up** at the **Insured Property**; provided, however, that **Governmental Authority(s)** shall not include the U.S. Department of the Army, **FORA** or any county, municipality or other governmental entity which becomes a **Named Insured** under this Policy.

M. **Inception Date** means the first date set forth in Item 2 of the Declarations.

N. **Insured** means the **Named Insured**, and any past or present director, officer, board member, partner or employee thereof, including a temporary or leased employee, while acting within the scope of his or her duties as such.

O. **Insured Contract** means a contract or agreement submitted to and approved by the Company, and listed on an Endorsement to this Policy.

P. **Insured Parcel** means all of the parcels that are collectively identified on a single map on each of Maps 1 through 9 located on the **Insured Property** as identified in ESCA Parcels by HMP

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Categories - Maps 1 through 9 prepared by MACTEC and attached to the Schedule of Insured Property(s) Endorsement.

Q. **Insured Property** means the locations identified in the Insured Property Endorsement.

R. **Intended Use** means the corresponding proposed future use designated for each particular parcel, or portion of each particular parcel, as identified in ESCA Parcels by HMP Categories - Maps 1 through 9 prepared by MACTEC and attached to the Schedule of Insured Property(s) Endorsement.

S. **LFR** means LFR Inc.

T. **Loss** means: 1. Costs, charges and expenses incurred in the defense, investigation or adjustment of **Claims** for **Clean-Up Costs**; or 2. **Clean-Up Costs**.

U. **Remediation Services Agreement** means that certain Remediation Services Agreement by and between **FORA** and **LFR** dated March 30, 2007.

V. **Munitions and Explosives of Concern** or **MEC** shall have the meaning given to such term in the **ESCA**, but shall, for purposes of this Policy, also include "Munitions Constituents" as such term is defined in the **ESCA** and shall also include lead in soils resulting from structures on the **Insured Property**, which are to be demolished pursuant to the **Remedial Plan.**

W. **Named Insured** means the entities listed in Item 1 of the Declarations,, acting on behalf of all other **Insureds**, if any, for the payment or return of any premium, payment of any self-insured retention, receipt and acceptance of any endorsement issued to form a part of this Policy, giving and receiving notice of cancellation or nonrenewal.

X. **Natural Resource Damage** means physical injury to or destruction of, including the resulting loss of value of, land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)), any state or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

Y. **Operable Unit Closeout Determination** means, with respect to an **Operable Unit**, receipt of **Site Closeout** of all **Insured Parcels** which are located within that particular **Operable Unit.**

Z. **Operable Unit** means each of the four primary groupings (Groups 1 through 4) as identified in the **Remedial Plan** as constituted on **Inception Date**..

AA. **Pilot Project Cost Savings** means "Pilot Project Cost Savings" as defined in the **ESCA.**

BB. **Policy Period** means the period set forth in Item 2 of the Declarations for the applicable coverage(s), or any shorter period arising as a result of:

1. Cancellation of this Policy; or

2. With respect to particular **Insured Property(s)** or **Non-Owned Location(s)** designated in the Declarations, the deletion of such location(s) from this Policy by the Company at the **Named Insured's** written request, but solely with respect to that **Insured Property** or **Non-Owned Location.**

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CC. **Pollution Conditions** means the discharge, dispersal, release or escape of any **Pollutants** into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, other than groundwater but including surface water or sediments provided that such conditions are not naturally present in the environment in the amounts or concentrations discovered. **Pollution Conditions** shall include the existence of **MEC** on or under the **Insured Property** prior to the **Inception Date.**

DD. **Pollutants** means wastes and any solid, liquid, gaseous or thermal irritant or contaminant, including, soot, acids, alkalis, medical waste or toxic chemicals that were on or under the **Insured Property** prior to the **Inception Date. Pollutants** also includes **MEC** that existed on or under the **Insured Property** prior to the **Inception Date.**

EE. **Project Completion** means the receipt of a **Site Closeout** for the entire **Insured Property.**

FF. **Property Damage** means:

1. Physical injury to or destruction of tangible property, including the resulting loss of use and diminution in value thereof;

2. Loss of use and diminution in value of tangible property that has not been physically injured or destroyed; and

3. **Natural Resource Damage.**

Property Damage does not include **Clean-Up Costs.**

GG. **Rate Schedule** means the rate schedules as set forth in the LFR/Weston Rate Schedule 2007 dated March 23, 2007 on file with the Company; provided, however, that such rates may be adjusted, on an annual basis, at the beginning of the first calendar year after **Inception Date**, by a **Scheduled Contractor(s)** for personnel utilized by that **Scheduled Contractor** as such **Scheduled Contractor** is adjusting their standard hourly rates for remediation projects in California; provided, however, the hourly rates charged for each category of personnel shall not increase annually by more than the greater of: (1) the prevailing wage rate applicable to each category of personnel, or, with respect to professional service categories not subject to prevailing wage rates, 4.2%; or (2) the annual change in the Consumer Price Index -- All Consumers as published in the Wall Street Journal for such calendar year or any comparable index published in such other national news publication agreed to by the **Named Insured** under Coverages B and C and the Company; or (3) the annual change in prevailing wage rates required to be charged for such category of personnel under and pursuant to the McNamara-O'Hara Service Contract Act.

HH. **Remedial Plan** means the "Remedial Plan, MEC Remediation Program, Fort Ord Early Transfer/Environmental Services Cooperative Agreement Project, Fort Ord, California" document attached to and forming part of this Policy and any modifications thereto required by a **Governmental Authority** subject to the terms of Section II.3.I hereof.

II. **Responsible Insured** means the manager or supervisor of the applicable **Named Insured** responsible for environmental affairs, control or compliance, or any manager of the **Insured Property** that is an employee of a **Named Insured**, or any officer, director or partner of the **Named Insured.**

JJ. **Scheduled Contractor** means a remediation contractor approved by the Company and scheduled on the Definition of Scheduled Contractor Endorsement.

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KK. **Site Closeout** shall have the meaning given to such term in the **ESCA.**

LL. **Termination Date** means, with respect to Coverages B and C, the earliest of the following:

(a) the date set forth in Item 9 of the Declarations;

(b) The ending date of the period set forth in Item 2 of the Declarations;

(c) The date the Limit of Liability shown in Item 3 of the Declarations for Coverages B and C is exhausted;

(d) The date the **Named Insured** receives **Operable Unit Site Closeout Determination** for an **Operable Unit**, but solely with respect to that particular **Operable Unit;**

(e) **Project Completion;** or

(f) Cancellation of the Policy pursuant to Section VI., paragraph G.

The **Termination Date** shall not be extended by the exercise of any rights held by a governmental entity or quasi-governmental entity to reopen, reconsider or otherwise cause the **Insured** to perform **Clean-Up** after previously having approved or acknowledged that the **Remedial Plan** has been completed.

MM. **Voluntary Cleanup Program** means a program of the United States or a state of the United States enacted pursuant to **Environmental Laws** which provides for a mechanism for the written approval of, or authorization to conduct, voluntary remedial action for the clean-up, removal or remediation of **Pollutants** or **Pollution Conditions** that exceed actionable levels established pursuant to **Environmental Laws.**

The remainder of this page has been intentionally left blank. Policy Signature Page shall immediately follow.

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ENDORSEMENT NO.

This endorsement, effective 12:01AM,

Forms a part of Policy No:

Issued to:

By:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SCHEDULE OF INSURED PROPERTY(S) ENDORSEMENT

It is hereby agreed that only the following locations are included in Item 5 of the Declarations as **Insured Property(s):**

Item 5: INSURED PROPERTY(S):

The following Parcels as identified in the ESCA Parcels by HMP Categories - Maps 1 through 9 prepared by MACTEC and attached to this Endorsement:

Map 1 –East Garrison:
Parcel ID

- E11b.6.1
- E11b.7.1.1
- E11b.8
- L20.19.1.1

Map 2 – Development North (NE Parker Flats):
Parcel ID

- L20.2.1
- L5.7
- E19a.3
- E19a.4

Map 3 – Laguna Seca:
Parcel ID

- L20.5.1
- L20.5.2
- L20.5.3
- L20.5.4
- L20.3.1
- L20.3.2

Map 4 – Mout Site
Parcel ID

- F1.7.2
- L20.8

Map 5 – CSUMB Housing
Parcel ID

- S1.3.2

Map 6 – Parker Flats – Page 1 of 2 (Above and below Cash Line)
Parcel ID

- E18.1.1
- E18.1.2
- E18.1.3
- E18.4
- E19a.1
- E19a.2
- E19a.3
- E19a.4
- E19a.5
- E20c.2
- L23.2
- L20.18
- L32.1

Map 7 – Interim Action Range 43-48
Parcel ID

- E38
- E39
- E40
- E21b.3
- E41
- E42

Map 8 – Seaside Development
Parcel ID

- E24
- E34
- E23.1
- E23.2

Map 9 – Del Rey Oaks
Parcel ID

- E29.1
- L20.13.1.2
- L20.13.3.1
- L6.2

All other terms, conditions, and exclusions shall remain the same.

_____
AUTHORIZED REPRESENTATIVE
or countersignature (in states where applicable)

ENDORSEMENT NO.

This endorsement, effective 12:01 AM,

Forms a part of Policy No:

Issued to:

By:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DEFINITION OF SCHEDULED CONTRACTOR ENDORSEMENT

It is hereby agreed that for purposes of Section **VII. DEFINITIONS**, Paragraph **JJ. Scheduled Contractor** is defined to include only the following:

Contractor/Type	Contractor's Address & Telephone Number
1. LFR Inc.	1. 1900 Powell St, Fl 12 Emeryville, CA 94608 Contact: Kristie Reimer Tel: (510) 652-4500 Cell: (650) 224-8545 Fax: (510) 652-2246
2. Weston Solutions, Inc.	2. 1400 Weston Way PO Box 2653 West Chester, PA 19380 Contact: Pete Ceribelli and/or Donald Baver Tel: (610) 701-3459 Cell: (610) 909-1643 Fax: (610) 701-3186
3. Westcliffe Engineers, Inc.	3. 9571 W. Hialeah Place Littleton, CO 80123 Contact: Jeffrey Swanson Tel: (720) 988-3859

All other terms, conditions, and exclusions shall remain the same.

AUTHORIZED REPRESENTATIVE
or countersignature (in states where applicable)

ENDORSEMENT NO.

This endorsement, effective 12:01 AM,

Forms a part of Policy No:

Issued to:

By:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MODIFICATION OF CLEAN-UP COSTS TO INCLUDE ONLY DIRECT COSTS UPON EXHAUSTION OF THE NOTIONAL COMMUTATION ACCOUNT.

It is hereby agreed that the Policy is amended as follows:

1. Upon exhaustion of the Notional Commutation Account under this Policy, Section **VII. DEFINITIONS**, Paragraph **E.**, **Clean-Up Costs** shall be deleted in its entirety and replaced with the following:

E. Clean-Up Costs means:

1. With respect to Coverage A, reasonable and necessary expenses, including legal expenses incurred with the Company's written consent which consent shall not be unreasonably withheld or delayed, for the investigation, removal, remediation, including associated monitoring, or disposal of soil, surfacewater, groundwater or other contamination:

   (a) To the extent required by **Environmental Laws** or required to satisfy a **Voluntary Cleanup Program**; or

   (b) solely with respect to **Munitions or Explosives of Concern**, to the extent required by the **ESCA**, or the **AOC**; or

   (c) That have been actually incurred by the government or any political subdivision of the United States of America or any state thereof or Canada or any province thereof.

2. With respect to Coverage B, reasonable and necessary costs, charges or expenses incurred for **Clean-Up**. Upon exhaustion of the Notional Commutation Account, **Clean-Up Costs** shall be limited to reasonable and necessary costs, charges or expenses incurred solely for **Clean-Up** which are **Direct Costs**.

3. With respect to Coverage C, reasonable and necessary costs, charges, and expenses incurred for **Clean-Up**. Upon exhaustion of the Notional Commutation Account, **Clean-Up Costs** shall be limited to reasonable and necessary costs, charges, and expenses incurred solely for **Clean-Up** which are **Direct Costs**.

4. Solely with respect to Coverages B and C, **Clean-Up Costs** does not include:

   (a) Costs, charges or expenses incurred for litigation, arbitration or other form of dispute resolution in any way related to or in connection with **Clean-Up**, including fees of attorneys, consultants, investigators, adjusters and experts, unless otherwise expressly consented to in writing and in advance by the **Company** and specifically included in a Definition of Clean-Up Endorsement; or

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(b) Costs, charges or expenses expended in preparation of the **Remedial Plan;** provided, however, the sub-limit of liability described in Section V. Paragraph D.2 shall apply to reasonable and necessary costs, charges or expenses expended in preparation of a supplementary remedial plan and the associated investigation of **Pollutants** that are not **MEC** under Coverage C.

(c) Upon exhaustion of the Notional Commutation Account, any profit markup by the **Named Insured** or any **Scheduled Contractors** on any **Clean-Up Costs.**

2. The following is added to Section **VII. DEFINITIONS:**

Direct Costs means (i) direct labor cost (including overtime if applicable and if warranted) of each **Scheduled Contractors'** employees multiplied by the applicable labor overhead multiplier, which is then multiplied by the applicable General and Administrative ("G&A") multiplier identified below; and (ii) subcontractor costs submitted to the **Named Insured** or **Scheduled Contractor(s)** multiplied by the applicable subcontractor multiplier identified below; and (iii) expense costs multiplied by the applicable expense multiplier identified below.

LFR Inc.

Labor Overhead Multiplier:	2.7326
G&A Multiplier:	1.1343
Expense Multiplier:	1.05
Subcontractor Multiplier applicable to Weston Solutions, Inc:	1.045
Subcontractor Multiplier applicable to subcontractors other than Weston Solutions, Inc.:	1.09

Weston Solutions, Inc.

Labor Overhead Multiplier:	2.7083
G&A Multiplier:	1.0835
Expense Multiplier:	1.0835
Subcontractor Multiplier:	1.0835

In the event that another **Scheduled Contractor** has been scheduled to this Policy and is performing **Clean-Up,** the **Named Insured,** at the written request of the Company, agrees to furnish the information requested in Calculating Direct Costs Condition as added by paragraph 3. below. for each such **Scheduled Contractor** and **Direct Costs** will be determined by the **Company** upon review of the requested information. The **Named Insured** or the Company may also request to reevaluate the multipliers used in the calculation of **Direct Costs** based upon the information requested in Calculating Direct Costs Condition. The reevaluation of the multipliers used in the **Direct Costs** calculation may only be requested once per calendar year and at an interval no closer than twelve months since the previous evaluation. In the event that such request is made, the granting of the request by the other party shall not be unreasonable withheld.

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3. The following is added as Section **VI. Conditions**:

Calculating Direct Costs

The Company reserves its rights to evaluate the information provided by the **Named Insured** and determine **Direct Costs** for each **Scheduled Contractor** in accordance with the provisions of paragraph 2. of this Endorsement. The **Named Insured** agrees to furnish the following information, if in existence, at the written request of the Company:

(a) a certified ledger or a copy of the **Scheduled Contractors'** indirect rates for contracts with federal entities, based on its most recent full year's audited financial statements;

(b) the calculation of the **Scheduled Contractors'** multipliers utilized for federal contracts including but not limited to the **Scheduled Contractors'** direct labor overhead multiplier and G&A multiplier;

(c) a list of base salaries for all employees that will be participating in **Clean-Up**; and

(d) the **Scheduled Contractors'** invoices for **Clean-Up Costs** in a form that permits the **Company** to confirm the **Named Insured's** billing is in conformance with the multipliers set forth in subparagraph (b).

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4. Subject to the applicable Limits of Liability set forth in Section V. and all of the other terms and conditions of this Policy, in the event that (a) the balance of the Notional Commutation Account has been exhausted prior to the payment of either the second or third premium installment and (b) the Company has paid **Clean-Up Costs** as defined in paragraph 1. of this Endorsement, the Company shall pay, solely with respect to such **Clean-Up Costs** as defined in paragraph 1. of this Endorsement paid by the Company, additional **Clean-Up Costs** equal to the difference of **Clean-Up Costs** as defined in Section VII.E. of the Policy and **Clean-Up Costs** as defined in paragraph 1. of this Endorsement. Such payment by the Company shall only be made after the payment of the full amount of the next premium installment, as set forth in Section VI.T., following such exhaustion of the Notional Commutation Account and after the Notional Commutation Account has been credited with the applicable portion of the amount of that premium installment pursuant to Section VI.R. The **Named Insured** shall promptly supply any information reasonably requested by the Company for use in calculating any such payment which may be due under this paragraph. The Company shall have sixty days from the receipt of such information or, if no information is requested, sixty days from the date of the payment of the full amount of the premium installment to make any payment which may be due under this paragraph.

All other terms, conditions, and exclusions shall remain the same.

AUTHORIZED REPRESENTATIVE
or countersignature (in states where applicable)

ENDORSEMENT NO.

This endorsement, effective 12:01 AM,

Forms a part of Policy No:

Issued to:

By:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TERRORISM EXCLUSION - ALL TERRORISM (INCLUDING CERTIFIED ACTS OF TERRORISM) EXCLUSION ENDORSEMENT

Pursuant to the requirements of the Terrorism Risk Insurance Act of 2002, the "Act," the **Insured** has been provided notice that the **Insured** may elect to purchase coverage for loss covered under this Policy arising directly or indirectly as a result of a certified "act of terrorism" as defined by Section 102. Definitions, of the Act and any revisions or amendments thereto and the premium charge for such coverage.

After receiving such notice, the **Insured** has elected not to purchase coverage for such certified "acts of terrorism" and has agreed to the inclusion of a Terrorism Exclusion. Therefore, this Policy is amended to include the following exclusion:

The Company has no obligation to make any payment or to provide or to pay for a defense under this Policy due to or arising directly or indirectly as a result of or in connection with **Terrorism** including but not limited to, any contemporaneous or ensuing loss caused by fire, looting, or theft.

Terrorism means the use or threatened use of force or violence against person or property, or commission of an act dangerous to human life or property, or commission of an act that interferes with or disrupts an electronic or communication system, undertaken by any person or group, whether or not acting on behalf of or in connection with any organization, government, power, authority or military force, when the effect is to intimidate, coerce or harm a government, the civilian population or any segment thereof, or to disrupt any segment of the economy.

The defined term **Terrorism** shall specifically include, but is not limited to, the following definition of a certified "Act of Terrorism" defined by Section 102. Definitions, of the Terrorism Risk Insurance Act of 2002 and any revisions or amendments thereto:

(1) Act of Terrorism –
- (A) Certification. – The term "act of terrorism" means any act that is certified by the Secretary of the Treasury of the United States, in concurrence with the Secretary of State, and the Attorney General of the United States --
  - (i) to be an act of terrorism;
  - (ii) to be a violent act or an act that is dangerous to --
    - (I) human life;
    - (II) property; or
    - (III) infrastructure;
  - (iii) to have resulted in damage within the United States, or outside of the United States in the case of --
    - (I) an air carrier or vessel described in paragraph (5)(B); [for the convenience of this endorsement, paragraph (5)(B) reads: occurs to an air carrier (as defined in Section 40102 of title 49, United States Code) to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and

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whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs, or at the premises of any United States mission];

(II) the premises of a United States mission; and

(iv) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

(B) Limitation. -- No act shall be certified by the Secretary as an act of terrorism if --

(i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers' compensation; or

(ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed $5,000,000.

(C) Determinations Final. – Any certification of, or determination not to certify, an act as an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.

(D) Nondelegation. – The Secretary may not delegate or designate to any other officer, employee, or person, any determination under this paragraph of whether, during the effective period of the Program, an act of terrorism has occurred.

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All other terms, conditions, and exclusions shall remain the same.

AUTHORIZED REPRESENTATIVE
or countersignature (in states where applicable)

81268 (12/02)
CI1966
FOR USE TO EXCLUDE ALL TERRORISM REJECTION OF CERTIFIED ACTS OF TERRORISM.

ENDORSEMENT NO.

This endorsement, effective 12:01 AM,

Forms a part of Policy No:

Issued to:

By:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COVERAGE A - ADDITIONAL INSURED(S) ENDORSEMENT

Solely as respect to Coverage A, it is hereby agreed that the following entity(s) is (are) included as an additional insured(s). Coverage for such additional insured(s) applies under this Endorsement:

1. Solely to the additional insured's liability arising out of the **Named Insured FORA**'s ownership, operation, maintenance or use of the **Insured Property(s)** and

2. Only if the additional insured is named in a suit as a co-defendant with the **Named Insured FORA**, alleging the additional insured is liable on the basis described in paragraph 1 above.

ADDITIONAL INSURED(S)

1. LFR Inc., its parent company(s), and any and all corporations, partnerships, companies or other entities as have existed at any time, or as now or may hereafter exist during the **Policy Period**, and in which LFR Inc. did or does have more than a 50% ownership interest.

2. Weston Solutions, Inc. and any and all corporations, partnerships, companies or other entities as have existed at any time, or as now or may hereafter exist during the **Policy Period**, and in which Weston Solutions, Inc. did or does have more than a 50% ownership interest.

Specimen

All other terms, conditions, and exclusions shall remain the same.

AUTHORIZED REPRESENTATIVE
or countersignature (in states where applicable)

ENDORSEMENT NO.

This endorsement, effective 12:01 AM,

Forms a part of Policy No:

Issued to:

By:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SCHEDULE OF INSURED CONTRACTS

It is hereby agreed that the following are scheduled as **Insured Contracts** to this Policy:

INSURED CONTRACTS

1. **ESCA**
2. **AOC**
3. **Remediation Services Agreement**

It is further agreed that the Master Cooperation and Environmental Services Agreement between **LFR** and Weston Solutions, Inc. shall be scheduled by Endorsement as an **Insured Contract** upon the Company's receipt, satisfactory review and approval of the executed Agreement, which approval will not be unreasonably withheld, denied or delayed.

Specimen

All other terms, conditions, and exclusions shall remain the same.

AUTHORIZED REPRESENTATIVE
or countersignature (in states where applicable)

EXHIBIT D

COOPERATIVE AGREEMENT AWARD

AGREEMENT NO: W9128F-07-2-0162 **EFFECTIVE DATE:** March 30, 2007

PR NO(S): W59XQ07087996I

SECTIONS	DESCRIPTION	PAGE(S)
Section A	Execution of Agreement	1
Section B	Agreement Schedule	2
Section C	Environmental Services Obligations	8
Section D	General Terms and Conditions	27
Section E	Attachments	33

1. **AUTHORITY:** This is an Environmental Services Cooperative Agreement (ESCA) under the authority of Title 10 United States Code, Section 2701(d) – Environmental Restoration Program (10 U.S.C. 2701).

2. **TOTAL AMOUNT OF AGREEMENT:** **$99,316,187.00**, less the reduction, if any, calculated pursuant to B.5.1.

3. **GOVERNMENT OBLIGATION/ACCOUNTING AND APPROPRIATION DATA.** Federal funds, in the amounts set forth in B.5.1 are hereby made available to the following Accounting and Appropriation Data:

ACRN AA: 97 NA X 0510.40M1 66 2007 088061 63072007000 25066 252G KD B480

4. **ELECTRONIC FUNDS TRANSFER.** Pursuant to 32 CFR 22.810(b)(2), Electronic Funds Transfer (EFT) shall be used to make payments under this award. See **SECTION B**, paragraph no. 7 for EFT information.

5. **PARTIES.** This Agreement is entered into between the United States of America, represented by U.S. Army Corps of Engineers, HTRW Center of Expertise (hereinafter called the Government), and the Fort Order Reuse Authority (hereinafter called the Recipient) pursuant to and under U.S. Federal law.

SECTION A - EXECUTION OF AGREEMENT

FOR THE RECIPIENT
Fort Ord Reuse Authority
100 12th St. Bldg. 2880
Marina, CA 93933-6006

(SIGNATURE)

Michael A. Houlemard, Jr.
(NAME)

Executive Officer
(TITLE)

March 27, 2007
(DATE)

FOR THE UNITED STATES OF AMERICA
Department of the Army
USACE – HTRW Center of Expertise
12565 West Center Road
Omaha, NE 68144

Douglas E. Hadley
(SIGNATURE)

DOUGLAS E. HADLEY
(NAME)

GRANTS OFFICER
(TITLE)

March 28, 2007
(DATE)

SECTION B

AGREEMENT SCHEDULE

1. TERMS AND CONDITIONS. By signing (acceptance) of this Agreement, the Recipient certifies that it will perform all activities and projects as set forth in its Application for Federal Assistance (and supporting documentation), and comply with all terms and conditions of this Agreement.

2. AGREEMENT TERM.

2.1. Funding Periods. The Federally funded term of the Agreement shall begin upon execution of the Agreement for a period of thirty years.

2.2. Long Term Obligations. Prior to completion of the term of the Agreement, the Recipient shall complete the Environmental Services, other than Long Term Obligations. The Recipient's responsibility for Long Term Obligations will extend beyond the term of this agreement, in accordance with Section C.4.1.15.4 (i).

3. ORDER OF PRECEDENCE. Federal regulations, to include but not limited to 32 CFR 33 and DoD 3210.6-R take precedence over all terms and conditions of this Agreement; however, the Army is not aware of any inconsistencies. Inconsistencies or conflicts in the terms and conditions of this Agreement shall be resolved according to the following order of precedence:

(a) Applicable United States statutes including Title 10 United States Code, Section 2701 (d);

(b) Federal Regulations, to include but not limited to 32 CFR Part 33 and DoD 3210.6-R.

(c) The "***Environmental Covenants Codes and Restrictions***" at **SECTION C** and TSRS thereto, incorporated at **SECTION E**;

(d) The "***General Terms and Conditions***", as set forth in **SECTION D**;

(e) The Agreement Schedule (**SECTION B**); then,

(f) The Recipient's Application for Federal Assistance (SF 424), Budget Information (SF 424C) and supporting data, Concept Plan and other supporting documentation (**Attachments at E.2.**).

4. AUDIT. The Comptroller General and the Inspector General of the Department of Defense shall have direct access to sufficient records and information of the Recipient, as they determine, to ensure accountability for Federal Funds. Audits will be conducted in accordance with OMB Circular A-133 and at 32 CFR 33.26.

5. FUNDING LIMITATIONS.

5.1. The maximum funding obligation of the Government to the Recipient for the term of this Agreement is $99,316,187.00, less the reduction, if any, calculated pursuant to B.5.1. Costs in excess of the maximum funding obligation will not be paid except as provided herein.

The funding obligation of the Government to Recipient shall be as follows: (i) payment of $40,000,000.00 by 31 March 2007, (ii) payment of $30,000,000.00 on 01 June 2008 (the "Interim Balance"), (iii) payment of $29,316,187.00 (the "Final Balance") on 01 June 2009, and (iv) payment of Army Contingent Funding as provided herein. However, if paid early, the Interim Balance shall be reduced by $5,283.00 multiplied by the number of days between the day it is paid and the day it is due. Additionally, if paid early, the Final Balance shall be reduced by $4,064.00 multiplied by the number of days between the day it is paid and the day it is due.

5.2. The Government's obligation to pay or reimburse any costs hereunder is subject to the availability of appropriated funds, and nothing in this Agreement will be interpreted to require obligations or payments by the Federal Government in violation of the Anti-Deficiency Act (31 U.S.C. § 1341).

5.3. The cost breakdown is as follows:

DESCRIPTION	MAXIMUM OBLIGATION
Environmental Services in accordance Section C and TSRS.	**$94,591,187.00, less the reduction, if any, calculated pursuant to B.5.1.**
Department of Toxic Substance Control (DTSC) and United States Environmental Protection Agency (USEPA) Technical Oversight Services.	**$4,725,000.00**
TOTAL COST	**$99,316,187.00, less the reduction, if any, calculated pursuant to B.5.1.**

5.4. The Government's maximum funding obligation is as follows:

FUNDING PERIOD	INCLUSIVE DATES	MAXIMUM OBLIGATION
Environmental Services (Line Item No. 0001)	**2007 –2037**	**$94,591,187.00, less the reduction, if any, calculated pursuant to B.5.1.**
DTSC and USEPA Technical Services (Line Item No. 0002)*	**2007 –2037**	**$4,725,000.00**

***Note: The funding Line Item No. 0002 can only be used to reimburse DTSC and USEPA for actual expenses associated with their technical oversight responsibilities. This is contingent upon prior approval of the overruns in question by the Grants Officer.**

5.5. Pursuant to 32 CFR 33.23 (b), the Recipient must liquidate all encumbered funding incurred under the Agreement not later than 90 calendar days after the end of the term of the Agreement, to coincide with the submission of the final Financial Status Report (SF-269). The Grants Officer may extend this deadline at the request of the Recipient.

6. BUDGET. The total amount of this Agreement, as approved by the Government, will be the maximum amount for which the Government would be obligated to pay the Recipient for allowable costs incurred under this Agreement, except as provided herein. The Recipient may not retain or otherwise use any excess funds

other than identified in Section C of this Agreement, for any other purposes without express written approval from the Grants Officer.

7. **ADVANCE PAYMENT.** Upon submission of a Request for Advance or Reimbursement (SF 270) to the Grants Officer, the Recipient shall be entitled to payment as set forth in B.5.1. The Government shall make requested payments to the Recipient in accordance with 32 CFR 33.21.

(a) The Recipient may submit Requests for Advance Payment via FAX or electronically (PDF format) to the Grants Officer.

(b) The Recipient's Central Contractor Registration (CCR) Information (for Electronic Funds Transfer (EFT)) is incorporated as follows:

838053585	77-0381729	3A2D7

8. **PAYMENT OFFICE.** The Defense Finance and Accounting Service (DFAS) Office responsible for making payments under this Agreement is as follows:

U.S. Army Corps of Engineers Finance Center (CEUFC)	**U.S. Army Corps of Engineers Finance Center (CEUFC) 5722 Integrity Drive Millington, TN 38054-5005**

9. **PERFORMANCE REPORTING.** The Grants Officer's representative for performance surveillance will be the Army's Environmental Representative, as identified in Section B Article 15. The Army's Environmental Representative is responsible to the Office of the Secretary of the Army for oversight of environmental remediation within the scope of this Agreement, including all work plans, scheduling of activities and other requirements set forth in Section C and in the Technical Specifications and Requirements Statement (TSRS). Furthermore, the Recipient shall provide the Army Environmental Representative with all necessary Long-Term Obligations Reports, as required under the TSRS. The Army's Environmental Representative shall keep the Grants Officer informed of the progress of the effort.

10. **FINANCIAL REPORTS.** Financial reports shall be prepared in accordance with 32 CFR 33.41.

(a) The Recipient will report program outlays and program income on an accrual basis. If the Recipient does not normally keep accounting records on an accrual basis, accrual information shall be developed through analysis of the documentation on hand.

(b) The Recipient shall use Standard Form 272, "Federal Cash Transaction Report", in order for the Grants Officer to monitor cash advanced, disbursement and or outlays under the Agreement. The initial report shall be for the period ending after the first payment. Subsequent reports shall be submitted for each quarter of performance, on a calendar year basis. The report shall be submitted no later than fifteen (15) working days following the end of each quarter.

(c) The Recipient shall use Standard Form 269, "Financial Status Report" to report the status of funds. The report shall be shall be submitted on an annual basis, no later than ninety (90) working days following the

Agreement year. A final report shall also be submitted no later than ninety (90) working days after the expiration or termination of Agreement support.

11. FINANCIAL REPORT DISTRIBUTION AND CORRESPONDENCE: The Recipient shall make distribution of all Financial Reports and written correspondence regarding the performance of the effort as follows:

Grants Officer	**U.S Army Corps of Engineers** **CENWO-HX** **ATTN: Mr. Douglas Hadley** **12565 West Center Road** **Omaha, NE 68144-3869**	**FINANCIAL REPORTS** **SF 272 (Interim)** **SF 269 (Annual / Final)** **Written Correspondence affecting performance and/or proposed changes by Recipient**	 Original Original Original
Army Environmental Representative	**Karen Wilson** **DA, ACSIM (DAIM-BD)** **600 Army Pentagon** **Washington, D.C. 22310-0600**	**FINANCIAL REPORTS** **SF 272 (Interim)** **SF 269 (Annual / Final)** **Written Correspondence affecting performance and/or proposed changes by Recipient** **PERFORMANCE REPORTS**	 1 Copy 1 Copy 1 Copy Original

12. **EQUIPMENT AND SUPPLIES.** Title, use and disposition of equipment and/or supplies purchased by the Recipient with Agreement funds, are subject to the obligations and conditions set forth at 32 CFR 33.32 through 33.34.

13. **SITE VISITS.** The Grants Officer, or authorized representatives, has the right at all reasonable times, with reasonable notice, to make site visits to review the project's accomplishments and to provide technical assistance as may be required. The Recipient shall provide all reasonable facilities/assistance for the safety and convenience of Government representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner as will not unduly interfere with or delay the work.

14. **PRE-AWARD COSTS.** The Recipient is **authorized** to incur costs from **01 January 2007** through **29 March 2007**.

15. GOVERNMENT AND RECIPIENT REPRESENTATIVES.

Mr. Douglas E. Hadley	Grants Officer	U.S Army Corps of Engineers CENWO-HX ATTN: Mr. Douglas Hadley 12565 West Center Road Omaha, NE 68144-3869 E-Mail: Doug.E.Hadley@usace.army.mil	PH: (402) 697-2441 FAX: (402) 697-2595
Karen Wilson	Army's Environmental Representative	DA, ACSIM (DAIM-BD) 600 Army Pentagon Washington, D.C. 22310-0600 E-mail: Karen.Wilson@hqda.army.mil	PH: (703) 602-2861 FAX: (703) 601-0544
Gail Youngblood	Fort Ord BRAC Environmental Coordinator	Fort Ord BRAC Environmental Coordinator P.O. Box 5008 Monterey, CA 93944-5008 E-Mail: Gail.Youngblood@monterey.army.mil	PH: (831) 242-7918 FAX: (831) 242-7091
Mr. Michael A. Houlemard, Jr.	Executive Officer	100 12th Street Building 2880 Marina, CA 93933-6006 Michael@fora.org	PH: (831) 883-3672 FAX:

--- END OF SECTION B ---

SECTION C
ENVIRONMENTAL SERVICES OBLIGATIONS

1. APPLICATION FOR FEDERAL ASSISTANCE. The Recipient's "*Application for Federal Assistance (and Supporting Documentation)*" is incorporated herein at SECTION E, Attachment E.2.

2. **SCOPE AND PURPOSE.**

2.1 **Background**. The Federal Government, for and on behalf of the citizens of the United States of America, acts as the steward of certain real property on which it operates and maintains military facilities necessary for the defense of the United States of America. Certain military facilities are no longer required for that mission, and the Department of Defense ("DoD") closed and plans to dispose of certain real and personal property at those facilities in accordance with the authority of the Defense Base Closure and Realignment Act of 1990, Public Law 101-510 (10 U.S.C. Section 2687 note, as amended). DoD is authorized to dispose of real and personal property on the former Fort Ord (as defined in Section C.3.26 below) to the Fort Ord Reuse Authority ("FORA," hereinafter "Recipient," as defined in Section C.3.35 below).

Under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9620(h)(3)(C), federal property may be transferred prior to the completion of all remedial action necessary to protect human health and the environment ("Early Transfer"). Under this Early Transfer authority, DoD may transfer portions of Fort Ord to the Recipient, which may assume responsibility for certain environmental response activities (hereinafter the "Environmental Services," as defined in Section C.3.22 below). The property to be transferred and the geographic area in which work will be performed under this Agreement is identified herein as the Areas Covered by Environmental Services, (hereinafter the "ACES," as defined in Section C.3.3 below). The environmental response activities required of the Recipient under this Agreement are identified herein as the Environmental Services. This Agreement provides the funding, specifications and requirements for the Recipient's performance and completion of the Environmental Services in the ACES.

Cleanup of the ACES is governed by CERCLA, the National Contingency Plan ("NCP"), the Administrative Order on Consent (hereinafter "AOC," as defined in Section C.3.1 below), and other applicable laws and regulations. The Army has conducted investigations and site characterization under its own authorities under CERCLA, the Defense Environmental Restoration Program ("DERP"), and other applicable laws and regulations, and has identified both contaminated areas as well as uncontaminated areas. Additional site characterization and investigations are to be performed.

The Recipient will be obligated to comply with the AOC under the oversight of the United States Environmental Protection Agency (hereinafter "USEPA") and the Department of Toxic Substances Control (hereinafter "DTSC"). As provided in Section C.4.1.1, the Parties agree that the Recipient's performance of the Environmental Services must satisfy certain obligations of the Army under CERCLA and the NCP. If inconsistencies are found between this Agreement and the AOC after this Agreement has been signed, the Parties will work toward a resolution, in accordance with Section D.9 of the ESCA.

This Agreement is of mutual benefit to the Army and the Recipient because it will facilitate transfer and the immediate reuse of the ACES by allowing the Recipient to perform the Environmental Services in conjunction with redevelopment activities. This Agreement, executed in anticipation of a transfer, will allow the Recipient full access to the ACES in order to implement the Environmental Services and redevelop the ACES.

This Agreement does not reduce or alter in any way the responsibilities and obligations of the Army under CERCLA, the NCP, or Section 330 of Public Law 102-484 ("Section 330"), except as otherwise provided in Section C.4.1.8 of this Agreement.

2.2 **Purpose**. The provisions of this Section of this Agreement establish the terms and conditions necessary for the completion of the Environmental Services required to obtain Site Closeout and the execution of Long-Term Obligations associated with Site Closeout. The AOC and Technical Specifications Requirements Statement (hereinafter "TSRS," as defined in Section 3.39 below and incorporated herein at Section E, Attachment E.1) establish the process for obtaining Site Closeout within the ACES. By execution of this Agreement, the Army and the Recipient concur with the AOC and TSRS. This Agreement in no way restricts the Parties from modifying the Covenant to Restrict the Use of Property (hereinafter "CRUP," as defined in Section C.3.13 below) or the Environmental Protection Provisions (hereinafter "EPP," as defined in Section C.3.21 below), and documents referenced therein, before or after the Environmental Services at the ACES have begun. However, any such modifications shall not eliminate or change the Recipient's or Army's obligations under this Agreement unless a concurrent modification is made to this Agreement in accordance with Section D.21.

2.3 **Scope**. The Recipient shall cause to be performed the Environmental Services, in consideration of the payment of a fixed sum by the Army in accordance with and subject to the provisions of this Agreement. The Environmental Services, to the extent required to be performed under this Agreement, shall satisfy the requirements of CERCLA and the NCP by satisfying the requirements provided in the AOC and TSRS. The Environmental Services will be performed in furtherance of the Recipient's approved Reuse Plan, as defined in Section C.3.37 below, and integrated with redevelopment activities, all as more particularly described in the TSRS.

The AOC establishes the process for obtaining Site Closeout within the ACES. By the execution of this Agreement, the Army concurs with the process set forth in the AOC, and all documents and approvals referenced therein; however, this concurrence in no way limits the Recipient's ability to complete Environmental Services that go beyond the requirements of CERCLA and Resource Conservation and Recovery Act ("RCRA") for the ACES by satisfaction of the AOC. Furthermore, this Agreement in no way restricts the parties to the AOC from modifying the AOC and documents referenced therein, pursuant to the terms thereof, before or after the Environmental Services at the ACES have begun; however, any such modifications will be coordinated with the Army in accordance with Section C.4.2.1 and shall not eliminate or change the Recipient's or Army's obligations under this Agreement unless otherwise agreed in a writing signed by the Parties.

In addition to providing the specified funding, the Army will retain the responsibilities and liabilities specified within this Agreement and attachments. The Army's program oversight shall ensure that the remedies implemented by the Recipient pursuant to the AOC and TSRS are consistent with CERCLA and the NCP, Department of Defense Explosives Safety Board (hereinafter the "DDESB," as defined in C.3.14) requirements, and other applicable laws and/or regulations. The Parties agree that the implementation of the AOC must be consistent with remedy requirements of CERCLA, the NCP, and other applicable laws and regulations, and that future modifications to the AOC will likewise be consistent with such remedy requirements. The Recipient agrees to achieve Site Closeout and perform the required remedial actions in accordance with and subject to the provisions of this Agreement. In accordance with 42 U.S.C. 9620(h)(3)(C)(iii), after all response actions necessary to protect human health and the environment on the ACES, or portions thereof, have been taken, the Army will grant to the Recipient the CERCLA warranty that all necessary response actions have been taken, as provided herein.

3. DEFINITIONS.

The following definitions apply to those terms used throughout the entire Agreement, including the TSRS.

3.1 **Administrative Order on Consent**. The term "Administrative Order on Consent" or "AOC" means the signed agreement executed between the Recipient, the USEPA, U.S. Department of Justice and DTSC. The AOC controls the cleanup of the ACES by the Recipient and requires the Recipient to remediate the ACES to achieve Site Closeout and thereby satisfy the Army's CERCLA obligations. It also requires the Recipient to enter into necessary CRUPs on the ACES to ensure the temporary and long-term protection of human health and the environment.

3.2 **Agreement**. See "Cooperative Agreement."

3.3 **Area Covered by Environmental Services**. The term "Area Covered by Environmental Services" or "ACES" means that entire geographical area identified as the ACES on the maps attached to the TSRS, or other contaminated areas outside the boundaries of the ACES when such contamination is caused or created by Recipient's performance of Environmental Services, but does not include contamination presently on adjoining property to be transferred to the Bureau of Land Management.

3.4 **Army Contingent Funding**. The term "Army Contingent Funding" means additional funding that may be required from the Army for Environmental Services in accordance with Section C.4.3.2.1.

3.5 **Army and Government**. The terms "Army" and "Government" are used interchangeably herein to mean the U.S. Army.

3.6 **Army Continuing Responsibilities**. The term "Army Continuing Responsibilities" means certain ongoing Army responsibilities identified by the Army, and listed in Section 6.0 of the TSRS, that will continue after the transfer of the ACES, and which are to be performed by the Army and for which the Recipient assumes no responsibility, except as provided herein.

3.7 **Army Obligations**. The term "Army Obligations" means, without limitation, (i) Army-Retained Conditions, as defined in Section C.3.9 below and (ii) Army Continuing Responsibilities, as defined in Section C.3.6 above.

3.8 **Army's Representative**. The term "Army's Representative," for performance oversight, means the Army Base Realignment and Closure Division, its designee, or successor agency, which is responsible to the office of the Secretary of the Army for environmental remediation of the ACES.

3.9 **Army-Retained Conditions**. The term "Army-Retained Conditions" means any of the following conditions, for which the Army has full responsibility and for which the Recipient assumes no responsibility, except as provided herein:

3.9.1 Radiological Material;

3.9.2 Chemical or biological warfare agents;

3.9.3 Claims and settlements of natural resource damages under CERCLA 107(f)(1) or comparable state statutes which arise from releases of hazardous substances, pollutants and contaminants that have occurred due to Army ownership or activities on the ACES except to the extent such damages are a result of Recipient's activities on the ACES. If claims are made under comparable state statutes, the Army retains its rights and defenses to defend against such claims.

3.9.4 Unknown Uninsured Conditions;

3.9.5 Perchlorate contamination in soil or groundwater;

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

3.10 **CERCLA**. The term "CERCLA" means the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601, et seq.

3.11 **CERCLA Terms**. The terms "release," "threatened release," "hazardous substance," "pollutant," "contaminant," "removal," "remedial action," and "response" have the meanings given such terms under CERCLA and USEPA regulations implementing CERCLA.

3.12 **Cooperative Agreement**. The terms "Cooperative Agreement" and "ESCA" mean this Environmental Services Cooperative Agreement.

3.13 **Covenant to Restrict the Use of Property**. The term "Covenant to Restrict the Use of Property" or "CRUP" means the document that identifies the environmental covenants and restrictions that shall apply to the ACES as a result of the Known Conditions on the ACES, which are addressed under the AOC and TSRS. These environmental covenants and restrictions are necessary for the protection of human health and the environment and the implementation of final remedies for the ACES.

3.14 **Department of Defense Explosive Safety Board**. The term "Department of Defense Explosives Safety Board" or "DDESB" means the independent division of the Department of Defense that reviews and ensures safety during munitions responses by adhering to the DoD Ammunitions and Explosives Safety Standards presented in Department of Defense Directive ("DoDD") 6055.9; and DoDD 6055.9-STD.

3.15 **DERP**. The term "DERP" means the Defense Environmental Restoration Program.

3.16 **DoD**. The term "DoD" means the Department of Defense of United States America.

3.17 **DTSC**. The term "DTSC" means the California Department of Toxic Substance Control.

3.18 **Effective Date**. The term "Effective Date" means the date by which the Agreement has been fully executed, the AOC has undergone the public comment period and in accordance therewith has been validated by the EPA, the Army has met its initial payment obligations herein, and coverage has been bound under the Environmental Insurance Policies.

3.19 **Endangered Species Conditions**. The term "Endangered Species Conditions" means any and all federal, state, local, or other requirements, mitigation measures, reports, inspections or other obligations or duties relating to or arising from the protection of plants or wildlife, or threatened or endangered plants or wildlife, except for those set forth in the existing biological opinions related to the ACES, and except for consultation with the United States Fish and Wildlife Service.

3.20 **Environmental Insurance Policies**. The term "Environmental Insurance Policies" means the Cleanup Cost Cap Policy ("Cost Cap Policy") also known as the Former Fort Ord Pollution Legal Liability Select Clean-Up Cost Cap Manuscript Insurance Policy, dated on or before March 31, 2007, and the Pollution Legal Liability Insurance Policy ("PLL Policy"), if any, which have been reviewed and concurred by the Army

and Recipient, and bound subsequent to the execution of this Agreement by an insurance carrier that is rated A.M. Best's A- FSC IX or better.

3.21 **Environmental Protection Provisions**. The terms "Environmental Protection Provisions" and "EPP" mean the permanent restrictions or notifications that will be attached to the transfer deed to ensure protection of human health and the environment.

3.22 **Environmental Services**. The term "Environmental Services" means investigation, remediation and related document preparation activities by the Recipient, necessary to achieve Site Closeout of the ACES, with respect to any Known Conditions, Unknown Insured Conditions, as well as any associated Long-Term Obligations; but in any event does not include any Army Obligations.

3.23 **ESCA**. See "Cooperative Agreement."

3.24 **Federal Facility Agreement**. The term "Federal Facility Agreement" means the Federal Facility Agreement entered into by the USEPA, DTSC, Regional Water Quality Control Board, and the Army, pursuant to 42 U.S.C. § 9620 (e)(2), dated November 19, 1990, and as amended by the First Amendment to the Federal Facility Agreement.

3.25 **FORA**. See "Recipient."

3.26 **Fort Ord**. The term "Fort Ord" means that real property shown on the appendix to the TSRS.

3.27 **Known Conditions**. The term "Known Conditions" means those MEC or MC conditions, or any related environmental conditions that arise as a result of MEC or MC cleanup, on or under the ACES identified in the "applicable documents" subsection of the TSRS and includes Reasonably Expected Environmental Conditions. The term "Known Conditions" does not include Army Obligations.

3.28 **Long-Term Obligations**. The term "Long-Term Obligations" means the performance of any long-term review, monitoring, and operation and maintenance activities and reporting, including land use control obligations, that are required to maintain the effectiveness of the remedy following Site Closeout.

3.29 **Munitions and Explosives of Concern**. The terms "Munitions and Explosives of Concern" and "MEC," which distinguishes specific categories of military munitions that may pose unique explosives safety risks, mean: (A) Unexploded Ordnance (UXO), as defined in 10 U.S.C. 101 (e) (5); (B) Discarded military munitions (DMM), as defined in 10 U.S.C. 2710 (e) (2); or (C) Explosive munitions constituents (e.g., TNT, RDX), as defined in 10 U.S.C. 2710 (e) (3), present in high enough concentrations to pose an explosive hazard.

3.29.1 **Munitions Constituents**. The terms "Munitions Constituents" and "MC" mean any materials originating from UXO, DMM, or other military munitions, including explosive and nonexplosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions. (10 U.S.C. 2710 (e)(3))

3.29.2 **Military Munitions**. The term "Military Munitions" means all ammunition products and components produced for or used by the armed forces for national defense and security, including ammunition products or components under the control of the Department of Defense, the Coast Guard, the Department of Energy, and the National Guard. The term includes but is not limited to confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries, including bulk explosives and rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof.

The term does not include chemical and biological warfare agents and chemical munitions, Radiological Materials, wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components, except that the term does include non-nuclear components of nuclear devices that are managed under the nuclear weapons program of the Department of Energy after all required sanitization operations under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) have been completed.

3.29.3 **Munitions Response**. The term "Munitions Response" means response actions, including investigation, removal actions and remedial actions to address the explosives safety, human health, or environmental risks presented by UXO, DMM, or MC, or to support a determination that no removal or remedial action is required.

3.29.4 **Munitions Response Area**. The terms "Munitions Response Area" and "MRA" mean any area on the ACES that is known or suspected to contain UXO, DMM, or MC. Examples include former ranges and munitions burial areas. A munitions response area is comprised of one or more munitions response sites.

3.29.5 **Munitions Response Site**. The terms "Munitions Response Site" and "MRS" mean a discrete location within an MRA that is known to require a Munitions Response.

3.30 **Notional Commutation Account**. An account established by the insurer the balance of which shall be calculated as per the Cost Cap Policy.

3.31 **Pilot Project**. The term "Pilot Project" means the performance of Environmental Services by the Recipient of portion(s) of the ACES to be mutually agreed upon by the Army and the Recipient (but not to exceed a total of 100 acres), utilizing the residential MEC clearance protocol that is currently preferred by USEPA and DTSC, as described in Section 2.1.8 of the TSRS, for areas with a planned residential reuse. The Pilot Project is designed to establish to the satisfaction of USEPA and DTSC that such measures add no material risk reduction when compared to the standard MEC clearance to depth protocol.

3.32 **Pilot Project Cost Savings**. The term "Pilot Project Cost Savings" means the amount of cost savings, if any, that will result, following the completion of the Pilot Project if USEPA and DTSC agree that the remaining portion(s) of the ACES that are planned for residential reuse will not require the residential MEC clearance protocol as described in Section 2.1.8 of the TSRS. Pilot Project Cost Savings will be calculated by multiplying the current estimated per acre cost for the residential MEC clearance protocol ($9,126.65) by the remaining number of acres for the planned residential reuse that do not require the residential MEC clearance protocol. Since only 519 acres are potentially subject to the Pilot Project Cost Savings, the Pilot Project Cost Savings shall not exceed $4,736,731.35 (519 x $9,126.65), and in any event such Pilot Project Cost Savings shall not be due and owing prior to the second anniversary of the inception of coverage under the Cost Cap Policy.

3.33 **Radiological Materials**. The term "Radiological Materials" for purposes of this Agreement means solid, liquid, or gaseous material, derived from U.S. Government activities, that contains radio nuclides regulated under the Atomic Energy Act of 1954, as amended, and licensed by the Nuclear Regulatory Commission. It includes radioactive material, nuclear devices and nuclear components thereof, and radiographic and instrument calibration sources and various instrumentation and radio luminescent products manufactured for military applications. The term "Radiological Materials" does not include background radiation, radio luminescent dials, or products manufactured for non-military applications, such as radio luminescent signs, tungsten welding electrodes and household smoke detector components.

3.34 **Reasonably Expected Environmental Conditions**. The term "Reasonably Expected Environmental Conditions" means known contamination identified in the TSRS, for which the Recipient has the

responsibility to achieve Site Closeout, even if there is a significant deviation in the quantity, volume, migration, disbursement, location within the ACES, and/or concentration of any such contamination discovered at a particular site than anticipated in the relevant RI/FS.

3.35 **Recipient**. The term "Recipient" means the Fort Ord Reuse Authority ("FORA"), and its successors. FORA is an entity that is within the meaning of the term "local government agency" as such term is used in 10 U.S.C. Section 2701(d)(1), with which the Army is authorized to enter into "agreements on a reimbursable or other basis."

3.36 **Regulatory Response Costs**. The term "Regulatory Response Costs" means labor costs, overhead costs, contractor costs, third party travel, and lodging costs and associated costs or fees relating to or arising from the activities of the USEPA or DTSC with the ACES.

3.37 **Reuse Plan**. The term "Reuse Plan" means the mutually agreed upon activities, identified in the Reuse Plan submitted to the Army with the Recipient's EDC Application, which Application was approved by the Army in June 1997.

3.38 **Site Closeout**. The term "Site Closeout" occurs at the point in time when the Recipient has performed all Environmental Services, excluding Long Term Obligations, as defined in Section C.3.22, with respect to the portion(s) of the ACES in question, and has:

(1) Obtained a Certification of Completion of the Remedial Action (as referenced in the AOC) from the USEPA for such portion(s) of the ACES, and

(2) for property known or suspected to contain MEC, in addition to USEPA approvals, submitted to the DDESB a Statement of Removal of MEC.

3.39 **Technical Specifications and Requirements Statement**. The term "Technical Specifications and Requirements Statement" or "TSRS" means the mutually agreed upon document attached hereto that describes the known environmental conditions at the ACES and identifies the general scope of cleanup alternatives that will be performed by the Recipient.

3.40 **Unknown Insured Conditions**. The term "Unknown Insured Conditions" means those environmental conditions in the ACES that are not Known Conditions and for which, and to the extent, the Recipient is insured and paid pursuant to the Environmental Insurance Policies.

3.41 **Unknown Uninsured Conditions**. The term "Unknown Uninsured Conditions" means those environmental conditions in the ACES that are not Known Conditions and are not Unknown Insured Conditions.

3.42 **USEPA**. The term "USEPA" means the United States Environmental Protection Agency.

4. OBLIGATIONS OF THE PARTIES.

4.1 Obligations of the Recipient.

4.1.1 **General**. In consideration of the Army's payment of funds in accordance with this Agreement, the Recipient shall perform the Environmental Services in accordance with and subject to the terms of this Agreement. The Recipient agrees that, subject to the provisions of Sections C.4.1.15 and C.4.2, it shall complete or cause to be completed the Environmental Services even if the costs associated therewith exceed the funds provided by the Army hereunder.

The Recipient shall perform the Environmental Services in accordance with and pursuant to the AOC, as determined by the parties to the AOC. The performance of the Environmental Services under the AOC shall satisfy the Army's responsibilities with regard to the Environmental Services under CERCLA and the NCP. By executing this Agreement, Army concurs with the process set forth in the AOC, including the documents and approvals therein. However, these concurrences in no way limit the Recipient's ability to perform additional remedial actions and thereby fulfill its obligation to satisfy CERCLA remedy requirements for the ACES by implementing the AOC to Site Closeout. The Recipient shall perform the Environmental Services and shall provide quarterly progress reports to the Army, in accordance with the TSRS.

The Recipient's obligation to complete the Environmental Services is expressly conditioned upon the Army providing the sums set forth in B.5.1 as the funding obligation of the Government, for performing the Environmental Services in accordance with the terms of this Agreement; provided, however, that such sum shall be reduced, at the time, and to the extent that the USEPA and DTSC provides in writing that no further action is necessary for the remaining residential parcels, and the Pilot Project results in Pilot Project Cost Savings. In the event USEPA or DTSC thereafter determines that additional cleanup is necessary after the Pilot Project Cost Savings are returned to the Army, the additional Environmental Services determined necessary will be deemed Army Obligations. FORA and Army may agree to allow FORA to conduct the work, in which event, FORA will be compensated by the Army on a cost incurred basis.

In the event the Agreement terminates pursuant to Section D.8, the Recipient's obligations shall be terminated. In such event, the Recipient shall return all unused funds in the Notional Commutation Account, and in the event of a termination under D.8.2 (1), the Recipient shall additionally return to the Army half of the difference between the insurance premium paid for the Cost Cap Policy to the insurer and the amount deposited into the Notional Commutation Account upon inception of the Environmental Insurance Policies. Furthermore, in the event of a termination under D.8.2 (1), the Recipient shall not be entitled to reasonable demobilization costs.

In the event the Government fails to make payment in accordance with B.5.1, and in the event such failure results in the cancellation of the Cost Cap Policy by the insurer, Recipient's obligations hereunder shall cease, except that (i) Recipient shall commence demobilization of its activities pursuant to this Agreement; (ii) Recipient shall demand the return of the remaining funds in the Notional Commutation Account; and (iii) Recipient shall return any such Notional Commutation Account funds to the Government less the cost of such demobilization.

These conditions shall be subject to dispute resolution pursuant to Section D.9. The maximum funding obligation will be increased to the extent necessary to meet fair and reasonable increases in Regulatory Response Costs, if funding is available and funds are approved by the Army Grants Officer.

4.1.2 **Notice of a Complaint**. There may be events in which federal, state, or local regulators, or other third parties, provide the Recipient a notice of a claim or serve the Recipient a summons and complaint for the existence of any environmental condition at the ACES that suggests an action is necessary for which the Army is responsible under this Agreement. In such an event, the Recipient shall provide the Army notice, and if applicable copies of service documents, as soon as possible, but no later than seven (7) days after such receipt.

4.1.3 **Discovery of an Army Obligation**. In the event the Recipient discovers an Army Obligation at, on, from or affecting the ACES, the Recipient shall notify the Army of such conditions within thirty (30) days of receiving actual notice of such conditions, except that the Recipient shall notify the Army of the discovery of Radiological Materials; or chemical or biological warfare agents; within twenty-four (24) hours of such discovery. The Parties agree, pursuant to the terms of this Agreement, to confer within thirty (30) days

of such notification regarding the scope of any initial investigation that may be necessary to ascertain whether the discovery is properly categorized as an Army Obligation or as Environmental Services. If a mutually agreeable solution is not reached within fifteen (15) working days of the commencement of discussions between the Recipient and the Army, the Parties reserve the right to recommend to the Army Grants Officer that the dispute or alternative dispute resolution process, as described herein, be initiated. The Army will retain full responsibility for Army Obligations.

4.1.4 Recipient's Actions with Respect to Army Obligations. Notwithstanding the provisions of the preceding Section C.4.1.3, the Recipient shall have the right but not the duty to take or cause to be taken the following actions within the ACES with respect to Army Obligations:

4.1.4.1 Investigation Activities. If the Recipient discovers a condition it reasonably believes is an Army Obligation other than a condition subject to Section C.4.1.4.2, it shall use its reasonable efforts to avoid incurring costs or obligations with respect to the condition by seeking to further ascertain whether such condition is in fact an Army Obligation.

Nothing in this Agreement shall be construed to authorize the Recipient to seek reimbursement from the Army for costs solely associated with the initial investigation needed to ascertain whether a condition is properly categorized as an Army Obligation to the extent that the initial investigation demonstrates that the conditions at issue are not an Army Obligation. Subject to the dispute resolution process of Section D.9, however, if said condition is an Army Obligation hereunder, Recipient's reasonable investigation costs will be reimbursed hereunder.

During dispute resolution, if USEPA or DTSC directs the Recipient to proceed with the disputed remediation in accordance with the AOC, the Recipient shall develop a work plan to address the discovery and submit it to the Army for approval. The Army will then decide within 15 days whether the Army or the Recipient will address the disputed discovery. If the work is later determined to be an Army Obligation, the Recipient will be reimbursed for reasonable expenses associated with the work plan and work, to the extent performed, approved by the Army.

4.1.4.2 Imminent Threat. Recipient may take any immediate action in accordance with this Section C.4.1.4.2 to address an imminent threat to human health or the environment if required by a regulatory agency, or if in Recipient's reasonable judgment, such action is necessary to address an imminent threat to human health or the environment.

The Recipient shall have a right, but not the duty, to take action and may seek reimbursement, subject to dispute resolution, from the Army for response costs related to Army Obligations where (a) notification cannot practicably be provided to the Army in accordance with the terms of Section C.4.1.3 above before such action needs to be taken, or (b) notification is provided to the Army before such action needs to be taken and the Army agrees to permit the Recipient to take such action under terms agreed to by the Parties. In the event that Recipient provides notification to the Army before such action needs to be taken but the Army cannot or will not provide a timely response to such threat, the Parties reserve their rights but will expedite dispute resolution provided in Section D.9.

4.1.4.3 Notice and Dispute. To the extent the Recipient takes or causes to be taken actions in accordance with Section C.4.1.4.1 or in accordance with Section C.4.1.4.2, the Recipient shall provide notice of such action to the Army as soon as practicable. If the Army disputes an action taken by the Recipient under Section C.4.1.4, the Army may engage in dispute resolution in accordance with Section D.9.

Failure of Recipient to provide timely notice as provided in Sections C.4.1.3 and C.4.1:4 shall not limit in any way the responsibility of the Army for Army Obligations under this Agreement, or under applicable law, except to the extent the Army's interests are materially and adversely affected by such late notice.

4.1.4.4 **Covenant Not to Sue**. The Recipient covenants not to sue and hereby waives any potential claims against the Army for consequential damages related to development delays caused by the Army's performance of, or failure to perform, investigations or remediation activities with respect to Army Obligations.

4.1.5 **Information Obtained by the Recipient**. In the event an Army Obligation is discovered, the Recipient shall provide to the Army all information obtained or developed by the Recipient with respect to such conditions.

4.1.6 **Discovery of Unknown Insured Conditions**. In the event that the Recipient discovers any Unknown Insured Condition(s), the Recipient shall perform all the necessary Environmental Services in accordance with the AOC and TSRS, and as required by applicable law for the Recipient to achieve Site Closeout, subject to the limitations of Section C.4.1.15. The Environmental Services rendered will be subject to USEPA approval needed for Site Closeout and, as necessary, submission to the DDESB. The Recipient shall provide timely notice to the Army of all Environmental Services performed for the Unknown Insured Condition and shall be entitled to seek reimbursement for such directly from the Environmental Insurance Provider.

4.1.7 **Discovery of Environmental Conditions After Site Closeout**

4.1.7.1 After Site Closeout of any portion of the ACES, if the Recipient discovers any MEC on that portion of the ACES, the Recipient shall immediately stop any intrusive or ground-disturbing work in the area and shall not attempt to disturb, remove or destroy it, but shall immediately notify the Local Police Department so that appropriate explosive ordnance disposal personnel can be dispatched to address such MEC, as required under applicable law and regulations. Upon discovery of MEC or hazardous and toxic waste after Site Closeout and if USEPA and DTSC determine that the completed Environmental Services is not protective of human health and the environment, the Recipient will cease all development activities in the area and shall conduct any additional response actions as required by USEPA and DTSC pursuant to the AOC. To the extent practicable, the Army will not conduct any such additional response actions prior to consultation with the Recipient.

4.1.7.2 The Army shall give the Recipient written notice of any failure by the Recipient to perform the Environmental Services. Recipient shall have ten calendar days to cure such failure. If such failure is cured within ten calendar days, or such longer period if approved by the Army, such failure will be deemed not to have occurred. If there has been a failure to perform following the opportunity to cure, the Army reserves all rights under this Agreement.

4.1.8 **Indemnification/Limited Waiver of Statutory Rights**. In consideration of the funds paid, and to the extent of the Environmental Services performed under this Agreement, the Recipient agrees that, to the extent the following do not constitute Army Obligations, it shall, upon the execution of this Agreement and irrespective of termination pursuant to Section D.8, indemnify the Army for:

4.1.8.1 any response cost claims for activities required to be performed or actions taken as a result of the Recipient's failure to perform all or part of the Environmental Services;

4.1.8.2 all personal injury or property damage claims but only to the extent caused by the Recipient or its contractors in the course of performing the Environmental Services;

4.1.8.3 all claims and settlements of natural resource damages pertaining to releases of hazardous substances, pollutants or contaminants, but only to the extent such environmental damages were caused or contributed to by the actions of the Recipient or its successor in interest;

4.1.8.4 all costs associated with additional remediation required on or within the ACES as a result of a change in land use from that contained in the Reuse Plan, as defined in Section C.3.37, at the time of the execution of this Agreement;

4.1.8.5 all costs associated with or further response actions that are required after Site Closeout to correct a remedy as a result of an USEPA or DTSC determination that the remedy is not protective of human health and the environment; this indemnification provision shall not apply if the Army selected a remedy that is less stringent than proposed by the Recipient;

4.1.8.6 all costs associated with or arising from any negligent acts or omissions or willful misconduct of the Recipient in the course of performing or in the performance of the Environmental Services or implementing remedial actions in accordance with the AOC.

The Army shall, with respect to the above indemnities, cooperate with and assist the Recipient in the defense, including, but not limited to, providing prompt notice of any claims, lawsuits, or notices from any claimant or agencies. The Parties agree that the provisions of this Section limit the Army's indemnification obligations under Section 330 of Public Law 102-484 to the extent that the Recipient has assumed certain indemnification obligations under this Section C.4.1.8.

4.1.9 **Financial & Technical Assurances**. The Parties agree that the Recipient has provided financial and technical assurances reasonably acceptable to the Army to enable the Army to meet the Army's requirements of 42 U.S.C. Section 9620(h)(3)(C).

4.1.10 **Reports**. In order to assure appropriate documentation for the Army to execute the CERCLA covenant, the Army may request that the Recipient provide additional information concerning the environmental condition of the ACES. The Recipient shall provide access to any documents in its possession containing such requested information to the Army as soon as possible after such request is made. The Recipient agrees to provide such access within a reasonable time of such request.

4.1.11 **Access**. The Recipient shall promptly provide the Army and any officially concerned Federal Government agency with all rights to access onto the ACES pursuant to environmental response access rights reserved by the Army in the transfer documents.

The Recipient may condition the provision of such rights on restrictions on the time and manner of access and conduct of activities, provided that such restrictions do not unreasonably delay or interfere with the Army's performance of environmental responsibilities. The Recipient recognizes and agrees to continue to accommodate the Army's need for existing office space for on-site personnel needed to oversee the Recipient's performance of Environmental Services at no cost to the Army.

4.1.12 **Public Participation**. The Recipient shall be responsible for meeting the public participation requirements as set forth in the TSRS.

4.1.13 **Additional Investigation**. The Parties agree that, should additional investigations be required to gather data in order to achieve Site Closeout beyond the scope of the RI/FS as anticipated in the

TSRS and the AOC, then the Recipient shall notify the Army of such indicated requirement. The Parties agree, pursuant to the terms of this Agreement, to confer regarding such investigations, to determine whether it is necessary and if so, the scope of such investigations. If a mutually agreeable solution is not reached within fifteen (15) working days of the commencement of discussions between the Recipient and the Army, each Party reserves the right to recommend to the Army Grants Officer that the dispute or alternative dispute resolution process as set forth in Section D.9 be initiated.

Nothing in this Agreement shall be construed to authorize the Recipient to require the Army to assume responsibility for additional investigations or to seek reimbursement from the Army for costs associated with additional investigations.

4.1.14 Endangered Species Responsibilities.

4.1.14.1 Prior to Site Closeout the Recipient shall be responsible for all Endangered Species Conditions, as defined in Section C.3.19, if the Recipient decides to perform response actions that are beyond the scope of the Environmental Services as outlined in this Agreement and the TSRS. After Site Closeout, the Recipient shall be responsible for all Endangered Species Conditions and consultation with the United States Fish and Wildlife Service.

4.1.14.2 Prior to Site Closeout, it shall be considered a Force Majeure event in accordance with Section C.5.12 if the Recipient incurs associated actual costs for the Endangered Species Conditions in excess of $100,000 as a result of: (1) a new endangered species discovered or listed; (2) a federal or state requirement for additional work beyond the scope of the TSRS such that an additional biological opinion is required; or (3) a federal or state requirement that prevents FORA from performing the Environmental Services in accordance with the TSRS under the existing biological opinions. Upon a Force Majeure event as described above, the Parties shall meet and agree on how to proceed for the Endangered Species Conditions.

4.1.15 Recipient's Performance Obligation.

4.1.15.1 Recipient shall be responsible for all actions necessary to accomplish the performance of all Environmental Services, as defined in C.3.22.

4.1.15.2 The Recipient is also responsible for all Known Conditions within the ACES, to include any costs incurred that exceed coverage under the Cost Cap Policy.

4.1.15.3 With respect to the discovery of Unknown Insured Conditions, the Recipient is responsible for remediation of those conditions covered by the Environmental Insurance Policy acquired by the Recipient.

4.1.15.4 After the Recipient has achieved Site Closeout and after the Army grants the CERCLA Warranty, the Recipient's continuing obligations will include the following:

(i) the performance of Long-Term Obligations, as defined in C.3.28;
(ii) further remedial actions required as a result of a proposed change in land use (different land use than anticipated in the Reuse Plan, as defined in Section C.3.37) by the Recipient;
(iii) enforcement of, or reasonable cooperation in connection with enforcement of, applicable provisions of any Environmental Insurance Policy available to cover costs for remedial actions within the scope of coverage;

(iv) additional obligations and responsibilities pursuant to Sections C.4.1.7 and C.4.1.14.1.

(v) continuing indemnification obligations under Section C.4.1.8.

4.1.16 Regulatory Response Costs

4.1.16.1 The Recipient shall be responsible for reimbursing the USEPA and DTSC for Regulatory Response Costs incurred by the USEPA and DTSC, as required by the AOC, incurred on or after the Effective Date.

4.1.16.2 Requests for additional funds for Regulatory Response Costs may be made by the Recipient and should be submitted at the time the Recipient recognizes a need for additional funds. Fair and reasonable cost overruns by USEPA and DTSC for Regulatory Response Costs will be paid by the Army. This is contingent upon approval of the overruns in question by the Grants Officer.

4.2 Obligations of the Army.

4.2.1 Oversight of the ESCA Implementation. In addition to the Army's agreement to fund the Recipient's performance of the Environmental Services, subject to Section C.4.1.15, in accordance with the TSRS, the Army shall review, comment, and/or approve all drafts of the Proposed Plans, Records of Decision, and documents required pursuant to the AOC in accordance with the process outlined in subparagraph 3.1 of the TSRS. The Army will provide comments within 14 days of receipt of draft Proposed Plans and Records of Decision from the Recipient. For documents required pursuant to the AOC, the Army will provide comments within 21 days of receipt of such documents. The Army may request additional time to review the documents if necessary. In addition, the Army will review and provide comments, if any, on all proposed amendments to the AOC. The Army will review the documents mentioned above to ensure that the remedies to be implemented by the Recipient are consistent with CERCLA, the NCP and other applicable laws and/or regulations to the degree needed to ensure the CERCLA requirement that all necessary remedial action is taken on the ACES. The Army reserves the right to invoke dispute resolution as provided in Section D.9 to ensure such consistency. Document reviews by the Army shall be consistent with the requirements outlined in the TSRS. Draft documents may be monitored through the quarterly report process specified in subparagraph 3.1 of the TSRS.

If, prior to Site Closeout, the Recipient proposes a modification to or termination of land use controls for a site, and the Army has comments or concerns with such modifications or termination, the Army shall provide written notice to the Recipient. The Recipient and the Army shall confer and negotiate in good faith to resolve any disputes concerning the proposed modification or termination. Any comments or concerns still in dispute thirty (30) days after Recipient's receipt of the above written notices shall be resolved under the dispute resolution set forth in Section D.9 of this Agreement.

4.2.2 CERCLA Covenant. The Army shall issue the warranty ("CERCLA Warranty") required by Section 120(h) of CERCLA ("CERCLA Section 120") within 60 days of the Recipient providing a written request to the Army for the issuance of the CERCLA Warranty, provided that such written request includes documentation approved by USEPA under the AOC establishing that Site Closeout has been achieved for the applicable portion(s) of the ACES. The Army agrees to provide a CERCLA Warranty for portions of the ACES as Site Closeout is achieved with the respect to these portions, and shall release by deed to the Recipient or any subsequent title holder any land use restrictions no longer required at the time each CERCLA Warranty is provided. To the extent new legal descriptions must be prepared in order for a CERCLA Warranty and deed to be recorded, the Recipient shall bear the costs of preparing such legal descriptions.

4.2.3 **Obligations Under CERCLA**. The Army recognizes its obligations and responsibilities under CERCLA Section 120, except for those actions that constitute the performance of Environmental Services by the Recipient hereunder and as otherwise provided in Section C.4.1.15 in this Agreement. For purposes of CERCLA Section 120, Recipient's or any successor, assignee, transferee, lender, lessee or respective contractor (collectively "Transferee"), potential or actual future status as operator or owner of the ACES will not relieve the Army of its obligations hereunder and under CERCLA Section 120 except to the extent the activities of the Recipient or Transferee cause a release or a threatened release of a hazardous substance, pollutant or contaminant resulting in response costs to the Army.

4.2.4 **Access**. The Army shall, upon request, promptly provide the Recipient and any party performing Environmental Services with all rights to access onto or into any real property, buildings or equipment for which the Army has legal authority to provide such rights, and with all rights to conduct any activities necessary to perform the Environmental Services upon such real property, buildings or equipment for which the Army has legal authority to provide such rights. The Army may condition the provision of such rights on restrictions on the time and manner of access and conduct of activities, provided that such restrictions do not unreasonably delay or interfere with the performance of the Environmental Services.

4.2.5 **Liability**. If the death of or injury to any person, or the loss of or damage to any property, is caused by the Government in the course of its use of the ACES or in the performance by the Government of Army Obligations hereunder, the liability, if any, of the Government therefore shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act (28 U.S.C. Section 2671, et seq., as amended) or otherwise provided by law.

4.2.6 **Army Indemnification**. Except as provided in Section C.4.1.8, the Army recognizes its obligation to hold harmless, defend, and indemnify the Recipient and any successor, assignee, transferee, lender, or lessee as provided for and limited by Section 330, and to otherwise meet its obligations under the law in this Agreement with regard to the ACES.

4.2.7 The Army shall take all necessary actions required hereunder and under applicable law with respect to Army Obligations, and shall take all actions required hereunder to fulfill its responsibilities under 42 U.S.C. 9620(h). For Army Obligations under the TSRS, the Army will timely:

1. Assess, inspect, investigate, study, and remove or remediate, as appropriate, the release of a hazardous substance, pollutant, or contaminant, from or on the ACES; and

2. Settle or defend any claim, demand, or order made by federal, state, or local regulators or third parties in connection with any release of a hazardous substance, pollutant, or contaminant from or on the ACES; and

3. The Army will make diligent efforts to identify and initiate actions within thirty (30) days after receiving notice from the Recipient pursuant to Sections C.4.1.3 and C.4.1.4. In the alternative, the Parties may amend this Agreement or enter into an additional agreement by which the Army will provide funds to the Recipient to enable the Recipient to take such actions, subject to Sections D.8. and D.9.

4.2.8 In performing environmental cleanup activities hereunder, the Government shall minimize interference with the use of the ACES by the Recipient and its successors, assigns, transferees and tenants to the extent practicable. The Government assumes no liability for any interference with the use of the ACES that may be caused by environmental cleanup activities, and the Recipient shall have no claim against the Government for any such interference. However, to the extent permissible under Federal rules and regulations,

the Government shall require that its contractors have general liability insurance for their negligent acts and errors and omissions insurance.

4.2.9 The Army has provided and shall provide project-related data and documentation contained in the administrative record to the Recipient upon conveyance of title to the Recipient. This data includes, but is not limited to the following: soil boring logs; test pit logs; monitoring well construction details/logs; test results; chemical analytical data for all media; data validation reports; land survey reports, documents of soil boring, monitoring well, removal action and other pertinent physical locations; field logbooks; meeting notes; relevant regulatory agency correspondence, documents required to compile full and administrative record for all reasonably requested investigation, cleanup, and reporting commenced prior to the effective date of this Agreement. The date for providing such data will be agreed upon by the Parties. The Recipient may also request that the Army provide additional information concerning site conditions for the ACES and if such information is reasonably obtainable without significant cost and releasable by the Army in accordance with applicable law, the Army shall provide reasonable access to such requested information to the Recipient within thirty (30) days of the Recipient's written request for such information, or as soon as is reasonably possible thereafter. Allocation of extraordinary reproduction and search costs shall be governed by the Freedom of Information Act and its implementing regulations and polices. The Recipient and the Army agree that if any of the documents identified above are missing and those documents are required to achieve Site Closeout, the Army will use diligent efforts to locate such documents and provide access to them promptly to the Recipient.

4.2.10 The Army will perform the Army Obligations, and its obligations under 4.2.1, in a manner that will not unreasonably delay the Recipient's performance of Environmental Services.

4.2.11 Wherever the terms of this Agreement provide for approval by the Army, such approval shall not be unreasonably withheld or delayed, and, at minimum, shall be provided within approval timelines under the AOC, as applicable.

4.2.12 With regard to Army Obligations hereunder, the Army will reasonably provide to the Recipient copies of any and all documents submitted to the USEPA at the same time said documents are submitted to USEPA. The Recipient shall have the right, hereunder, to review and comment on these documents.

4.3 Insurance and Related Liability.

4.3.1 General Liability. The Recipient shall either self-insure or shall carry and maintain general liability insurance, to afford protection with limits of liability in amounts approved from time to time by the Army, that meet the minimum requirements set forth in Section 3.4 of the TSRS.

4.3.2 Environmental Insurance. The Recipient shall obtain, carry and maintain environmental insurance through the Environmental Insurance Policies that meet the requirement set forth in Section 3.4 of the TSRS.

4.3.2.1. Army Contingent Funding. The Army will provide Army Contingent Funding to the Recipient only upon the occurrence of the following: (i) the Recipient has exhausted all funds in the Notional Commutation Account; and (ii) the Recipient has, in addition to (i), exhausted the full amount of the Limit of Liability under the Cost Cap Policy, which equals $128,000,000. Once these expenditures have occurred, the Army will pay Army Contingent Funding in the Amount of Direct Costs (as defined in the Cost Cap Policy but only if such Direct Costs would have been owed under the Cost Cap Policy if the Limit of Liability had not been exhausted) for matters within the scope of the TSRS to achieve Site Closeout. Army

Contingent Funding shall not exceed $15,000,000. The Army Contingent Funding obligation accrues only until the Recipient achieves Site Closeout for Environmental Services.

4.3.3 Worker's Compensation. If and to the extent required by applicable law, the Recipient will either self-insure or carry and maintain worker's compensation or similar insurance in form and amounts required by law. Any such insurance policy will provide a waiver of subrogation by the Recipient of any claims the Recipient may have against the Army, its officers, agents, or employees except for those asserted by third parties in their own right. In no circumstances will the Recipient be entitled to assign to any third party rights of action that the Recipient may have against the Army.

4.3.4 General Liability Policy Provisions. All general liability insurance which the Recipient carries or maintains or causes to be carried or maintained pursuant to this Section C.4.3 will be in such form, for such amount as specified above, for such periods of time and with such insurers as the Army may approve, which approval shall not be unreasonably withheld or delayed. All policies issued by the respective insurers for general liability insurance required by this Agreement will provide that no cancellation will be effective until at least thirty (30) days after receipt by the Army of written notice thereof; and provide a waiver of subrogation by the Recipient of any claims the Recipient may have against the Army, its officers, agents, or employees. In no circumstances will the Recipient be entitled to assign to any third party rights of action, which the Recipient may have against the Army.

4.3.5 Delivery of Policies. The Recipient will provide to the Army a certificate of insurance evidencing the insurance required by the Recipient and will also deliver, no later than thirty (30) days prior to cancellation or the expiration of any such policy, a certificate of insurance evidencing coverage for the same risks.

5. GENERAL PROVISIONS.

5.1 Term of Agreement.

5.1.1 Notwithstanding anything to the contrary in this Agreement, the obligations of the Parties herein are triggered only upon the occurrence of the Effective Date.

5.1.2 This Agreement shall remain in effect in accordance with B.2 subject to earlier termination pursuant to Section D, or extension pursuant to Section B.

Any requests, obligations, duties or costs relating to or arising from a change in planned land use is not the responsibility of the Army, and are instead the responsibility of the Recipient or the then current owner.

5.1.3 The obligations of the Parties that shall survive the term of this Agreement, identified in Section B.2, shall include but are not limited to the following:

1. the obligations of the Recipient to maintain compliance with the deed provisions, all environmental decision documents, Site Closeout requirements, and the land use covenants as required under the AOC, and compliance with any applicable Long-Term Obligations;

2. the Recipient's obligations to perform the Environmental Services associated with Unknown Insured Conditions; and

3. the Recipient and Army Obligations under Sections C.4.1.1, C.4.1.7, C.4.1.8, C.4.1.14, C.4.1.15, C.4.2.1, C.4.2.3, C.4.2.6, C.4.3, and Section D.

5.2 Successors and Assigns.

5.2.1 The Recipient shall remain liable for performing its obligations under this Agreement, without regard to the potential for portions of the ACES to be transferred to future owners or tenants, in furtherance of the Site redevelopment objectives for the ACES and without regard to the possible transfer of portions of the Recipient's liability under the AOC. Nothing in this Agreement shall be construed to authorize the Recipient to assign any of its responsibilities or obligations under this Agreement or all or substantially all of the Recipient's obligations under the AOC to a third party without the prior approval of the Army or make any subsequent owners or occupants of the ACES a successor or assign under this Agreement. All obligations and covenants made by the Parties under this Agreement will bind and inure to the benefit of any successors and assigns of the respective Parties, whether or not expressly assumed by such successors or assigns, and may not be assigned in whole or in part without the written consent of the other party.

5.2.2 In accordance with California statutory process under the Cortese-Knox-Hertzberg Local Government Reorganization Act, California Gov't Code 56036, *et seq.*, the Monterey County Local Area Formation Commission (hereinafter "LAFCO") shall designate a successor. The Parties agree that the designated successor shall be a municipal entity that should be able to meet the financial and technical obligations and responsibilities required under this Agreement and the AOC. The Parties understand that for the purposes of the AOC, the Recipient will exercise best efforts to secure acceptance by USEPA of the LAFCO designation of the successor.

The successor in interest will be limited to one of the following municipal entities:
1. Monterey County
2. Seaside
3. Marina

4. A Joint Powers Agency if created under California law for the purpose of succeeding FORA's obligations, liabilities, and duties.

5.2.3 The Parties agree that if the FORA dissolves or terminates, the designated successor shall become the Recipient hereunder, and shall assume all liabilities, obligations and responsibilities under this Agreement regardless of whether there is Finding of Default under the AOC due to the Recipient's inability to obtain USEPA's acceptance of the designated successor to the Recipient under the AOC.

5.3 **Severability**. If any provision of this Agreement is held invalid, the remainder of the Agreement will continue in force and effect to the extent not inconsistent with such holding.

5.4 **Waiver of Breach**. No Party shall be deemed to have waived any material provision of this Agreement upon any event of breach by the other party and no "course of conduct" shall be considered to be such a waiver, absent a writing expressly waiving such a provision.

5.5 **Notices**. Any notice, transmittal, approval, or other official communication made under this Agreement will be in writing and will be delivered by hand, facsimile transmission, electronic mail, or by mail to the other party at the address or facsimile transmission telephone number set forth below, or at such other address as may be later designated:

To the Army:

Department of Army, ACSIM
DAIM-BD (ATTN: COL Edgar Yanger)
600 Army Pentagon
Washington, D.C. 22310-0600

To FORA: Mr. Michael A. Houlemard, Jr.
100 12th St. Bldg. 2880
Marina, CA 93933-6006

5.6 **Representations.**

5.6.1 The Army represents that:

1. it is fully authorized to enter into this Agreement;

2. the Recipient can fully rely on the data provided to the Recipient or its contractors by the Army or the Army's contractors for purposes of performing the Environmental Services and making disclosures required under applicable law; and

3. The information contained in the documents identified in the applicable documents Section of the TSRS, fairly and accurately represents the Army's actual knowledge of the nature and extent of contamination within the ACES.

5.6.2 The Recipient represents that:

1. it is fully authorized to enter into this Agreement; and

2. it enters this Agreement cognizant of the requirements and prohibitions set forth in the Anti-Deficiency Act and that any provision of this Agreement that states or implies that the Army will reimburse the FORA for specific costs incurred are wholly subject to the Anti-Deficiency Act and that the Army's obligations are subject to that law.

5.7 **Conflict of Interest**. The FORA shall ensure that its employees are prohibited from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others.

5.8 **Access to and Retention of Records**. The Recipient shall afford any authorized representative of the Army, the Department of Defense, or the Comptroller General, or other officially concerned Federal government agency access to and the right to examine all records, books, papers, and documents, including records in automated forms ("Records") that are within the Recipient's custody or control and that relate to its performance under this Agreement. This right of access to records shall not include attorney client communications, attorney work product or other legally privileged documents. The Recipient shall retain all such records intact in such form, if not original documents, as may be approved by the Army or other officially concerned government agency, which approval shall not be unreasonably withheld, for at least thirty (30) years following completion or termination of this Agreement or transfer all such records into Army custody. Access to the Recipient's records will be during normal business hours, and the Army or other officially concerned federal government agency will give the Recipient seventy-two (72) hours prior notice of its intention to examine the Recipient's records, unless the Army or other officially concerned federal government agency determines that more immediate entry is required by special circumstances. The Recipient will have no claim due to such entries against the Army or other officially concerned government agency, or any officer, agent, employee, or contractor thereof.

5.9 **Change of Circumstances**. Each party will promptly notify the other party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect such party's ability to carry out any of its obligations under this Agreement.

5.10 **CERCLA Requirements**. For purposes of 42 U.S.C. Section 9620(h)(3), this Agreement shall not increase, diminish, or effect in any manner any rights or obligations of the Recipient or the Army with respect to the ACES.

5.11 **Officials Not to Benefit**. The Recipient acknowledges that no member or delegate to the United States Congress, or resident Commissioner, shall be permitted to share in any part of this Agreement or receive any benefit that may arise there from.

5.12 **Force Majeure**. The Parties shall perform the requirements of this Agreement except to the extent performance is prevented or delayed by events that constitute force majeure. A force majeure is defined as any event arising from causes which are beyond the control of a party and which cannot be overcome with due diligence, and include but are not limited to war, terrorism, riots, strikes and other labor issues, severe weather, legal action by private citizens or organizations that result in injunctions, acts of God, and Endangered Species Responsibilities as stated in Section C.4.1.14.2, to the extent such events result in delays or cessation of Environmental Services. If either Party disputes whether an event constituting force majeure has occurred hereunder, the dispute resolution set forth in Section D.9 may be invoked.

5.13 **Subcontractors**. LFR, Inc.

-- END OF SECTION C --

SECTION D
GENERAL TERMS AND CONDITIONS (STATE & LOCAL GOVERNMENTS)

1. **FEDERAL STATUTES AND REGULATIONS.** Federal statutes and regulations to include, but not limited to, 32 CFR 33 and DoD 3210.6-R[1], take precedence over all terms and conditions of this Agreement.

2. **ADMINISTRATION AND COST PRINCIPLES.** Applicable to this award, and incorporated herein by reference, are the requirements of the following Office of Management and Budget (OMB) Circulars[2], as of the effective date of the award:

(a) OMB A-87 – "*Cost Principles for State, Local and Indian Tribal Governments*" (Revised 04 May 1995, as further amended on 29 August 1997)

(b) OMB A-102 – "*Grants and Cooperative Agreements with State and Local Governments*" (Revised 07 October 1994, as further amended on 29 August 1997)

(c) OMB A-133 – "*Audits of States, Local Governments, and Non-Profit Organizations*" (Revised 24 June 1997)

3. **CERTIFICATIONS.** By acceptance (signing) of this award or by accepting funds under the award, the Recipient thereby makes the following certifications:

(a) Appendix A to 32 CFR Part 25 regarding debarment, suspension, and other responsibility matters;

(b) Appendix C to 32 CFR Part 25 regarding drug-free workplace requirements; and,

(c) Appendix A to 32 CFR Part 28 regarding lobbying.

4. **AWARD PROVISIONS FOR NATIONAL POLICY REQUIREMENTS.** By acceptance (signing) of this award, or by accepting funds under the award, the Recipient assures that it will comply with applicable provisions of the following national policy requirements (as applicable) with respect to the prohibition of discrimination:

(a) On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DoD regulations at 32 CFR Part 195;

(b) On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 [3 CFR, 1964-1965 Comp.p.229], as implemented by Department of Labor Regulations at 41 CFR Part 60];

(c) On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. § 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR Part 90; and,

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[1] DoD Grant and Agreement Regulations at http://www.dtic.mil/whs/directives/corres/html/32106r.htm

[2] OMB Circulars/Forms at http://www.whitehouse.gov/omb/grants/index.html

(d) On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), implemented by Department of Justice regulations at 28 CFR Part 41 and DoD regulations at 32 CFR Part 56.

5. **RETENTION AND EXAMINATION OF RECORDS.** Retention and access requirements for records shall be as set out at 32 CFR 33.42.

6. **ENVIRONMENTAL PROTECTION.** By acceptance (signing) of this Agreement or accepting funds under this Agreement, the Recipient agrees to comply with applicable Federal environmental laws in undertaking activities on the ACES that are not covered by the Agreement, including:

6.1. The Recipient agrees that its performance under this Agreement, with Equivalent State Compliance, will comply with all applicable Federal, State or local environmental laws and regulations, including but not limited to: the requirements of the Clean Air Act (42 U.S.C § 7401-7671q.) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. § 1318), which relate generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder; the Resource Conservation and Recovery Act of 1976 ("RCRA", 42 U.S.C. § 6901, et seq.); the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA," 42 U.S.C. § 9601, et seq.); and the National Environmental Policy Act of 1969 ("NEPA," 42 U.S.C. § 4321, et seq.); the Clean Water Act (33 U.S.C. 1251-1387); and 40 CFR Part 32.

(a) The Recipient will comply with all existing environmental permits, and the Parties will cooperate with each other in preparation of future environmental permits, as permitted by law, required for the Recipient's compliance under this Agreement.

(b) The Government's rights under this Agreement specifically include the right for Government officials to inspect for compliance with environmental, safety, and occupational health laws and regulations, whether or not the Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections.

(c) The Recipient understands and agrees that there may be future Government activities in support of environmental cleanup or disposal operations for Army Retained Conditions. The Recipient agrees to cooperate to the extent necessary in support of these operations, and will not interfere with or hinder any such operations by the Government.

(d) Conditions or activities giving rise to the liabilities which occurred prior to the onset of this Agreement, and are not a result of, or related to any action, or failure to act, by the Recipient, are not subject to indemnification provisions in Section C. This provision will survive the expiration or termination of this Agreement.

6.2. It will identify to the Grants Officer any impact on flood-prone areas, and provide help that the Grants Officer may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas.

6.3. It will identify to the Grants Officer any impact on underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and assist the Grants Officer in compliance with the Safe Drinking Water Act of 1974 (42 U.S.C. 300h-3).

7. CHANGES.

7.1. Relation to Cost Principles. The cost principles set forth in OMB A-87 – "*Cost Principles for State, Local and Indian Tribal Governments*", contain requirements for prior approval of certain types of costs. These prior approval requirements apply to all Federal Assistance instruments (and subgrants) entered into by the Army. In addition to the prior approvals required under OMB A-87, capital expenditures for equipment, including replacement equipment, other assets, and improvements which materially increase the value or useful life of equipment or other capital assets are allowable as direct costs.

7.2. Budget Changes. Pursuant to 32 CFR 33.30, the Recipient is permitted to re-budget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. Request for prior approval shall be in the same budget format the Recipient used in its application and shall be accompanied by a narrative justification for the proposed revision. The Recipient shall obtain written approval of the Grants Officer prior to initiating:

(a) Any revision which would result in additional Government funding; or

(b) Cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects functions, or activities which exceed or are expected to exceed ten (10) percent of the current total approved budget.

7.3. Programmatic or Scope Changes. Regardless of whether there is an associated budget change requiring approval, the following changes require prior written approval:

(a) Need to extend the period of availability of funds; or

(b) Changes to the TSRS incorporated herein at Section E, Attachment E.1.

(c) Modification to the requirements and/or funding needed for insurance and related liability incorporated herein at Section C.

8. ENFORCEMENT AND TERMINATION FOR CONVENIENCE.

8.1. Remedies for Noncompliance. The Government's remedies for noncompliance are as set forth at 32 CFR 33.43(a).

8.2. Suspension and Termination. The bases for and effects of suspension and termination are as set forth at 32 CFR Part 33. In addition, the Army reserves the right to suspend or terminate this Agreement if 1) the FFA Amendment has not become effective or an Early Transfer for the ACES is not approved by the USEPA or not concurred in by Governor of California, or 2) if the Army does not approve any of the amendments to the AOC.

8.3. Relationship to Debarment and Suspension. The enforcement remedies identified in this section do not preclude the Recipient from being subject to "Debarment and Suspension" under E.O. 12549.

8.4. Termination for Convenience. This Agreement may also be terminated, in whole or in part, only by the Grants Officer with the consent of the Recipient in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated.

9. DISPUTES AND ALTERNATIVE DISPUTES RESOLUTION (32 CFR 22.815). Disputes between the Recipient and the Grants Officer shall be resolved by mutual agreement at the Grants Officer's level, to the maximum extent practicable. Disputes are written demands or written assertions by one of the parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of terms, or other relief arising under or relating to the award, including matters in dispute regarding the performance of Environmental Services under Section C. The dispute shall, at a minimum, contain sufficient information and supporting data to enable the Grants Officer to render an informed decision. Whenever the Recipient submits, in writing, a dispute to the Government, the Grants Officer shall consider the issue(s) and, within 60 calendar days of receipt, either:

(a) Prepare a written decision, which shall include the basis for the decision and shall be documented in the award file; or

(b) Notify the Recipient of a specific date when he or she will render a written decision. The notice shall inform the Recipient of the reason for delaying the decision.

During the dispute process with respect to the portion not in dispute, the Recipient shall proceed diligently with performance of the award, to the extent the Grants Officer continues to certify for payment Recipient's funding requests, pending final resolution of any dispute.

9.1. Alternative Disputes Resolution (ADR). These procedures include settlement negotiations, mediation, and fact-finding. In the event the Recipient decides to appeal the decision the Recipient is encouraged to enter into ADR procedures with the Grants Officer, as set forth herein:

(a) If the Recipient decides to appeal under ADR, it must within 90 calendar days from the date that it receives the Grants Officer's written decision, mail or otherwise furnish to the Grants Officer notice that an appeal is intended using the ADR procedures herein. The appeal shall include a description of the claim or dispute, reference to the pertinent Agreement terms, and a statement of factual areas of agreement and disagreement.

(b) Within 30 calendar days from the date that the Grants Officer is furnished the Recipient's appeal the Grants Officer shall provide all data, documentation, and pertinent information, required for use on a pending appeal to the Department of the Army, Assistant Chief of Staff for Installation Management.

(c) The Assistant Chief of Staff for Installation Management shall review the facts pertinent to the dispute or secure assistance from legal and other advisors and issue a written decision with supporting rationale.

(d) If the Recipient chooses not to initiate an appeal using ADR procedures, it may initiate such formal claims as are authorized by 28 U.S.C. 1491, or other applicable statutes.

(e) In any event, Recipient shall not be required to take or refrain from taking actions, if such would be inconsistent with the results of the dispute resolution process under the AOC.

10. RECIPIENT RESPONSIBILITY. The Recipient has full responsibility for the conduct of the effort supported by this Agreement, in accordance with the Recipient's Application for Federal Assistance (and supporting documentation), and the terms and conditions specified in this Agreement. The Recipient is encouraged to suggest, or propose to discontinue, or modify unpromising efforts.

11. ACKNOWLEDGEMENT OF SPONSORSHIP. The Recipient agrees that in the release of information relating to this Agreement, such release shall include a statement to the effect that: (a) the effort is/was sponsored by the Department of the Army, Assistant Chief of Staff for Installation Management; (b) the content of the information does not necessarily reflect the position or policy of the Government; and (c) that no official endorsement should be inferred. "Information" includes news releases, articles, manuscripts, brochures, advertisements, still and motion pictures, speeches, trade association proceedings, sym6posia, etc.

12. SUBCONTRACTS. Pursuant to 32 CFR 33.36 (a), the Recipient will follow the same policies and procedures it uses for procurements from its non-Federal funds. The Recipient will ensure that every purchase order or other contract includes any clauses required by Federal statutes and Executive Orders and their implementing regulations, as set forth under 32 CFR 33.36 (i) (1) through (13) inclusive.

13. SUBGRANTS. The Recipient shall follow State law and procedures when awarding and administering subgrants (whether on a cost-reimbursement or fixed amount basis), pursuant to 32 CFR 33.37 (a) (1) through (4) inclusive.

14. ALLOWABILITY OF COSTS. Allowability of costs shall be in accordance with 32 CFR 33.22 and 32 CFR 33.23.

15. OFFICIALS NOT TO BENEFIT. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit arising from it, in accordance with 41 U.S.C. § 22.

16. CHANGE OF CIRCUMSTANCES. Each party will promptly notify the other party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect such party's ability to carry out any of its obligations under this Agreement.

17. PROTECTION OF HISTORIC RESOURCES. The Recipient agrees to comply with Section 106 of the National Historical Preservation Act of 1966 (16 U.S.C. 470 (f)), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR 800 and E.O. 11593.

18. PROTECTION OF THREATENED AND ENDANGERED SPECIES AND NATURAL HABITAT. The Recipient agrees that its performance under this Agreement will comply with all applicable Federal, State, and local laws and regulations related to the protection of threatened and endangered species and natural habitat, if any, included but not limited to the requirements of the Endangered Species Act of 1973 (16 U.S,C. § 1531, et seq.) except as provided herein. The Recipient is aware of and understands its obligations to protect and conserve threatened and endangered species and to take all reasonable precautions to protect trees and natural habitat during maintenance and future operations and to restore the ground surface after completion of maintenance or other operations as near to its former condition as may be possible for protection against erosion.

19. HATCH ACT. The Recipient agrees to comply with the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328), as implemented by the Office of Personnel Management at 5 CFR Part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or in part with Federal funds.

20. AFTER THE AWARD REQUIREMENTS.

(a) Closeout, subsequent adjustments, continuing responsibilities, and collection of amounts due are subject to the requirements in 32 CFR 33.50 through 33.52.

(b) Pursuant to 32 CFR 33.50, the Recipient shall submit, within 90 calendar days after the date of expiration of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Grants Officer may approve extensions when requested by the Recipient.

21. MODIFICATION OF AGREEMENT. The only method by which the Agreement can be modified is through formal, written modification, initiated by the Grants Officer on behalf of the Government. No other communications, whether oral or in writing, shall be binding on the parties.

--- END OF SECTION D ---

SECTION E

ATTACHMENTS

NO.	ATTACHMENT/EXHIBIT DESCRIPTION	PAGES
E.1.	Attachment E.1. **Technical Specifications and Requirements Statement**	
E.2.	Application for Federal Assistance (SF 424) **And Budget Information (SF 424B)**	

---ATTACHMENTS FOLLOW ---

ATTACHMENT E.1

TECHNICAL SPECIFICATIONS AND REQUIREMENTS STATEMENT

1.0 INTRODUCTION

In accordance with the terms of this Environmental Services Cooperative Agreement (ESCA), this Technical Specifications and Requirement Statement (TSRS) provides the U.S. Department of the Army's (Army) general specifications for the Fort Ord Reuse Authority (FORA) to conduct the environmental services, address environmental scheduling and regulatory issues, and assume liability and responsibility for Site Closeout of the Areas Covered by Environmental Services (ACES), as defined in Section C.3.3 ESCA and identified in Appendix 1. The Army intends to transfer the ACES to FORA via a Deed with Finding of Suitability for Early Transfer (FOSET).

The environmental services will be performed in conjunction with the redevelopment of the ACES and in accordance with the Administrative Order on Consent (hereinafter "AOC"), CERCLA Docket Number 09-2007-03, between FORA, USEPA, and DTSC, to achieve Site Closeout as defined in Section C.3.38 of the ESCA. Implementation of the AOC will also satisfy the remedy requirements of CERCLA, the NCP, and other applicable environmental laws and regulations regarding remediation of the ACES. The Army will provide funding for the environmental services required, as provided for in the ESCA and this TSRS. The mechanism for funding these services is the ESCA.

1.1 Background

As provided in Section C.4 of the ESCA, the FORA will conduct certain investigation and cleanup efforts at the ACES and the Army will provide the appropriate level of oversight. The Army's involvement in the cleanup of the ACES will be limited to the scope of the ESCA and this TSRS. This document is meant to support and be consistent with the ESCA. If inconsistencies are found between this TSRS and the ESCA after the ESCA has been signed, the ESCA shall control. If inconsistencies are not resolved after referring to the ESCA, the parties will work toward a resolution, in accordance with Section D.9 of the ESCA.

1.2 Early Transfer and Cooperative Cleanup

The Army and FORA intend to complete an early transfer of the ACES so that FORA can obtain title to the property requiring MEC remediation. Not all parcels included in the Early Transfer require additional characterization and/or remediation for MEC. FORA's responsibilities for the ACES is described in the ESCA and in the Remedial Activities Table. The ACES are shown on the maps included in Appendix 1. The Remedial Activities Table lists those environmental sites of the ACES requiring MEC remediation and/or investigation by the FORA and generally describes the activities that will be accomplished for each of the sites. Activities described in the Remedial Activities Table may be modified by FORA pursuant to the AOC, as long as said modifications do not affect FORA's ability to achieve Site Closeout under the amount funded in the ESCA. Activities described in the Remedial Activities Table will be undertaken in conjunction with redevelopment activities where the opportunity exists.

In conjunction with the early transfer, the FORA and the Army chose to pursue a process whereby the FORA assumes the responsibility for the environmental services under the ESCA. The Army, as the former federal landholding agency, will meet its obligations under CERCLA and other applicable laws and regulations by providing the funds required via the ESCA and overseeing the completion of the environmental services necessary for Site Closeout in conjunction with the AOC and ESCA. In accordance with its responsibilities, the Army shall remain involved, will provide appropriate program oversight of the cleanup efforts at the ACES, to include document review as specified in Section C.4.2 of the ESCA, and will grant covenants under CERCLA section 120(h)(3)(A)(i)(II) (deferred CERCLA covenant) in accordance with Section C.4.2.2 of the ESCA.

1.3 Applicable and Relevant Documents – Lists of applicable and relevant documents are attached as Exhibit A of this TSRS. Applicable and relevant documents are not limited to those listed in Exhibit A; see Fort Ord Administrative Record and Fort Ord Military Munitions Response Program (MMRP) Database for additional information that may be applicable and/or relevant. Other applicable or relevant and appropriate documents include the publicly available Installation-Wide Multispecies Habitat

Management Plan and biological opinions, including the Installation-Wide Multispecies Habitat Management Plan (HMP), the East Garrison – Parker Flats Land Use Modifications Assessment (May 2002) and associated Memorandum of Understanding signed December 2005, and biological opinions 1-8-99-F/C-39R, 1-8-01-F-70R, and 1-8-04-F-25R.

2.0 TECHNICAL SERVICES REQUIRED

2.1 Task Description

The major component activities of this TSRS are outlined below.

1. Project management
2. Site Investigation and Monitoring
3. Specific Tasks for Munitions and Explosives of Concern (MEC)
4. Natural Resources Trustees Coordination & Damage Claims
5. Regulatory Requirements
6. Environmental Insurance
7. Remedy Implementation
8. EPA Certification of Completion
9. Public Involvement
10. Period of Performance
11. Submittal of Documents and Project Schedule

FORA shall provide the necessary qualified and licensed personnel, equipment, and resources to successfully execute the MEC investigation and/or remediation of parcels described in the Remedial Activities Table in accordance with the ESCA and AOC. Project activities and responsibilities are outlined in the following sections and additional details on project activities listed below are found in Section 3 of this TSRS. This TSRS more fully specifies the environmental services FORA will conduct under the ESCA on behalf of the Army. Nothing in this TSRS shall limit the FORA from conducting environmental activities that vary from those activities specified in this TSRS provided such activities are coordinated with the Army, consistent with the ESCA, and ultimately

achieve Site Closeout from EPA. The ultimate requirement is to achieve Site Closeout so that the Army may grant the deferred CERCLA covenant.

2.1.1 Project Management

The complexity, magnitude, and unique nature of the cleanup at the environmental sites of the ACES requires coordination of project activities to ensure that stakeholders are kept informed of the project status, existing or potential problems, and any changes that may be required to prudently manage the project. Project stakeholders include the Department of the Army Base Realignment and Closure (BRAC) Division (BRACD), U.S. Environmental Protection Agency (EPA), Region IX, and the California Department of Toxic Substances Control (DTSC). FORA will use the AOC to guide the cleanup of the ACES in conjunction with redevelopment while ensuring consistency with remedial requirements of CERCLA, the NCP, and other applicable environmental laws and regulations. To ensure that the remedy requirements of CERCLA and the NCP are being met, the Army shall consult with FORA, review and comment on documents, and review for concurrence any revisions, modifications, or amendments to the AOC or decision documents as required in Section C.4.2.1 of the ESCA.

FORA shall maintain a project repository, as well as provide copies to the Army in order for the Army's maintenance of the Administrative Record as required by CERCLA, the NCP, and other applicable laws and regulations. FORA shall also prepare and submit quarterly progress reports (as defined in Section 3.1) to the Army that document technical progress to date, depict upcoming work, and describe any technical issues confronted with successful or proposed solutions. Finally, FORA shall hold conference calls, as defined in Section 3.3, with the Army representative on an as-needed basis as determined by the Army to discuss the progress of the cleanup of the ACES and the status of ongoing documents/reports being reviewed by the Army representative. The Army representative shall be the BRAC Environmental Coordinator, or her designated successor. Additional details on the project management responsibilities are found in Section 3.1 through Section 3.3 of this TSRS.

2.1.2 Site Investigation and Monitoring

FORA shall conduct any additional site investigation, including sampling and analysis that

may be necessary to delineate areas requiring remedial actions in accordance with the AOC and ESCA. As additional delineation or other site characterization work is completed during the period of performance, the FORA shall record any changes needed to the necessary documents (e.g., remedial design documents and AOC) and provide changes to the Army for review in accordance with the procedures specified in the ESCA Section C.4.2.1. To the extent additional site investigation results in additional decision documents, independent of the AOC, the Army will review for concurrence, in order to ensure consistency of any remedial actions with CERCLA, pursuant to the review procedures set forth in Section C.4.2 of the ESCA.

Prior to the end of the Period of Performance, discussed in Section 2.1.11, FORA shall implement, to the extent required by the AOC and the ESCA, a plan to meet Long-Term Obligations pursuant to Section C.4.1.15.4(i) of the ESCA. This plan will provide for the implementation of the Long Term Obligations, including without limitation, ongoing remediation activities required under the AOC. In addition, FORA shall prepare monitoring reports and effectiveness reports as required by the AOC, and submit copies of the plans and reports to the Army representative. The Army shall review and comment on such plans and reports in accordance with the Army oversight procedures specified in Section C.4.2 of the ESCA.

2.1.3 Specific Tasks for Munitions and Explosives of Concern (MEC)

In accordance with the ESCA, FORA will:

(1) Achieve Site Closeout pursuant to the requirements of the AOC and the following:

(a) DOD 6055.9 STD DOD Ammunition and Explosives Safety Standards, 5 October 2004.

(2) FORA will incorporate and implement the Habitat Management Plan (HMP) and Army Biological Opinion (ABO) requirements into the ESCA remedial actions. Implementation includes a full-time on-site biologist, pond sampling, vegetation monitoring and reporting, and weed/erosion control.

(3) Submit an Explosive Safety Submission (ESS) and any required explosives safety site plans through the U.S. Army Technical Center for Explosives Safety (USATCES) to the Department of Defense Explosive Safety Board (DDESB) for approval, in accordance with the Army oversight procedures specified in Section C.4.2 of the ESCA, prior to conducting any munitions response, and to provide after-action reports, once the munitions response is completed.

(4) Work closely with identified DoD representatives in conducting the munitions response.

(5) Participate in, and coordinate with the Army's MEC Awareness Safety Education Program to educate the public of the dangers presented by unexploded ordnance.

(6) Implement, administer, and enforce the land use controls contained in the CRUPs. Such implementation and administration of land use controls may be evidenced by the filing by FORA with EPA, DTSC,and the Arm y, of an annual compliance report. This report shall certify, after inspection, that all components of land use controls are in place, and reporting any apparent violations of the land use controls, and describing actions, if any, taken in response to such violations. The annual reports shall be filed within thirty (30) days of the anniversary date of the filing of the CRUPs containing the land use controls in the real property records of Monterey County. FORA shall submit annual compliance report so long as the CRUPs continue to exist.

2.1.4 Natural Resources Trustees Coordination and Damage Claims

FORA shall also be responsible for complying with the requirements outlined in CERCLA Section 104(b)(2) regarding the notification of, and coordination with, appropriate federal, state or Tribal Natural Resource Trustees, to request input and information on releases and proposed cleanup responses. Although the Army will undertake any official discussions with Natural Resource Trustees, FORA shall assist the Army in efforts to resolve Trustee concerns during implementation of any remedial activities under the AOC. FORA is not

responsible for any Natural Resource Damage claims brought due to contamination and releases that occurred historically (i.e., prior to transfer to FORA) or for releases or contamination from Army activities or operations that occur after transfer. Pursuant to the terms of the ESCA, FORA is responsible for any Natural Resource Damage claims to the extent arising from, caused or contributed to by the actions of FORA.

2.1.5 Regulatory Requirements According to the AOC

The FORA shall be responsible for negotiating with EPA and DTSC to achieve Site Closeout, pursuant to the AOC and the ESCA. Any modifications to the AOC shall be coordinated with the Army.

2.1.6 Environmental Insurance

In order to prevent delays in the cleanup and to protect FORA and the Army from Unknown Conditions, as defined in the ESCA, encountered during the cleanup of the ACES, FORA will obtain Environmental Insurance meeting the requirement set forth in Section 3.4 of this TSRS.

2.1.7 Remedy Implementation

FORA shall utilize the funds provided under the ESCA to conduct the tasks outlined here and to implement remedial actions required by the AOC. FORA shall ensure that all remedial activities are performed in accordance with the terms of the above documents and in support of the reuse specified in the reuse plan map prepared by FORA as approved by the governing board of the FORA in June 1997 (the "Reuse Plan"). FORA is responsible for all additional costs associated with a change in reuse from the Reuse Plan. All changes in land use from the Reuse Plan that increase the amount or scope of remedial activities on the environmental sites of the ACES, or compromises the effectiveness of the CRUPs or land use controls found in the AOC, and/or requires the modification, variance, or termination of such restrictions, shall be at the sole expense and responsibility of FORA. If such a change is planned, FORA shall notify the Army representative before proceeding with any of its associated obligations under the AOC. Regardless of any changes in reuse,

FORA must ensure that all remedial activities contemplated for the environmental sites of the ACES meet the remedy requirements of CERCLA.

FORA shall be responsible for developing documents associated with the remedial actions to achieve Site Closeout as described in the AOC. If additional remedial action is necessary as a result of changes to the AOC, the Army will review the same in accordance with the procedures specified in Section C.4.2.1 of the ESCA.

The Army has followed the CERCLA Site Investigation (SI), Remedial Investigation/Feasibility Study (RI/FS) and Engineering Evaluation/Cost Analysis (EE/CA) processes in the prior characterization of environmental conditions and analysis of remedial action alternatives of the ACES. Natural resource and ESA data has also been collected to support these CERCLA processes. Site characterization and biological data are available in the various reports referenced in Exhibit A herein, Administrative Record and MMRP Database. The site characterization data, where available, has been used in evaluating various remedial alternatives and site-specific activities summarized in the Remedial Activities Table. The remedial actions and/or land use controls for the ACES will comply with the AOC, CERCLA, the NCP, and other applicable laws and/or regulations and will be protective of human health and the environment.

2.1.8 Residential Quality Assurance

During development of the ESCA for the Fort Ord parcels, the regulatory agencies expressed concern with the adequacy of the Army's efforts to achieve regulatory acceptance of parcels that had been cleared with the best available and appropriate detection technologies. This concern is attributable to the potential for small but possibly hazardous items remaining just below the capability of instrument detection and yet close enough to the surface to pose a threat to the future residents. In an effort to satisfy regulatory concerns, a process has been developed which will allow the regulators to gain comfort with the acceptability of a parcel for residential use (hereinafter referred to as the residential quality process {RQA}). The process will be followed at selected sites within the ACES and presented to the regulators, with an objective of demonstrating that the RQA achieves no significant improvement over the Army's efforts and should not be continued at remaining sites. This process (to be documented in CERCLA project

documentation) is briefly explained in Appendix 2. The exact details and procedures will be detailed in project work and safety plans.

2.1.9 Certification of Completion of Remedial Action

Following completion of remedial activities, FORA shall develop a final report for the Certification of Completion of Remedial Action as specified in the AOC. The final report shall include the information required by the AOC. FORA shall determine if it is more suitable to develop one site-wide report or several reports corresponding to the environmental sites of the ACES. These reports shall include the information required by the AOC and evidence of EPA's written concurrence as to the completion of all Environmental Services excluding Long-Term Obligations required for the area(s) covered by the reports.

2.1.10 Public Involvem ent

The opportunity for public involvement is essential for obtaining community input and maintaining community understanding and support for the cleanup actions on the ACES. FORA shall be responsible for notification to, involvement with, and solicitation of input from the public as required by the AOC, CERCLA, and the NCP, in coordination with the Army. Additionally, the Army will continue to be involved with other property on Fort Ord not affected by this early transfer and will require coordination of Public Involvement activities. FORA will provide, in timely fashion, pertinent information regarding its public involvement activities associated with the cleanup actions of the ACES, to the Army, in order for the Army to meet its site-wide community relations requirements under the Community Relations Plan, CERCLA, and the NCP. FORA will be responsible for, in close coordination with the Army, initiating, coordinating, and scheduling necessary public activities relating to the remedial activities on the ACES as required under the AOC, including developing briefings, presentations, fact sheets, developing additional statements of work for performing remedial actions of the ACES, taking meeting minutes, legal notices, public meetings, and sending articles to news media after coordination with the EPA and DTSC, if necessary. FORA shall also comply with other requirements for public participation as prescribed under the AOC.

2.1.11. Period of Performance

The period of performance for this TSRS is as follows:

Start Date: March 30, 2007

End Date: March 29, 2037

Any variation or modifications to this TSRS must be made in accordance with Section D.7 and D.21 of the ESCA and in coordination with the Army.

2.1.12. Submittal of Documents and Achievement of Project Schedule

To the extent required by the AOC and the ESCA, FORA will develop the RI/FSs and prepare drafts for the Proposed Plans and RODs to achieve remedy selection; FORA will develop all reports as required under the Remedial Design Work Plan and Remedial Action Work Plan to implement the remedy for each site as described in the AOC.

FORA will be responsible for assuring that the milestones and deliverables referenced in Section E.2.1.11 above, in conjunction with the remediation schedule, which will be set forth in the AOC, are met. The Army representative shall be responsible for verifying that milestones are met and shall also be responsible for reviewing and all documents/reports submitted to the Army, in a timely manner to support the milestones.

FORA shall provide Army representative with and a copy of GIS data and two copies and one electronic copy of all documents/reports described in this TSRS, to include but not limited to general remedial documents, drafts of decision documents, and proposed amendments to the decision documents and to the AOC. The Army representative shall have the right to review and provide comments on all the documents/reports listed above.

If the Army has comments or concerns, the Army will notify FORA, within a reasonable time period, and discuss the concerns and comments and attempt to find mutually agreeable resolution. If a mutually agreeable solution is not reached within 15 working days of the commencement of discussions between the FORA and the Army, the Parties reserve the right to recommend to the Army Grants Officer that the dispute or alternative dispute resolution process, as described in Section D.9 of the ESCA, be initiated.

The Army representative shall take no more than 14 days to review draft Proposed Plans

and Records of Decision and 21 days to review and comment on all other documents required under the AOC. The Army's review and comment will be completed and provided to FORA before FORA submits such documents to the EPA. In those instances, where several or a few voluminous documents are provided to the Army at the same time, the Army and the FORA shall agree upon a reasonable period in which the Army can review and provide comments back to FORA. The Army's review of the documents/reports shall be limited to the following scope:

- To ensure consistency with the ESCA and CRUPs
- To ensure consistency with CERCLA, the NCP, and any requirements applicable to Non-CERCLA environmental services
- To ensure that ESCA funds that have been spent or that will be spent are in compliance with the Scope as defined in Section C.2.3 of the ESCA and the Environmental Services as defined in Section C.3.22 of the ESCA.

FORA shall be responsible for completing the following major tasks prior to the ESCA termination:

- Complete all required documentation, investigation, design and remedial activities in the ACES, as required by the AOC;
- Forward all reports and other documentation as required under the AOC for review by the Army Representative;
- Upon completion of the remedial actions for the ACES pursuant to the AOC, forward all reports and make any other documentation requested by the Army available for review by the Army Representative; and
- Following the completion of all Environmental Services, excluding Long Term Obligations, pursuant to the AOC, submit proof of Site Closeout by (1) Obtaining EPA's Certification of Completion of the Remedial Action for such portion(s) of the ACES, and (2) submitting a Statement of Removal of MEC to the DDESB for property known or suspected to contain MEC,

FORA shall submit all deliverables as outlined in the AOC and Section E.2.1.11 of this

TSRS to the Army for review. The Army Representative shall be responsible for verifying that deliverables are submitted and shall also be responsible for reviewing documents/reports submitted to the Army in a timely manner to support the project schedule, concurrent with regulatory review and schedules. The Army reserves the right to obtain professional assistance, at its own cost, to review documents and reports that FORA submits to the Army. In addition, if the Army Representative deems it necessary, the Army Representative may access the ACES for purposes of on-site quality assurance and verification of remediation performance in accordance with the ESCA and deed covenant.

3.0 ADDITIONAL INFORMATION

3.1 Project Progress Reports

FORA shall prepare and submit quarterly project progress reports to the Army Representative during the entire period of performance, regardless of whether submission of these reports is required by EPA and/or DTSC, and regardless of whether any substantial remediation activities have occurred at the environmental sites of the ACES. The project progress reports shall address the following topics, as applicable:

- Document technical progress or work completed during the reporting period
- Total ESCA grant funds spent during the previous quarter, and grant funds spent to date.
- Depict upcoming work for the next quarter and the ESCA grant funds needed for the upcoming work.
- Technical or regulatory issues that may impact project schedule.
- When necessary, status of comments submitted by the Army on documents/reports developed by the FORA.
- Status of coordination of MEC-related documents with DDESB.
- Corrective Measures Implementation Reports
- Corrective Measures Effectiveness Reports
- Needed Notifications in accordance with the ESCA
- Changes to the AOC
- Summary of public participation activities conducted during the quarter, and planned in the next quarter.
- Project updates to the Coordinated Resources Management Planning (CRMP) meetings

FORA can modify or adapt those progress reports that may be submitted to EPA so as to address the topics listed above and satisfy the requirements of both the AOC and Section B.9 of the ESCA. FORA will provide one copy of the Project Progress Report to the

Army Representative within 30 calendar days of the end of each quarter for the Army's distribution to other appropriate parties within the Army. The Army reserves the right to request a follow-on conference call to discuss or clarify issues presented in the Progress Report.

3.2 Project Repository

The Army has maintained the Administrative Record and project repositories of environmental documents at the Installation. The Army is responsible for maintenance of the Administrative Record and Information Repository for the Installation, including the technical documentation and records generated for the ACES prior to and after property transfer. In order to ensure consistency with CERCLA, the NCP, and other applicable laws and/or regulations, FORA shall maintain a project repository for the ACES environmental services at an easily accessible repository in Monterey County or on Fort Ord of project-related environmental remediation information generated after property transfer to FORA. This repository will contain pertinent documentation for project reviews or justification and to provide a clear record of the approach used to achieve the remedial action goals for the environmental sites of the ACES. FORA will also provide these documents in hardcopies and/or electronically to interested public members who requested to receive these documents. The records maintained at the FORA repository will be provided to the Army representative as they are submitted to the EPA and DTSC and will become Army property. FORA shall provide the Army with the original and an electronic file copy of the documents for its records.

3.3 Conference Calls and Briefings

The FORA shall brief the Army representative on an as-needed basis but in no instance more often than monthly on the status of the remediation activities at the environmental sites of the ACES or other concerns regarding the Progress Report or other reports developed during the period of performance. Briefings will be conducted by means of conference calls that FORA shall arrange.

3.4 Environmental Insurance

FORA shall obtain, carry, and maintain Environmental Insurance Policies.

3.5 Amendments to AOC

The Parties acknowledge that the AOC may be amended, and the remedial activities performed at the environmental sites of the ACES may ultimately differ from the remedies identified in this TSRS. Amendments to the AOC and implemented remedial actions must be sufficiently protective of human health and the environment, and will comply with requirements of CERCLA and the NCP, and Site Closeout will be obtained by FORA. The Parties hereby acknowledge and agree that such Amendments are anticipated and acceptable as modifications to this TSRS, provided that FORA complies with the ESCA provisions requiring notice and consultation with the Army regarding such AOC modifications/amendments in accordance with Section C.4.2.1 of the ESCA and Section E.2.1.11 of this TSRS.

4.0 PERFORMANCE MANAGEMENT

4.1 Place of Performance

The place of performance shall be the ACES and at FORA offices, located either on-site or off-site at other local sites.

4.2 Privacy and Security

No special clearance is required for this task.

4.3 Contract Management

4.3.1 Quality Assurance/Quality Control and Health and Safety

FORA shall ensure that appropriate Quality Assurance/Quality Control and health and safety standards and guidelines under applicable law are incorporated into all project activities.

4.3.2 Signatory Authority

FORA shall prepare and author remedial designs, removal action approval papers, and other documents, as required. The Army will sign all CERCLA decision documents associated with the cleanup of ACES. The Army Representative or designated representative will prepare any other Army-required closure documentation.

5.0 GOVERNMENT FURNISHED RESOURCES

The Army shall provide the following resources to FORA (if necessary and available):

- Pertinent records, reports, data, analyses, and information in the currently available formats (e.g., hardcopy, electronic tape, disks, CDs), to facilitate development of a complete and accurate assessment of current, former, and historical site activities and operations; waste generation and contaminant characteristics; parameters of interest; and site environmental conditions.

- Access to appropriate personnel to conduct interviews on Site Operations and activities.

6.0 ARMY CONTINUING RESPONSIBILITIES

The Army has identified certain ongoing Army responsibilities that will continue after the transfer of the ACES. All Army Continuing Responsibilities will be addressed in accordance with the terms and conditions in the Agreement, CERCLA, and the NCP. The following are Army Continuing Responsibilities:

6.1 Endangered Species Act Consultation

Prior to Site Closeout and if FORA is required seek a new biological opinion, the Army will conduct any consultation that may be necessary with the U.S. Fish and Wildlife Service. FORA will provide, in timely fashion, pertinent information regarding its habitat management activities associated with the cleanup actions of the ACES to the Army, in order for the Army to meet its site-wide reporting requirements under the HMP and the federal Endangered Species Act.

6.2 Parker Flats

The Army will complete the Remedial Investigation/Feasibility Study, Proposed Plan, and Record of Decision for the Parker Flats Munitions Response Area, as described in the *Superfund Proposed Plan, Remedial Action is Proposed For Parker Flats Munitions Response Area, Track 2 Munitions Response Remedial Investigation/Feasibility Study, Former Fort Ord, California,* dated February 9, 2007.

6.3 Groundwater Contamination

The Army will address any and all groundwater contamination associated with activity that occurred prior to the transfer of title of ACES at, under, or migrated or migrating to or from the ACES.

6.4 Other Settlement Agreement Obligations

Any and all requirements, obligations, duties, or costs associated with compliance, performance and implementation of all applicable agreements, obligations, promises and covenants previously imposed by any court, administrative or consent order, settlement or consent agreement, or other obligations or agreement of any kind (excluding those

imposed by statute), imposed upon or agreed to by the Army or DoD which affect the performance of the ESCA except those obligations imposed by the following two settlement agreements:

(i) Settlement Agreement between Monterey Bay Unified Air Pollution Control District (the "District") and the United States Army ("Army") and Dept. of Defense ("DOD"), dated May 22, 1998; and

(ii) Settlement Agreement between Plaintiff's Curt Gandy, Patricia Huth, Richard Bailey, Michael Weaver, Edward Oberweiser, Linda Millerick, and the Ft. Ord Toxics Project and the Army and DOD, dated April 28, 2004.

6.5 <u>Basewide Range Assessment</u>

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

6.6 The Army shall be responsible for relocations of residents in the event such are required by the applicable governmental authorities in connection with planned burn activities except to the extent such relocations are the result of improper acts or omissions of the Recipient or its successor in interest.

6.7 The Army shall be responsible for the matters relating to security and fencing in the letter from the Army on these issues dated prior to the Effective Date.

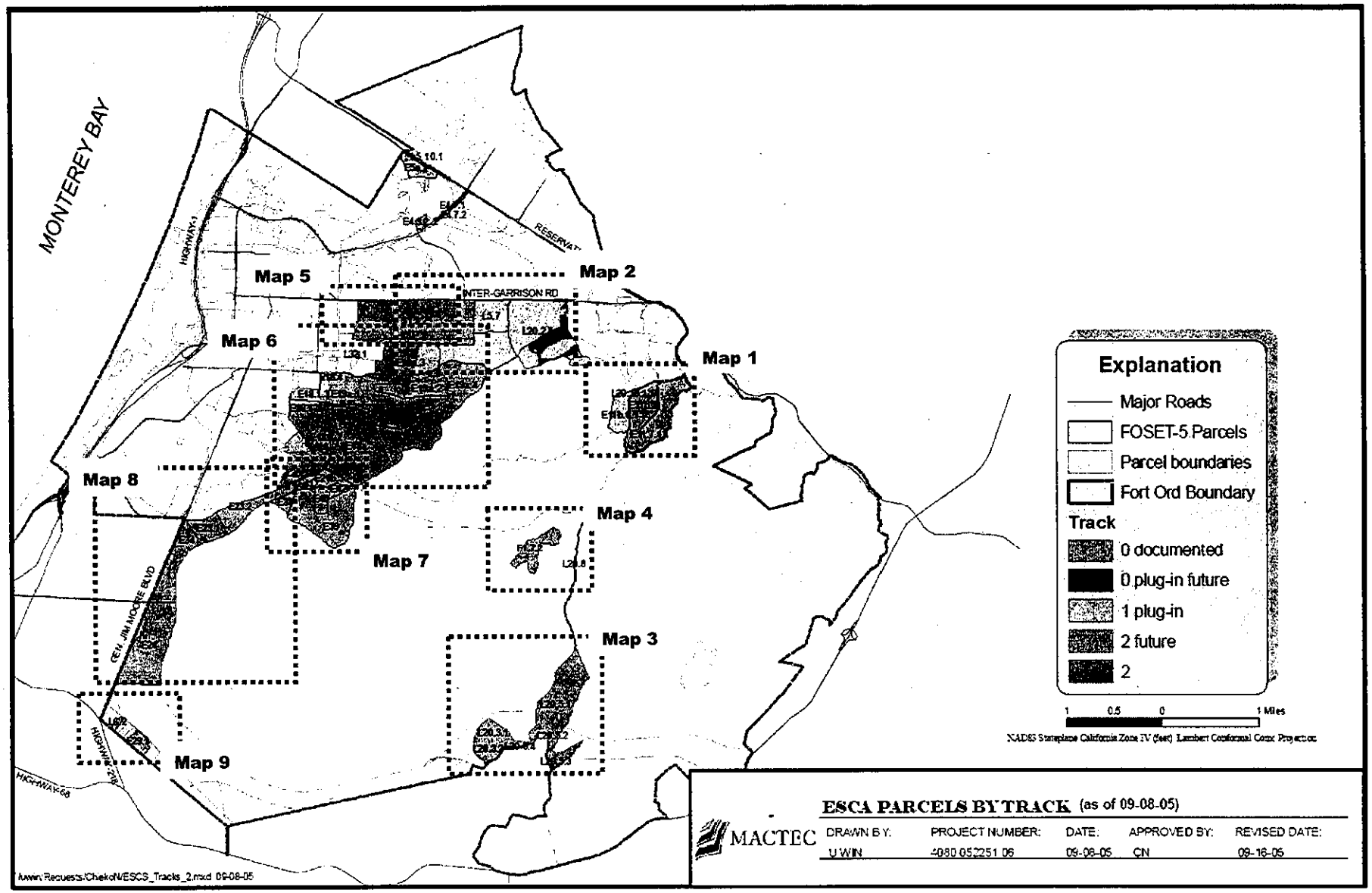
Remedial Activities Table

CLIN	CLIN Title	Parcels	Acres	Description	Proposed Actions*
1	Site-wide	NA	NA	This section addresses requirements relating to all map areas. These may include but are not limited to program management functions, burn mobilization, HMP and ABO mitigation such as California Tiger Salamander mitigation, public meetings, MEC monitoring five year reviews, FORA Team staff relocation, A Base-wide RIFS and ROD has been prepared and documents that hazardous and toxic wastes are not known to exist on the ACES.	All support activities will be performed on an ongoing basis as required. HMP implementation will include a full-time on-site biologist, pond sampling, vegetation monitoring and reporting, and weed/erosion control.
2	Map 8, Seaside	E23.1, E23.2, E24, E34	419	Located in the southwest portion of the ESCA property. Site investigation and MEC clearance (excluding special case areas) have been completed. Planned reuse includes a road/Inland Range Border, residential, and other development.	Anticipated actions include RI/FS, MEC surface clearance and MEC clearance to depth of the special case areas; performance of additional QA verification of the areas already remediated by the Army.
3	Map 3, Multi-use/ South Range Area	L20.3.1, L20.5.1, L20.3.2, L20.5.2, L20.5.3, L20.5.4	276	Located in the southeast portion of the ESCA property. Site investigation and limited MEC clearance have been completed for all areas. Planned reuse includes development with land use controls.	Anticipated actions include an RI/FS, MEC surface clearance, and MEC clearance to depth.
4	Map 4, MOUT Site	F1.7.2, L20.8	61	Located in the center portion of the ESCA property. Site investigation has been completed. Planned reuse includes development for law enforcement training and other non-residential development.	Anticipated actions include RI/FS, MEC surface clearance, and MEC clearance to depth.
5	Map 6, Parker Flats	E18.1.3, E18.4, E19a.3, E19a.5, E20c.2, L20.18, L23.2, L32.1	582	Located in the central portion of the ESCA property. Site investigation and MEC clearance have been completed. Planned reuse includes development of a cemetery and commercial and residential development. The Army will have completed an approved RIFS by the time of transfer.	Anticipated actions include performance of additional QA verification of the areas already remediated by the Army.

CLIN	CLIN Title	Parcels	Acres	Description	Proposed Actions*
6	Map 6, Parker Flats	E18.1.1, E18.1.2, E19a.1, E19a.2	323	Located in the central portion of the ESCA property. Site investigation and MEC clearance have been completed. Planned reuse includes habitat reserve, development of a horse park, development of a cemetery, and commercial and residential development.	Anticipated actions include RI/FS, MEC surface clearance, MEC clearance to depth, and habitat management
7	Map 7, Interim Action	E21b.3, E38, E39, E40, E41, E42	263	Located in the central portion of the ESCA property. Site investigation and MEC clearance have been completed. Planned reuse includes a habitat reserve, rifle range development and other development.	Anticipated actions include RI/FS, MEC surface clearance, habitat restoration, and habitat management.
8	Map 9, MRA DRO/South	L20.13.3.1, L20.13.1.2, E29.1, L6.2	34	Located in the southwest portion of the ESCA property. Site investigation and MEC clearance have been completed. Planned reuse includes a habitat reserve and development.	Anticipated actions include RI/FS and habitat management.
9	Map 1 – East Garrison	E11b.6.1, E11b.7.1.1,E11b.8, L20.19.1.1	244	Located in the northeast portion of the ESCA property. Site investigation and limited MEC clearance have been completed. Planned reuse includes a habitat reserve and residential development.	Anticipated actions include RI/FS, MEC surface clearance, MEC clearance to depth, and habitat management.
10	Map 5, CSUMB/Landfill	E8a.2, E8a.1.1.1, S1.3.2	480	Located in the north central portion of the ESCA property. Site investigation and MEC clearance have been completed for all areas. Planned reuse includes natural landscaping with oak groves, development with reserve or restrictions (landfill), and residential development.	Anticipated actions include RI/FS, MEC surface clearance, MEC clearance to depth, and habitat management. The Army will retain remediation obligations in soil and groundwater for the landfill.
11	Map 6, Parker Flats	E19a.4	238	Located in the central portion of the ESCA property. Site investigation and limited MEC clearance have been completed. Planned reuse includes a habitat reserve.	Anticipated actions include RI/FS, limited surface clearance, and habitat management.

CLIN	CLIN Title	Parcels	Acres	Description	Proposed Actions*
12	Map 2, Development/ BLM - North	L20.2.1, L5.7, E19a.3, E19a.4	506	Located in the north central portion of the ESCA property. Preliminary Assessment and Investigation have been completed. Planned reuse includes habitat reserve and corridor and commercial development. Parcel L5.7 is proposed as a school site.	Anticipated actions include RI/FS, MEC surface clearance, MEC clearance to depth, and habitat management.
		Total Acres	**3,426**	**(Note: Does not include 58 acres in Map 12, which is not part of the ACES)**	

* These actions may be modified with EPA approval as long as Site Closeout is obtained.

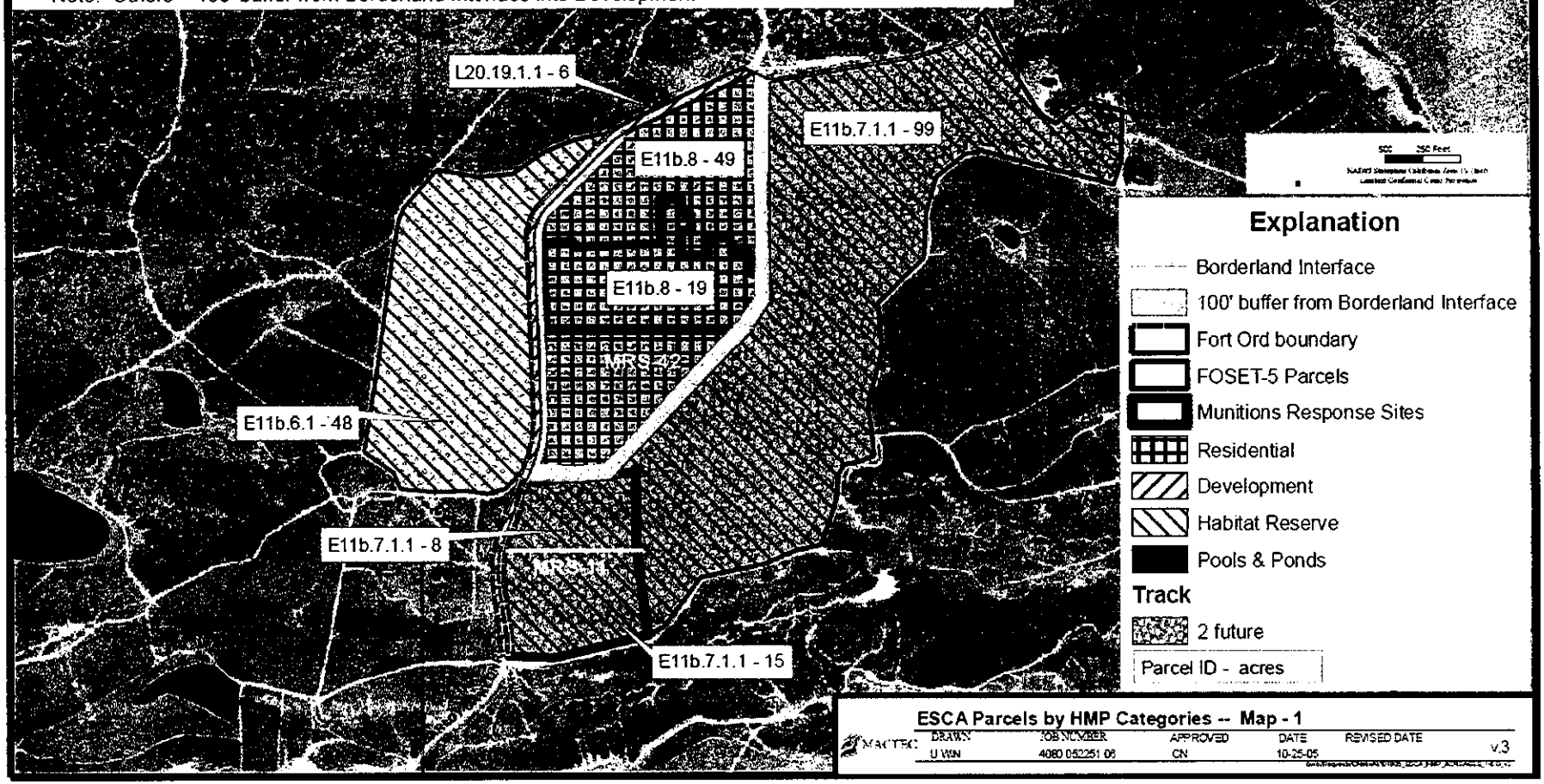


Modifications by LFR, Inc. – 3/26/07

Acreages by HMP Categories (Map-1)

Parcel ID	Development			Habitat Reserves	Habitat Corridor	Development with Reserve/Restrictions
	Residential	Road	Others			
E11b.6.1	-	-	-	48	-	-
E11b.7.1.1	-	-	-	122	-	-
E11b.8	58	-	10	-	-	-
L20.19.1.1	-	6	-	-	-	-

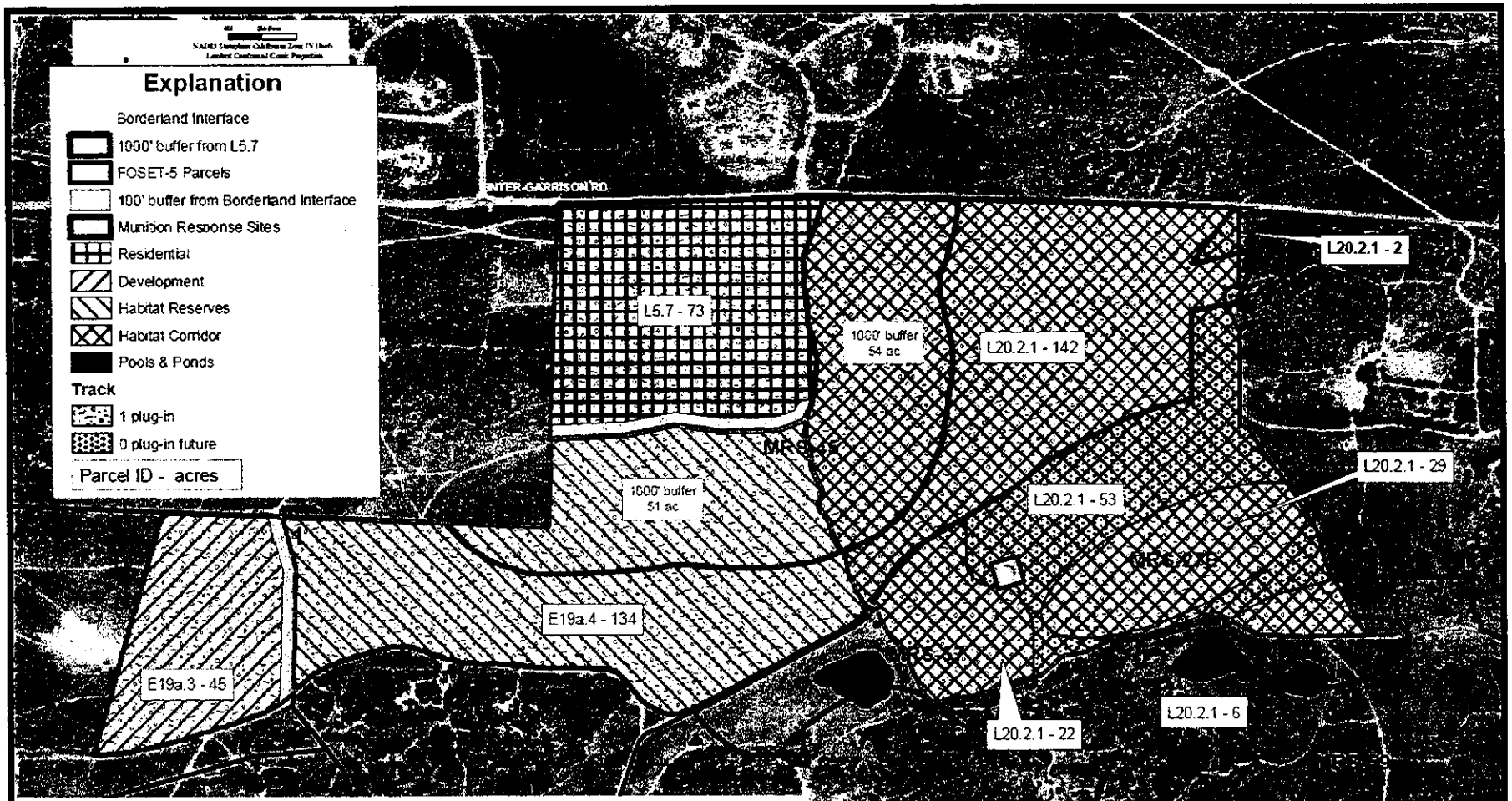
Note: Others = 100' buffer from Borderland Interface into Development



ESCA Parcels by HMP Categories -- Map - 1

DRAWN	JOB NUMBER	APPROVED	DATE	REVISED DATE
U WIN	4080 052251 06	CN	10-25-05	

v.3



Acreages by HMP Categories (Map-2)

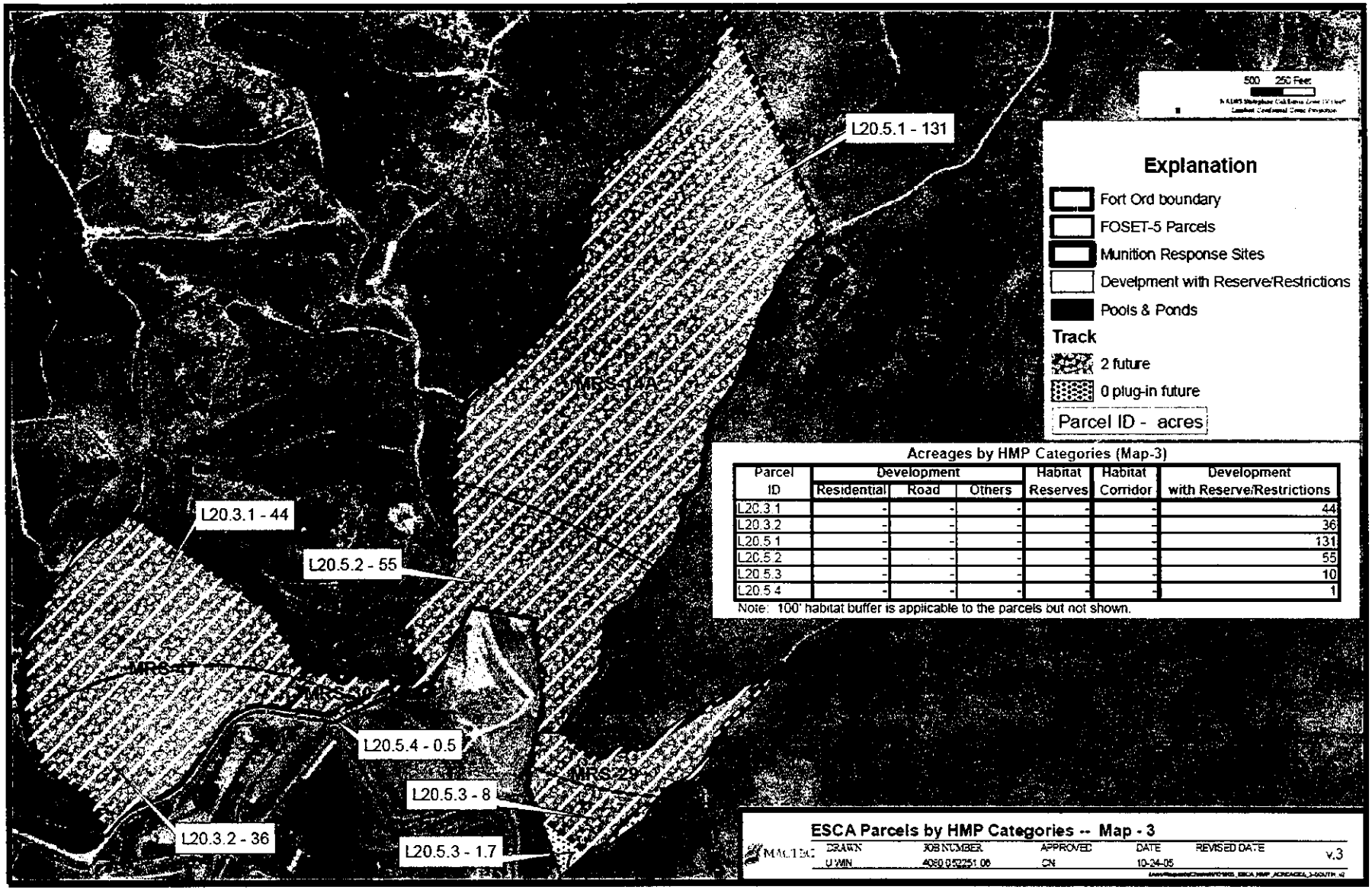
Parcel ID	Development			Habitat Reserves	Habitat Corridor	Development with Reserve/Restrictions
	Residential	Road	Others			
E19a.3	-	-	45	-	-	-
E19a.4	-	-	-	-	134	-
L5.7	68	-	5	-	-	-
L20.2.1	-	-	-	254	-	-

Note: Others = including 100' buffer from Borderland Interface into Development (5 ac in L5.7 and 3 ac in E18A.3)

ESCA Parcels by HMP Categories -- Map - 2

MACTEC

DRAWN	JOB NUMBER	APPROVED	DATE	REVISED DATE	
U WIN	4080 052251 06	CN	10-26-05		v.4



Acreages by HMP Categories (Map-3)

Parcel ID	Development			Habitat Reserves	Habitat Corridor	Development with Reserve/Restrictions
	Residential	Road	Others			
L20.3.1	-	-	-	-	-	44
L20.3.2	-	-	-	-	-	36
L20.5.1	-	-	-	-	-	131
L20.5.2	-	-	-	-	-	55
L20.5.3	-	-	-	-	-	10
L20.5.4	-	-	-	-	-	1

Note: 100' habitat buffer is applicable to the parcels but not shown.

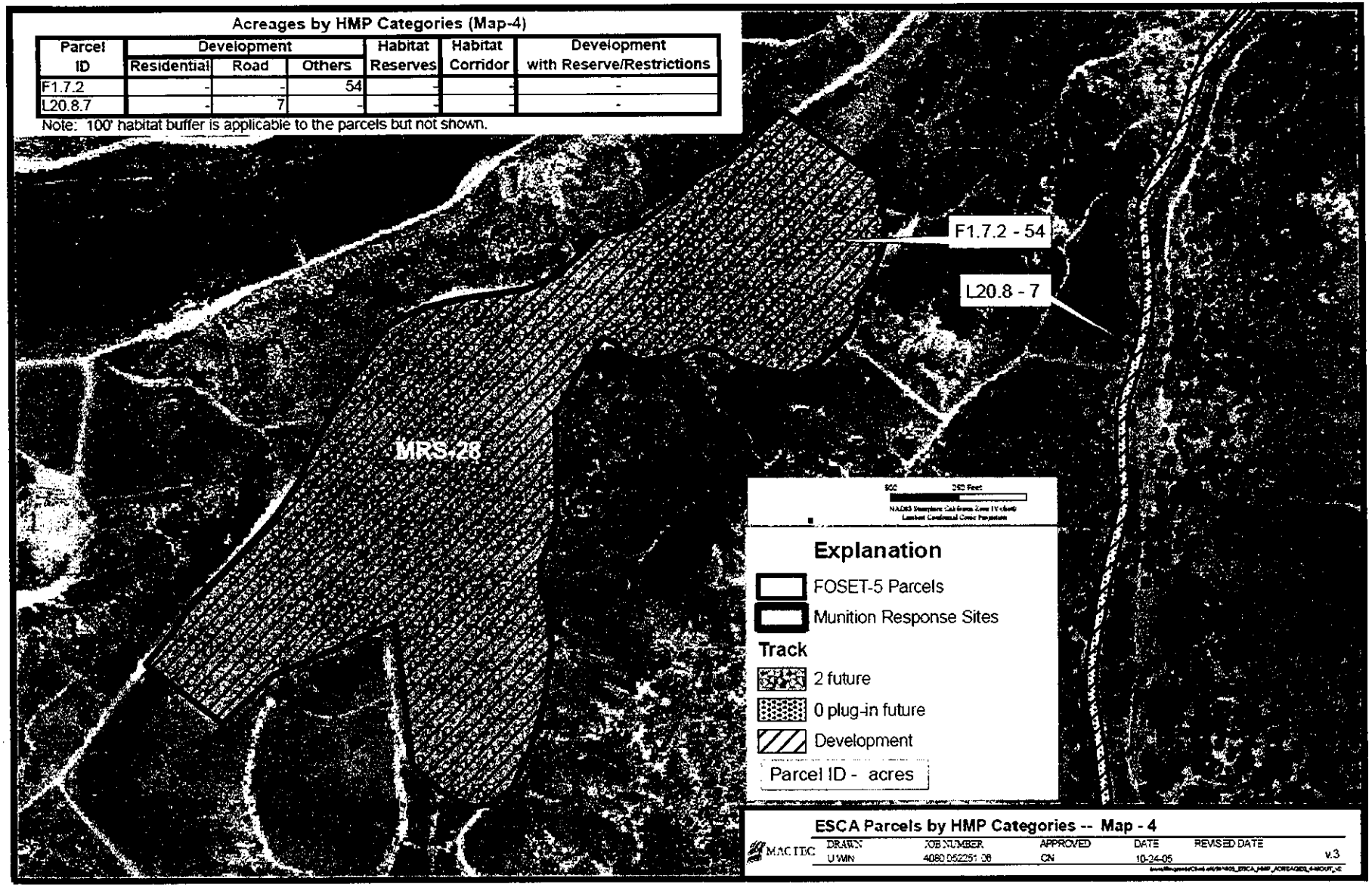
ESCA Parcels by HMP Categories -- Map - 3

DRAWN	JOB NUMBER	APPROVED	DATE	REVISED DATE	
U WIN	4080.052751.06	CN	10-24-05		v.3

Acreages by HMP Categories (Map-4)

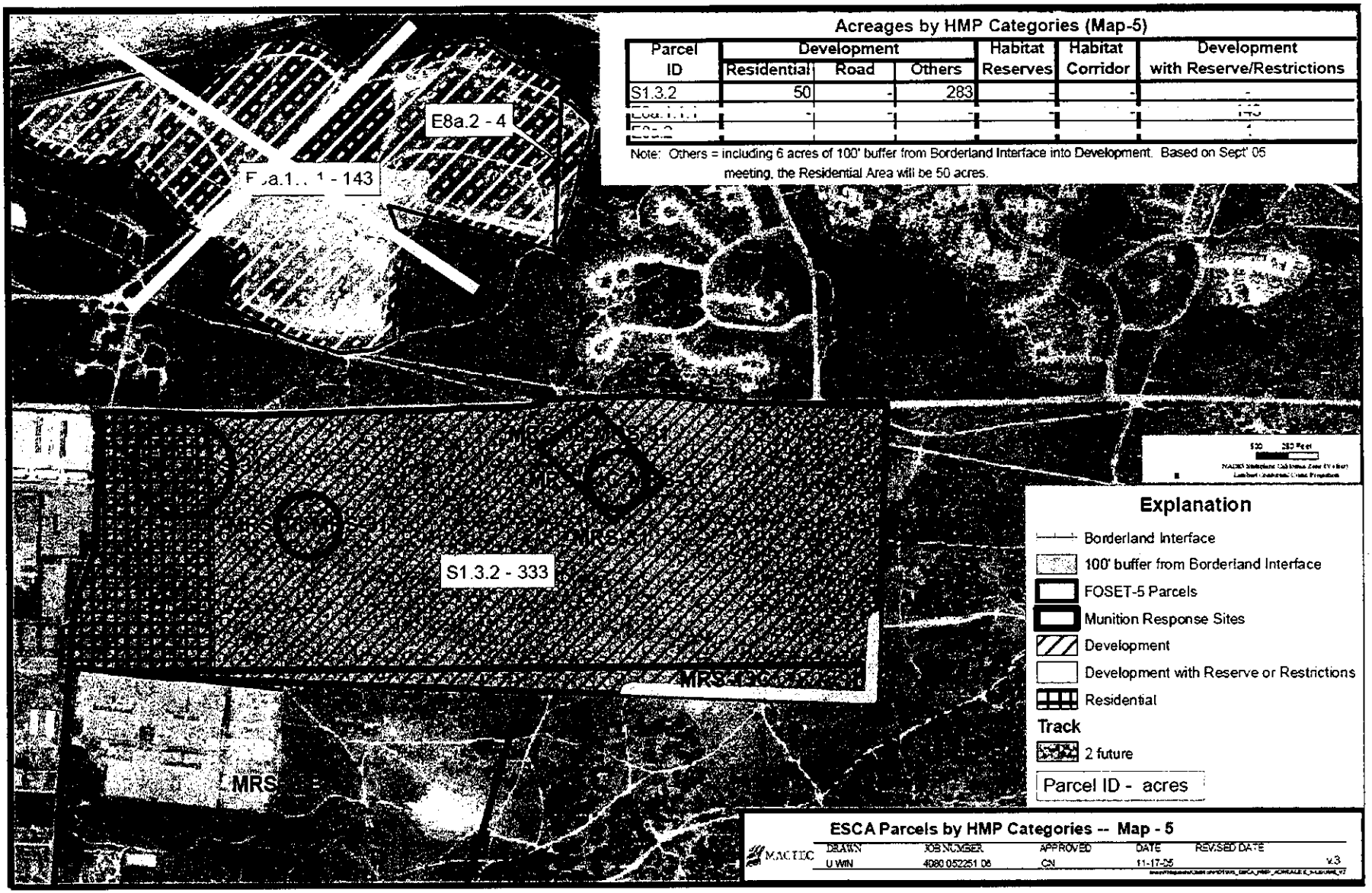
Parcel ID	Development			Habitat Reserves	Habitat Corridor	Development with Reserve/Restrictions
	Residential	Road	Others			
F1.7.2	-	-	54	-	-	-
L20.8.7	-	7	-	-	-	-

Note: 100' habitat buffer is applicable to the parcels but not shown.



ESCA Parcels by HMP Categories -- Map - 4

MACTEC	DRAWN	JOB NUMBER	APPROVED	DATE	REVISED DATE	
	UWIN	4080 062251 08	CN	10-24-06		v.3



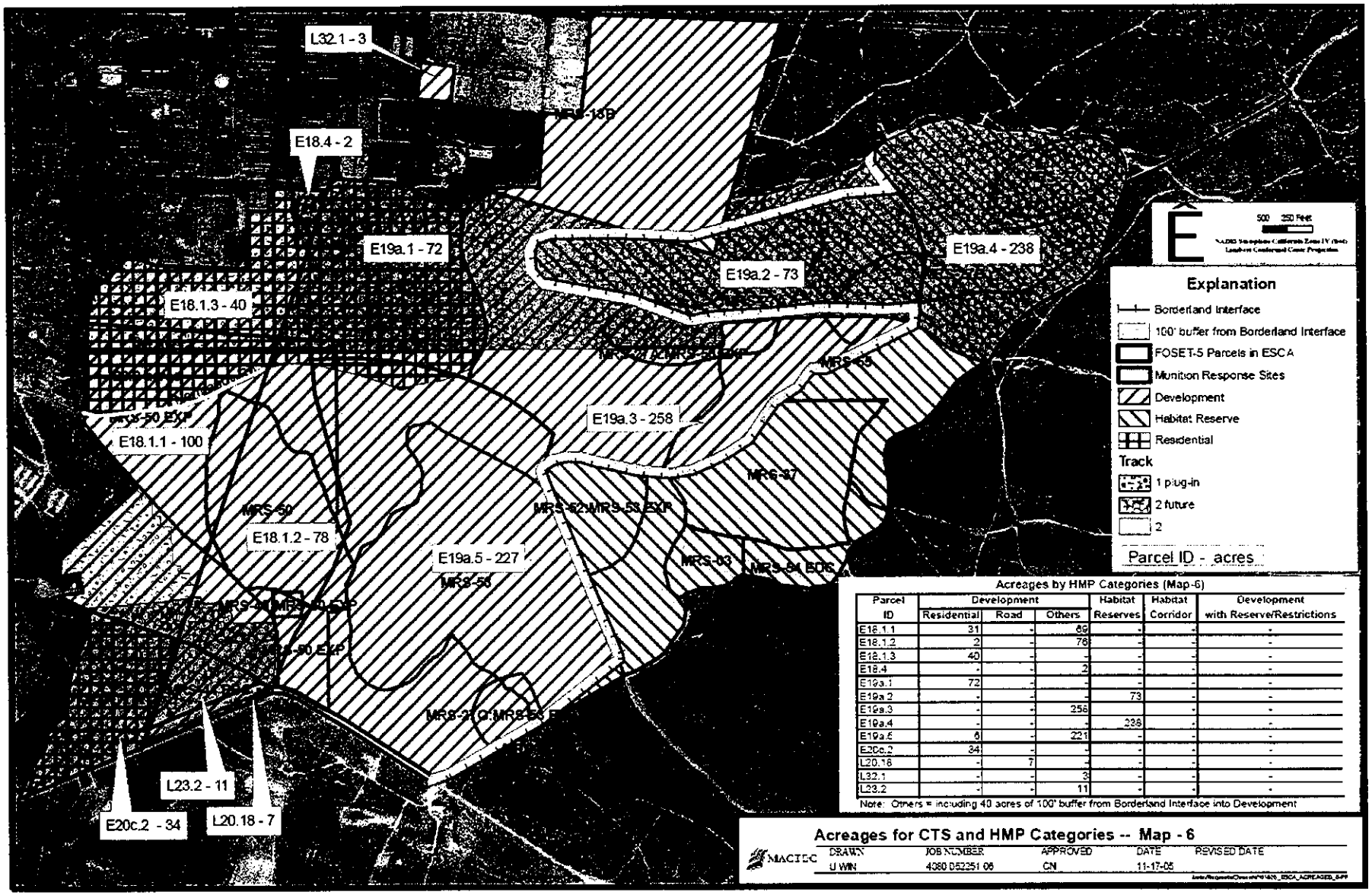
Acreages by HMP Categories (Map-5)

Parcel ID	Development			Habitat Reserves	Habitat Corridor	Development with Reserve/Restrictions
	Residential	Road	Others			
S1.3.2	50	-	283	-	-	-
[illegible]	-	-	-	-	-	[illegible]
[illegible]	-	-	-	-	-	-

Note: Others = including 6 acres of 100' buffer from Borderland Interface into Development. Based on Sept' 05 meeting, the Residential Area will be 50 acres.

Note: E8a.1.1.1 (143 acres) and E8a.2 (4 acres) are NOT included in the ESCA. These parcels are an Army retained condition.

Modifications by LFR, Inc. – 3/26/07



Acreages by HMP Categories (Map-6)

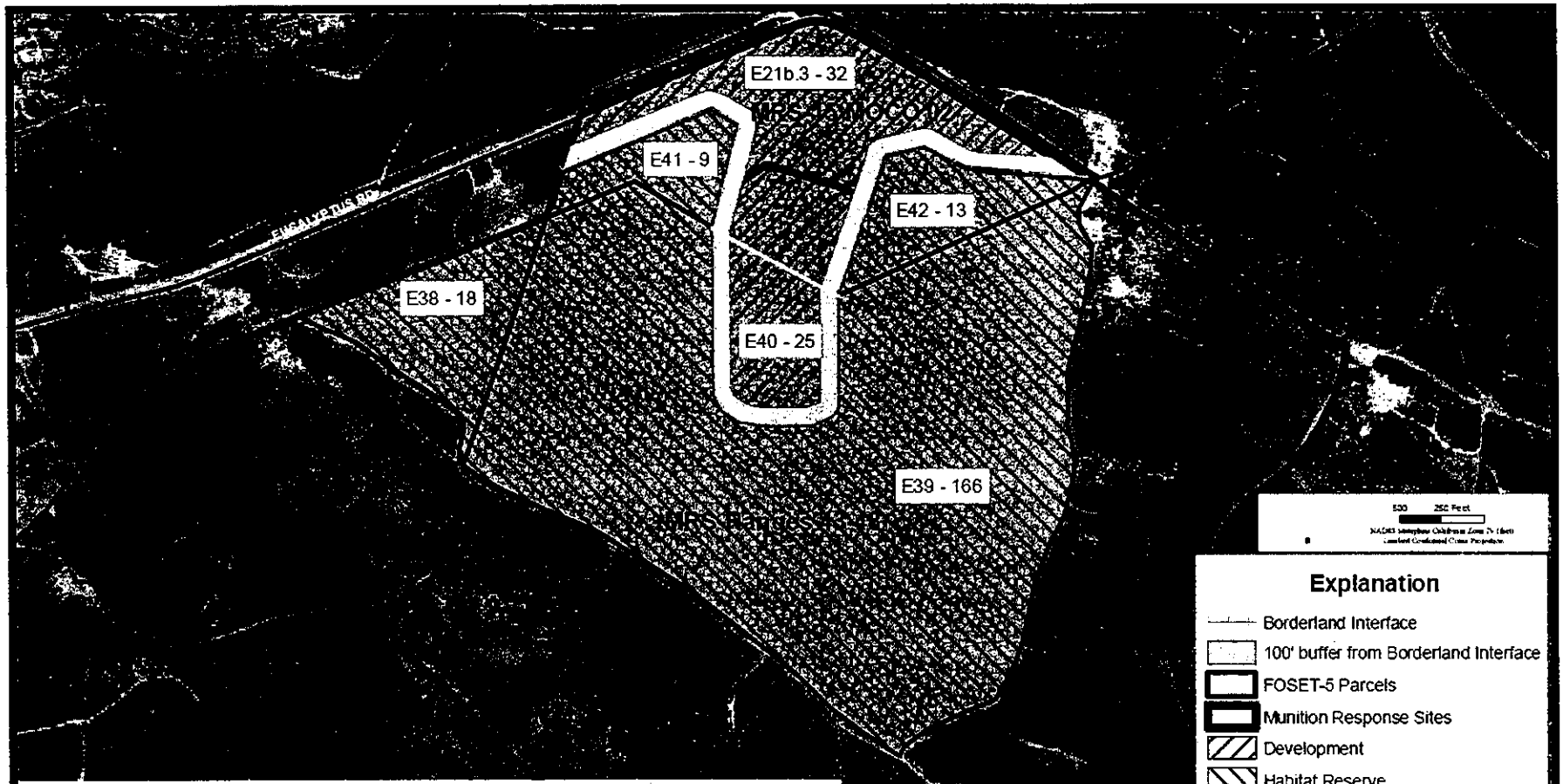
Parcel ID	Development			Habitat Reserves	Habitat Corridor	Development with Reserve/Restrictions
	Residential	Road	Others			
E18.1.1	31	-	69	-	-	-
E18.1.2	2	-	76	-	-	-
E18.1.3	40	-	-	-	-	-
E18.4	-	-	2	-	-	-
E19a.1	72	-	-	-	-	-
E19a.2	-	-	-	73	-	-
E19a.3	-	-	258		-	-
E19a.4	-	-	-	238	-	-
E19a.5	6	-	221	-	-	-
E20c.2	34	-	-	-	-	-
L20.18	-	7	-	-	-	-
L32.1	-	-	3	-	-	-
L23.2	-	-	11	-	-	-

Note: Others = including 40 acres of 100' buffer from Borderland Interface into Development

Acreages for CTS and HMP Categories -- Map - 6

MACTEC

DRAWN	JOB NUMBER	APPROVED	DATE	REVISED DATE
U WIN	4080 052251 06	CN	11-17-05	



Acreages by HMP Categories (Map-7)

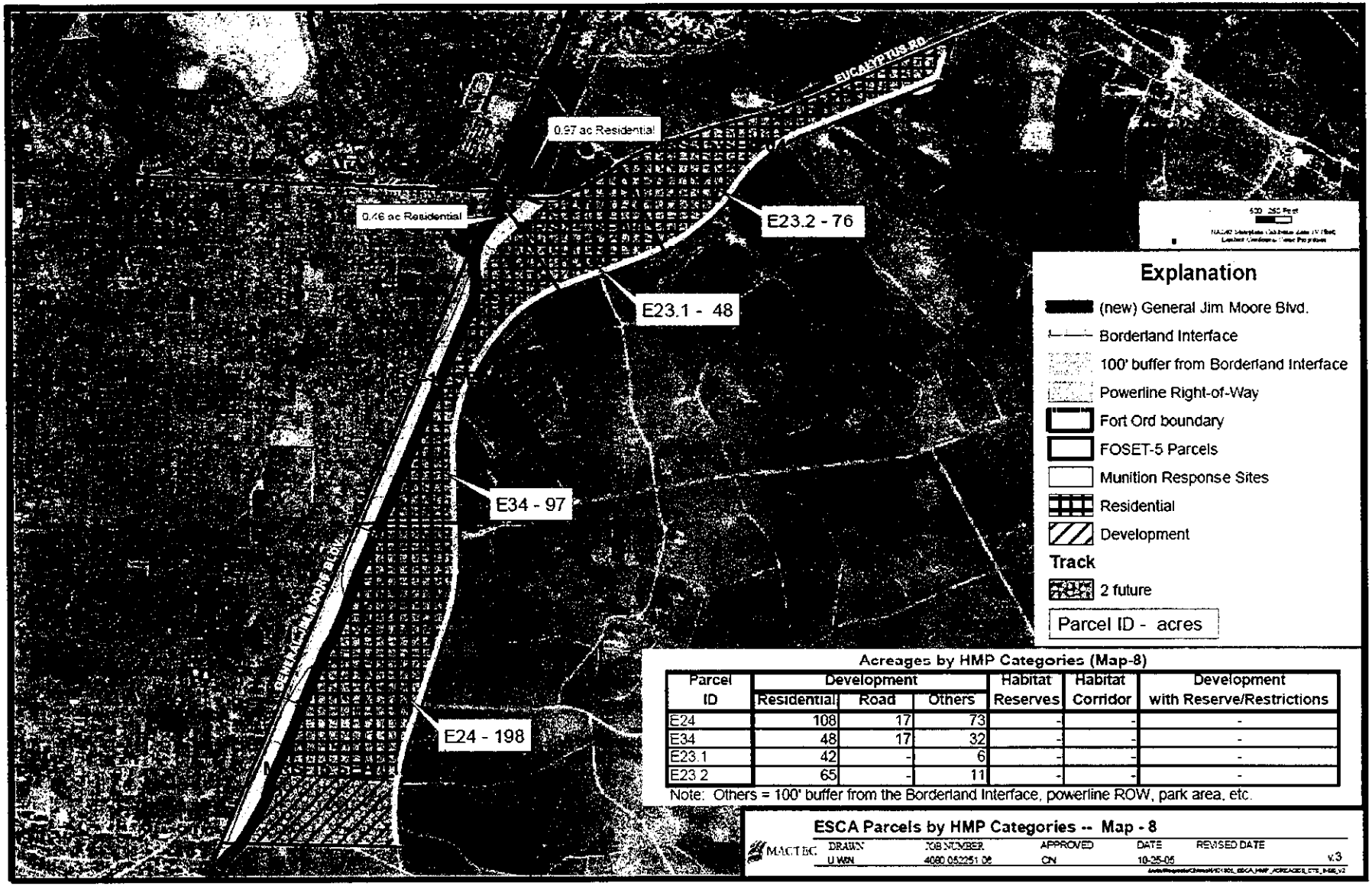
Parcel ID	Development			Habitat Reserves	Habitat Corridor	Development with Reserve/Restrictions
	Residential	Road	Others			
E38	-	-	-	18	-	-
E39	-	-	-	166	-	-
E40	-	-	25		-	-
E41	-	-	-	9	-	-
E42	-	-	-	13	-	-
E21b.3	-	-	32		-	-

Note: Others = including 14 acres of 100' buffer from Borderland Interface into Development

ESCA Parcels by HMP Categories -- Map - 7

MACTEC

DRAWN	JOB NUMBER	APPROVED	DATE	REVISED DATE	
U WIN	4060 052251.06	CN	10-25-05		v.3



Acreages by HMP Categories (Map-8)

Parcel ID	Development			Habitat Reserves	Habitat Corridor	Development with Reserve/Restrictions
	Residential	Road	Others			
E24	108	17	73	-	-	-
E34	48	17	32	-	-	-
E23.1	42	-	6	-	-	-
E23.2	65	-	11	-	-	-

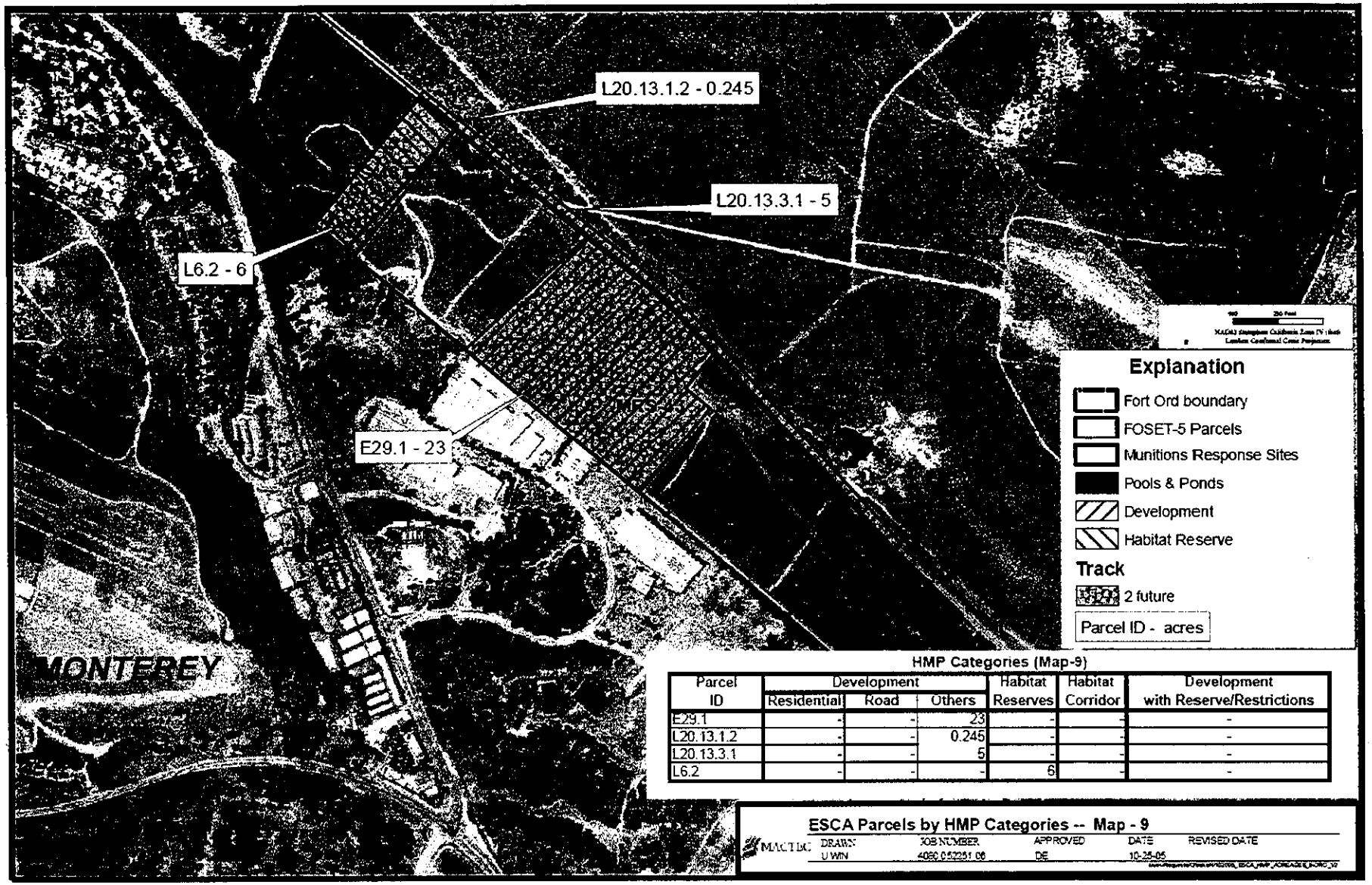
Note: Others = 100' buffer from the Borderland Interface, powerline ROW, park area, etc.

ESCA Parcels by HMP Categories -- Map - 8

MACTEC

DRAWN	JOB NUMBER	APPROVED	DATE	REVISED DATE
U WIN	4080 052251 06	CN	10-25-05	

v.3



HMP Categories (Map-9)

Parcel ID	Development			Habitat Reserves	Habitat Corridor	Development with Reserve/Restrictions
	Residential	Road	Others			
E29.1	-	-	23	-	-	-
L20.13.1.2	-	-	0.245	-	-	-
L20.13.3.1	-	-	5	-	-	-
L6.2	-	-	-	6	-	-

ESCA Parcels by HMP Categories -- Map - 9

MACTEC	DRAWN	JOB NUMBER	APPROVED	DATE	REVISED DATE
	U WIN	4080.052251.06	DE	10-25-05	

Appendix 2

Fort Ord Residential Quality Assurance (RQA) Process

Background

During development of the ESCA for the Fort Ord parcels, the regulatory agencies expressed concern with the adequacy of the Army's efforts to achieve regulatory acceptance of parcels that had been cleared with the Best Available and Appropriate Detection Technologies (BADT). This concern is attributable to the potential for small but possibly hazardous items remaining just below the capability of instrument detection and yet close enough to the surface to pose a threat to the future residents. In an effort to satisfy regulatory concerns, a process has been developed which will allow the regulators to gain comfort with the acceptability of a parcel for residential use (hereinafter referred to as the residential quality assurance {RQA} process). The process will be followed at a selected 100 acre "test" parcel(s) within the ACES. Upon completion of RQA Test Parcel(s), the results will be evaluated and presented to the regulators with an assessment of whether the value added/risk reduction associated with the process justifies the additional time and cost required. If the data are favorable and the arguments are persuasive to the regulators, the RQA process, starting with the removal of six inches of soil and subsequent second scan, will not be continued. Subsequently, the funding "set aside" in the ESCA for this RQA process will not be needed and should be returned to the Government in the most expedient manner in accordance with the ESCA fiscal requirements.

"Test" Parcel Selection

Selection of the "test" parcel is a critical step. FORA and/or its contractor shall meet the criteria listed below in selecting the parcel:

1) The "test" parcel should be approximately 100 acres,
2) The "test" parcel should be representative of the most difficult MEC contamination that will be faced during the residential cleanup efforts,
3) The "test" parcel selection should be mutually agreed to by the Army and the regulators, and
4) The "success criteria" should be established prior to commencing the cleanup efforts on the "test" parcel.

The RQA process for cleanup of the "test" parcel will be described in CERCLA project documentation. It is briefly explained in the following paragraphs and in Figure 1. The exact details and procedures will be detailed in project work and safety plans.

Upon completion of the normal MEC clearance a parcel will be assessed for future use. Non-residential parcels will be complete at that time and residential parcels will be subject to additional work based on the results of the MEC remediation.

If minimal or no MEC is found (along with other indicators such as minimal munitions debris) the regulatory agencies maintain the ability to exclude the parcel (or portions of the parcel) from the RQA process.

The first step of the RQA process is the removal of the top six inches (+/-) of soil from the existing ground surface. The intent is to remove potential interference associated with the vegetative layer and create a new ground level that will allow small items that may have been previously undetectable (if any) to be closer to the new surface and be detected.

Once the six-inch lift of soil is removed and stockpiled out of the RQA area, the newly exposed ground surface will be geophysically investigated using the BADT instrumentation and processes. Geophysical data will, if at all possible, be digitally recorded and geospatially positioned to allow for post processing.

After processing, any anomalies meeting the criteria for being potential MEC (as established in the geophysical prove out) will be reacquired by a survey, excavated and identified by qualified UXO personnel. Results will be recorded and entered into the project's GIS. MEC and MD will be handled in accordance with the established work plan processes.

Quality process checks will be conducted throughout the RQA process to ensure established processes and procedures are being followed.

The RQA process will be tested on a certain number of acres (the quantity to be verified with the regulatory agencies and the Army but approximately 100 acres). Upon completion of RQA Test Parcel(s), the results will be evaluated and presented to the regulators with an assessment of whether the value added/risk reduction associated with the process justifies the additional time and cost required. FORA will work with the regulatory agencies to make a determination on whether the RQA process should be continued for all remaining (or select remaining) residential parcels. The regulatory agency decision will be documented and entered in the administrative record.

Figure 1: RQA Process Flow Chart

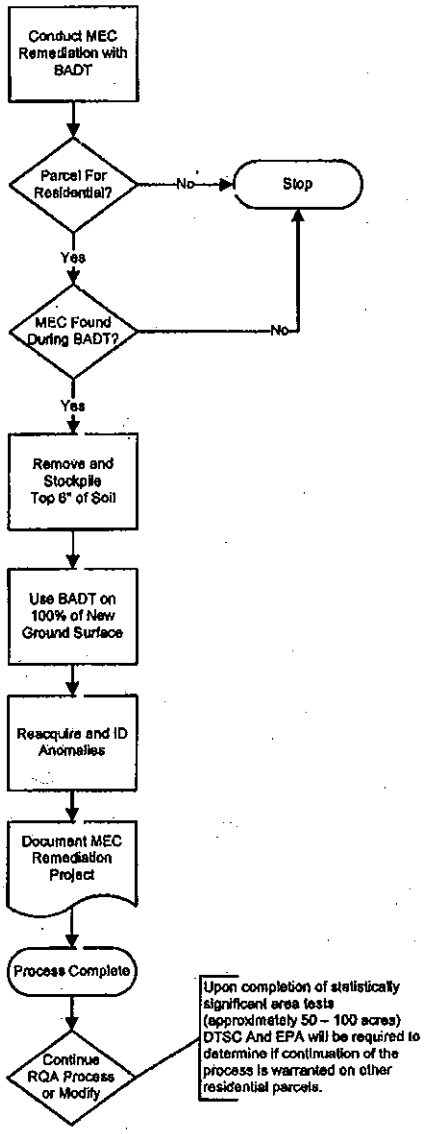


Exhibit A

Documentation for Parcels by Maps

Map 1

- OE-0320 Final SS/GS Sampling & 1' OE Removal After Action Report Site OE-11 (9/30/01)
- OE-0342 Final 4' OE Removal After Action Report, Inland Range Contract, Former Fort Ord, California, Site OE-42 Explosive Storage Location (ESL) (10/12/01)
- OE-0318 Final OE Removal After Action Report Site OE-23 (10/16/01)
- OE-0556J Final East Garrison Area 4 Site Assessment Site Report, Former Fort Ord, Monterey, California, Military Munitions Response Program (3/16/2006)
- BW-2300D Draft Final Comprehensive Basewide Range Assessment Report, Former Fort Ord, California (3 volume set) (3/31/05)

Map 2

- OE-0323 Final SS/GS Sampling After Action Report Site OE-45 (Tactical Training Area) (9/3/01)
- OE-0532 Final Technical Information Paper, Surface Removal, BLM Area East of Parker Flats (4/23/02)
- OE-0591H Final Track 1 Plug-in Approval Memorandum Multiple Sites, Groups 1 - 5, Former Fort Ord, California (7/19/2006)
- OE-0022 Draft U. S. Department of Defense Ordnance and Explosive Waste Archives Search Report, Fort Ord, California, Monterey County, California 1997 (1/1/97)
- BW-2300D Draft Final Comprehensive Basewide Range Assessment Report, Former Fort Ord, California (3 volume set) (3/31/05)

Map 3

- OE-0213A-B Final After Action Report, Inland Range Contract, Site OE-47 (Wolf Hill), Volumes I and II (11/9/00)
- OE-0108 Final Report for Ordnance and Explosive Removal Action, Fort Ord, California-Laguna Seca Turn 11 Expansion (LS T11) (11/1/95)
- OE-0296C Final OE Removal Action After Action Report, Inland Range Contract, Former Fort Ord, California, Site OE-14A (Lookout Ridge II) (4/26/01)
- OE-0226A Final OE Removal Action After Action Report, Inland Range Contract, Former Fort Ord, California, Site OE-29 (12/30/00)
- BW-2300D Draft Final Comprehensive Basewide Range Assessment Report, Former Fort Ord, California (3 volume set) (3/31/05)

Map 4

- OE-0314 Final 100% Grid and SS/GS OE Sampling, After Action Report, Inland Range Contract, Former Fort Ord, California, Site OE-28 (MOUT) (8/17/01)
- OE-0499G Final After Action Report Time Critical Removal Action and Military Munitions Reconnaissance, Eucalyptus Fire Area, Former Fort Ord, California, Revision 0. (1/17/05)
- BW-2300D Draft Final Comprehensive Basewide Range Assessment Report, Former Fort Ord, California (3 volume set) (3/31/05)

Map 5

- OE-0012 OEW Sampling and OEW Removal Action, Ft. Ord, Final Report, Volume I (12/1/94)
- OE-0122 Final Report for Ordnance and Explosive Removal Action, Fort Ord, California-Site HFA/CSU (11/1/95)
- OE-0121 Final Report for Ordnance and Explosive Removal Action, Fort Ord, California-Site CSU (11/1/95)
- OE-0227A Final OE Removal Action After Action Report, Inland Range Contract, Former Fort Ord, California, Site OE-13C (12/26/00)
- BW-1041 Removal Action Report, Time Critical Removal Action, Inter-Garrison Site, Fort Ord, CA (2/28/95)
- IAFS-170 Interim Action Confirmation Report. Site 39B - Inter-Garrison Site, Fort Ord, California (4/2/97)
- BW-2300D Draft Final Comprehensive Basewide Range Assessment Report, Former Fort Ord, California (3 volume set) (3/31/05)
- IAFS-089 Interim Action Record of Decision, Contaminated Surface Soil Remediation, Fort Ord, California (signed) February 23, 1994 (2/23/94)

Map 6

- OE-0523E Draft Final Track 2 Munitions Response Remedial Investigation/Feasibility Study Parker Flats Munitions Response Area, Former Fort Ord, California, Volume 1 Remedial Investigation, Volume 2 Risk Assessment, Volume 3 Feasibility Study (2 binder set) (12/30/2005)
- OE-0339 Final 100% Grid Sampling/GridStats Sampling/ 4' OE Removal, After Action Report, Site OE-44 EDC/PBC (10/19/01)
- OE-0216A Draft Final SiteStats/GridStats Sampling and OE Removal After Action Report, Site OE-4A (includes CDROM) (10/23/00)
- OE-0022 Draft U.S. Department of Defense Ordnance and Explosives Waste Archives Search Report, Fort Ord, California, Monterey County, Caliofnria 1997 (1/1/97)
- OE-0534 Final Technical Information Paper, Surface Removal, Parker Flats (1/1/02)
- BW-2300D Draft Final Comprehensive Basewide Range Assessment Report, Former Fort Ord, California (3 volume set) (3/31/05)

Map 7

- OE-0533 Final MRS-Ranges 43-48 and MRS-MOCO.2 Technical Information Paper, Range-Related Debris Removal (3/24/2005)
- OE-0580D Draft Final Non-Time Critical Removal Action MRS-MOCO.2 NOI Removal Area (Phases 1 and 2) After-Action Report (6/6/2006)
- OE-0414 Final Record of Decision, Interim Action for Ordnance and Explosives at Ranges 43-48, Range 30A, and Site OE-16, Former Fort Ord, California (signed) (9/20/2002)
- OE-0537 Final Technical Information Paper Surface Removal Ordnance and Explosives (OE) Site Ranges 43-48 (2/1/2002)
- OE-0590 Draft MRS-Ranges 43-48 Interim Action Technical Information Paper, Former Fort Ord, Monterey, California, Military Munitions Response Program (5/30/2006)
- RI-038A Draft Final Remedial Action Confirmation Report Site 39, Ranges 21 and 46 Basewide Remediation Sites, Former Fort Ord, California, Revision O, January 2003 (1/24/03)
- RI-025 Record of Decision, Basewide Remedial Investigation Sites. Fort Ord, California (1/13/97)

- BW-2300D Draft Final Complehensive Basewide Range Assessment Report, Former Fort Ord, California (3 colume set) (3/31/05)

Map8

- OE-0495K Final Technical Information Paper MRS-SEA.1-4, Time-Critical Removal Action, Non-Time Critical Removal Action, and 100% Geophysical Survey, Former Fort Ord, Monterey, California Military Munitions Response Program (2/11/2006)
- BW-2222F Draft Final Remedial Action Confirmation Report, Site 39 Ranges 18 and 19 Basewide Remediation Sites, Former Fort Ord, California, Revision 0 (2/25/05)
- RI-038A Draft Final Remedial Action Confirmation Report Site 39, Ranges 21 and 46 Basewide Remediation Sites, Former Fort Ord, California, Revision O, January 2003 (1/24/03)
- BW-2300D Draft Final Comprehensive Basewide Range Assessment Report, Former Fort Ord, California (3 volume set) (3/31/05)

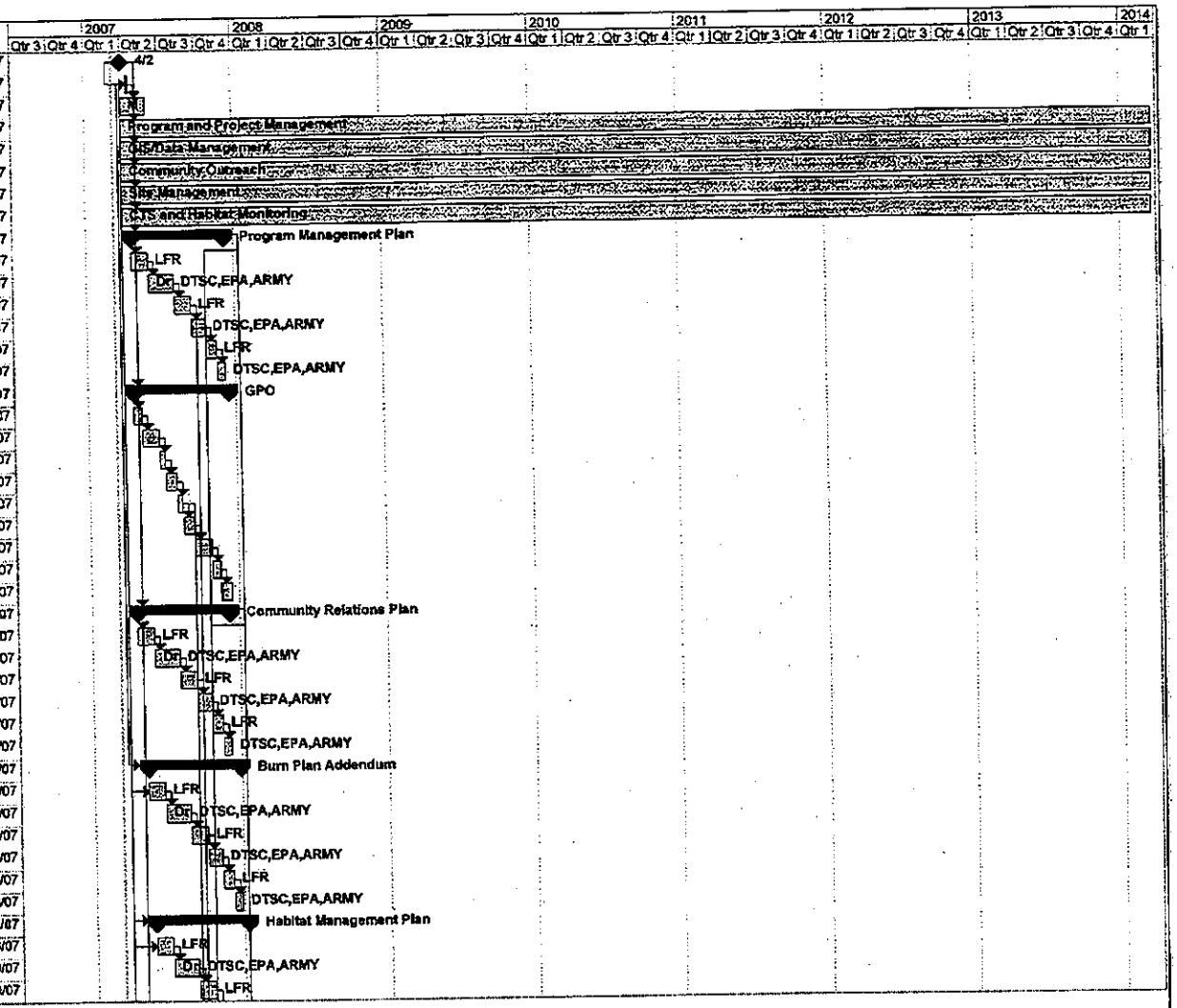
Map 9

- OE-0293A Final After Action Report Geophysical Sampling Investigation and Removal, Inland Range Contract Site Del Rey Oaks Group, Volumes 1-15 (4/24/01)

— END of TSRS ---

EXHIBIT E

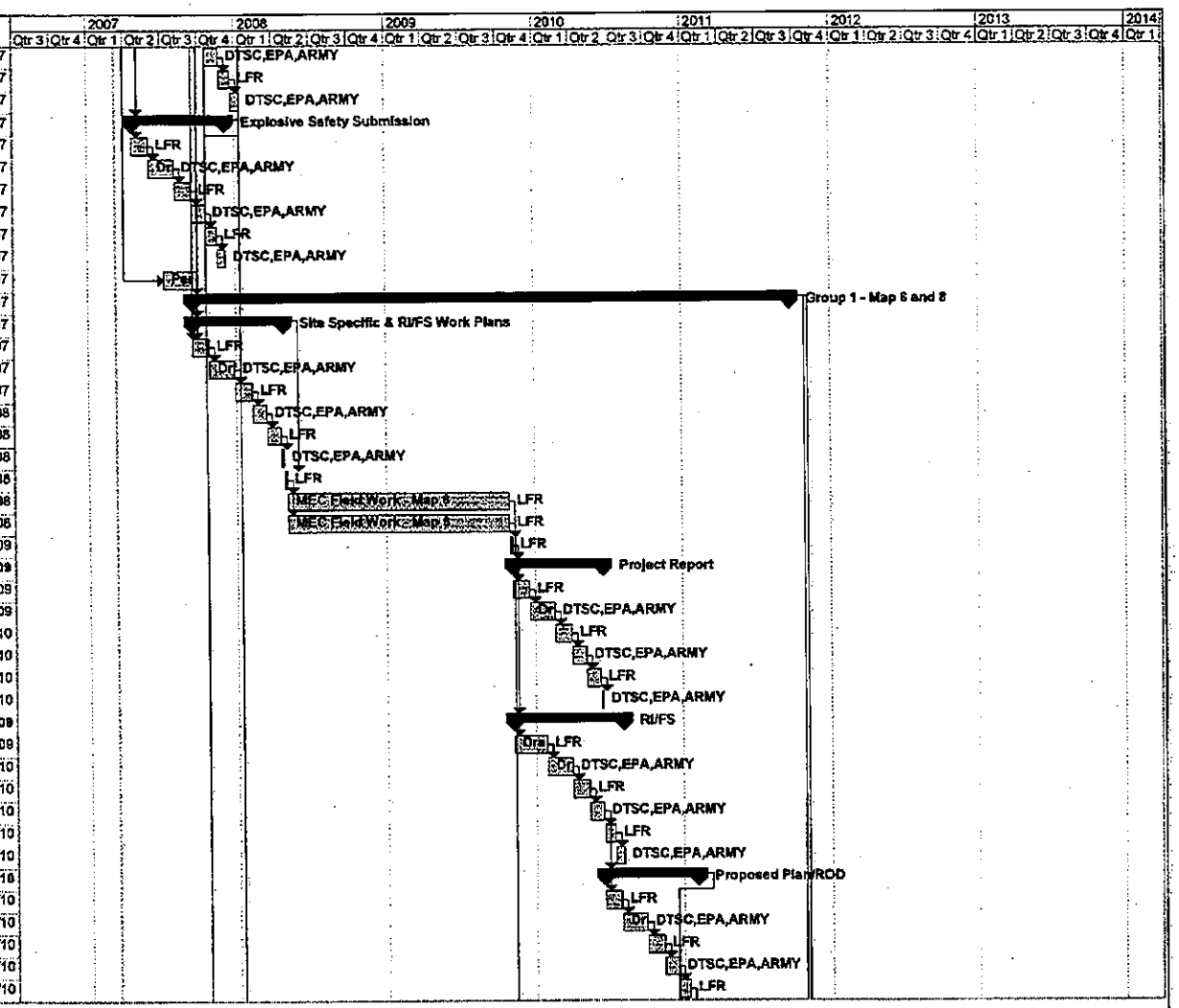
ID	WBS	Task Name	Duration	Start
1	1	Award of GFPR	0 days	Mon 4/2/07
2	2	Project Kick Off Meeting	1 wk	Mon 4/16/07
3	3	Mobilization and Office Establishment	45 days	Mon 4/2/07
4	4	Program and Project Management	364 wks	Mon 4/2/07
5	5	GIS/Data Management	364 wks	Mon 4/2/07
6	6	Community Outreach	364 wks	Mon 4/2/07
7	7	Site Management	364 wks	Mon 4/2/07
8	8	CTS and Habitat Monitoring	364 wks	Mon 4/2/07
9	9	**Program Management Plan**	**165 days**	**Mon 4/23/07**
10	9.1	Draft Preparation	30 days	Mon 4/23/07
11	9.2	Draft Review	45 days	Mon 6/4/07
12	9.3	Draft Final Preparation	30 days	Mon 8/6/07
13	9.4	Draft Final Review	25 days	Mon 9/17/07
14	9.5	Final Edition Preparation	20 days	Mon 10/22/07
15	9.6	Final Review and Approval	15 days	Mon 11/19/07
16	10	**GPO**	**170 days**	**Mon 4/23/07**
17	10.1	Draft Work Plan	15 days	Mon 4/23/07
18	10.2	Draft Review	30 days	Mon 5/14/07
19	10.3	Final Preparation	10 days	Mon 6/25/07
20	10.4	Final Review and Approval	20 days	Mon 7/9/07
21	10.5	Field Work	2 wks	Mon 8/6/07
22	10.6	Draft Report	20 days	Mon 8/20/07
23	10.7	Draft Review	30 days	Mon 9/17/07
24	10.8	Final Report Prep	15 days	Mon 10/29/07
25	10.9	Final Review and Approval	20 days	Mon 11/19/07
26	11	**Community Relations Plan**	**166 days**	**Mon 4/23/07**
27	11.1	Draft Preparation	30 days	Mon 4/23/07
28	11.2	Draft Review	45 days	Mon 6/4/07
29	11.3	Draft Final Preparation	30 days	Mon 8/6/07
30	11.4	Draft Final Review	25 days	Mon 9/17/07
31	11.5	Final Edition Preparation	20 days	Mon 10/22/07
32	11.6	Final Review and Approval	15 days	Mon 11/19/07
33	12	**Burn Plan Addendum**	**166 days**	**Mon 5/14/07**
34	12.1	Draft Preparation	30 days	Mon 5/14/07
35	12.2	Draft Review	45 days	Mon 6/25/07
36	12.3	Draft Final Preparation	30 days	Mon 8/27/07
37	12.4	Draft Final Review	25 days	Mon 10/8/07
38	12.5	Final Edition Preparation	20 days	Mon 11/12/07
39	12.6	Final Review and Approval	15 days	Mon 12/10/07
40	13	**Habitat Management Plan**	**165 days**	**Mon 5/28/07**
41	13.1	Draft Preparation	30 days	Mon 5/28/07
42	13.2	Draft Review	45 days	Mon 7/9/07
43	13.3	Draft Final Preparation	30 days	Mon 9/10/07



Project: Fort Ord ESCA Schedule.mpp
Date: Fri 3/9/07

Task | Progress | Summary | External Tasks | Deadline
Split | Milestone | Project Summary | External Milestone

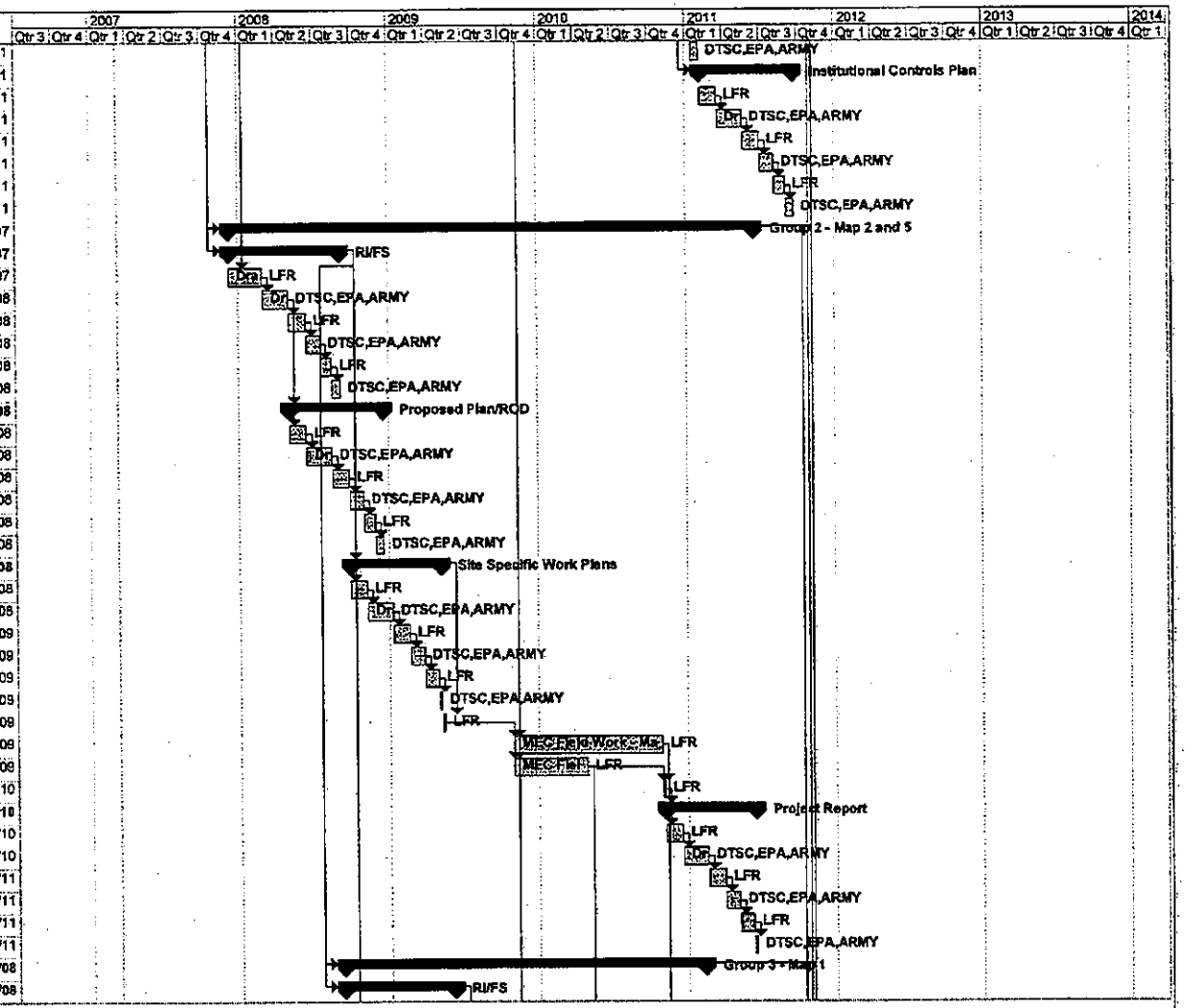
ID	WBS	Task Name	Duration	Start
44	13.4	Draft Final Review	25 days	Mon 10/22/07
45	13.5	Final Edition Preparation	20 days	Mon 11/26/07
46	13.6	Final Review and Approval	15 days	Mon 12/24/07
47	14	**Explosive Safety Submission**	**166 days**	**Mon 4/23/07**
48	14.1	Draft Preparation	30 days	Mon 4/23/07
49	14.2	Draft Review	45 days	Mon 6/4/07
50	14.3	Draft Final Preparation	30 days	Mon 8/6/07
51	14.4	Draft Final Review	25 days	Mon 9/17/07
52	14.5	Final Edition Preparation	20 days	Mon 10/22/07
53	14.6	Final Review and Approval	15 days	Mon 11/19/07
54	14.7	Permit Explosives Magazines	60 days	Mon 7/9/07
55	15	**Group 1 - Map 6 and 8**	**1060 days**	**Mon 9/17/07**
56	15.1	**Site Specific & RI/FS Work Plans**	**160 days**	**Mon 9/17/07**
57	15.1.1	Draft Preparation	30 days	Mon 9/17/07
58	15.1.2	Draft Review	45 days	Mon 10/29/07
59	15.1.3	Draft Final Preparation	30 days	Mon 12/31/07
60	15.1.4	Draft Final Review	25 days	Mon 2/11/08
61	15.1.5	Final Edition Preparation	25 days	Mon 3/17/08
62	15.1.6	Final Review and Approval	5 days	Mon 4/21/08
63	15.2	Mobilization	5 days	Mon 4/28/08
64	15.3	MEC Field Work - Map 6	78 wks	Mon 5/5/08
65	15.4	MEC Field Work - Map 8	78 wks	Mon 5/5/08
66	15.5	Demobilization	5 days	Mon 11/2/09
67	15.6	**Project Report**	**160 days**	**Mon 11/9/09**
68	15.6.1	Draft Preparation	30 days	Mon 11/9/09
69	15.6.2	Draft Review	45 days	Mon 12/21/09
70	15.6.3	Draft Final Preparation	30 days	Mon 2/22/10
71	15.6.4	Draft Final Review	25 days	Mon 4/5/10
72	15.6.5	Final Edition Preparation	25 days	Mon 5/10/10
73	15.6.6	Final Review and Approval	5 days	Mon 6/14/10
74	15.7	**RI/FS**	**195 days**	**Mon 11/9/09**
75	15.7.1	Draft Preparation	60 days	Mon 11/9/09
76	15.7.2	Draft Review	45 days	Mon 2/1/10
77	15.7.3	Draft Final Preparation	30 days	Mon 4/5/10
78	15.7.4	Draft Final Review	25 days	Mon 5/17/10
79	15.7.5	Final Edition Preparation	20 days	Mon 6/21/10
80	15.7.6	Final Review and Approval	15 days	Mon 7/19/10
81	15.8	**Proposed Plan/ROD**	**185 days**	**Mon 6/21/10**
82	15.8.1	Draft Preparation	30 days	Mon 6/21/10
83	15.8.2	Draft Review	45 days	Mon 8/2/10
84	15.8.3	Draft Final Preparation	30 days	Mon 10/4/10
85	15.8.4	Draft Final Review	25 days	Mon 11/15/10
86	15.8.5	Final Edition Preparation	20 days	Mon 12/20/10



Project: Fort Ord ESCA Schedule.mpp
Date: Fri 3/9/07

Task | Split | Progress | Milestone | Summary | Project Summary | External Tasks | External Milestone | Deadline

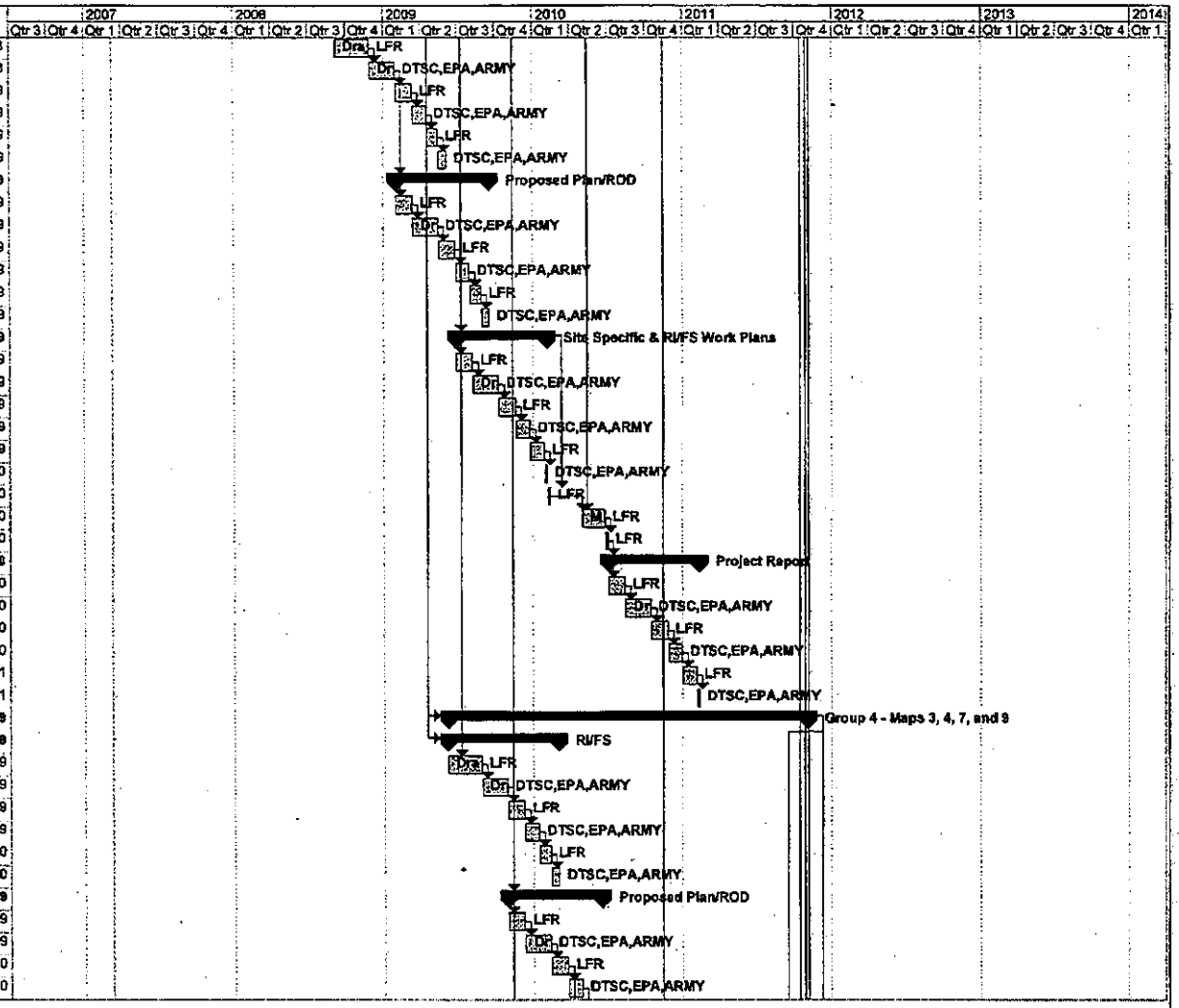
ID	WBS	Task Name	Duration	Start
87	15.8.6	Final Review and Approval	15 days	Mon 1/17/11
88	15.9	**Institutional Controls Plan**	**165 days**	**Mon 2/7/11**
89	15.9.1	Draft Preparation	30 days	Mon 2/7/11
90	15.9.2	Draft Review	45 days	Mon 3/21/11
91	15.9.3	Draft Final Preparation	30 days	Mon 5/23/11
92	15.9.4	Draft Final Review	25 days	Mon 7/4/11
93	15.9.5	Final Edition Preparation	20 days	Mon 8/8/11
94	15.9.6	Final Review and Approval	15 days	Mon 9/5/11
95	16	**Group 2 - Map 2 and 5**	**920 days**	**Mon 12/10/07**
96	16.1	**RI/FS**	**195 days**	**Mon 12/10/07**
97	16.1.1	Draft Preparation	60 days	Mon 12/10/07
98	16.1.2	Draft Review	45 days	Mon 3/3/08
99	16.1.3	Draft Final Preparation	30 days	Mon 5/5/08
100	16.1.4	Draft Final Review	25 days	Mon 6/16/08
101	16.1.5	Final Edition Preparation	20 days	Mon 7/21/08
102	16.1.6	Final Review and Approval	15 days	Mon 8/18/08
103	16.2	**Proposed Plan/ROD**	**165 days**	**Mon 5/5/08**
104	16.2.1	Draft Preparation	30 days	Mon 5/5/08
105	16.2.2	Draft Review	45 days	Mon 6/16/08
106	16.2.3	Draft Final Preparation	30 days	Mon 8/18/08
107	16.2.4	Draft Final Review	25 days	Mon 9/29/08
108	16.2.5	Final Edition Preparation	20 days	Mon 11/3/08
109	16.2.6	Final Review and Approval	15 days	Mon 12/1/08
110	16.3	**Site Specific Work Plans**	**180 days**	**Mon 9/29/08**
111	16.3.1	Draft Preparation	30 days	Mon 9/29/08
112	16.3.2	Draft Review	45 days	Mon 11/10/08
113	16.3.3	Draft Final Preparation	30 days	Mon 1/12/09
114	16.3.4	Draft Final Review	25 days	Mon 2/23/09
115	16.3.5	Final Edition Preparation	25 days	Mon 3/30/09
116	16.3.6	Final Review and Approval	5 days	Mon 5/4/09
117	16.4	Mobilization	5 days	Mon 5/11/09
118	16.5	MEC Field Work - Map 2	52 wks	Mon 11/2/09
119	16.6	MEC Field Work - Map 5	26 wks	Mon 11/2/09
120	16.7	Demobilization	5 days	Mon 11/1/10
121	16.8	**Project Report**	**160 days**	**Mon 11/8/10**
122	16.8.1	Draft Preparation	30 days	Mon 11/8/10
123	16.8.2	Draft Review	45 days	Mon 12/20/10
124	16.8.3	Draft Final Preparation	30 days	Mon 2/21/11
125	16.8.4	Draft Final Review	25 days	Mon 4/4/11
126	16.8.5	Final Edition Preparation	25 days	Mon 5/9/11
127	16.8.6	Final Review and Approval	5 days	Mon 6/13/11
128	17	**Group 3 - Map 1**	**635 days**	**Mon 9/8/08**
129	17.1	**RI/FS**	**195 days**	**Mon 9/8/08**



Project: Fort Ord ESCA Schedule.mpp
Date: Fri 3/9/07

Task | Progress | Summary | External Tasks | Deadline
Split | Milestone | Project Summary | External Milestone

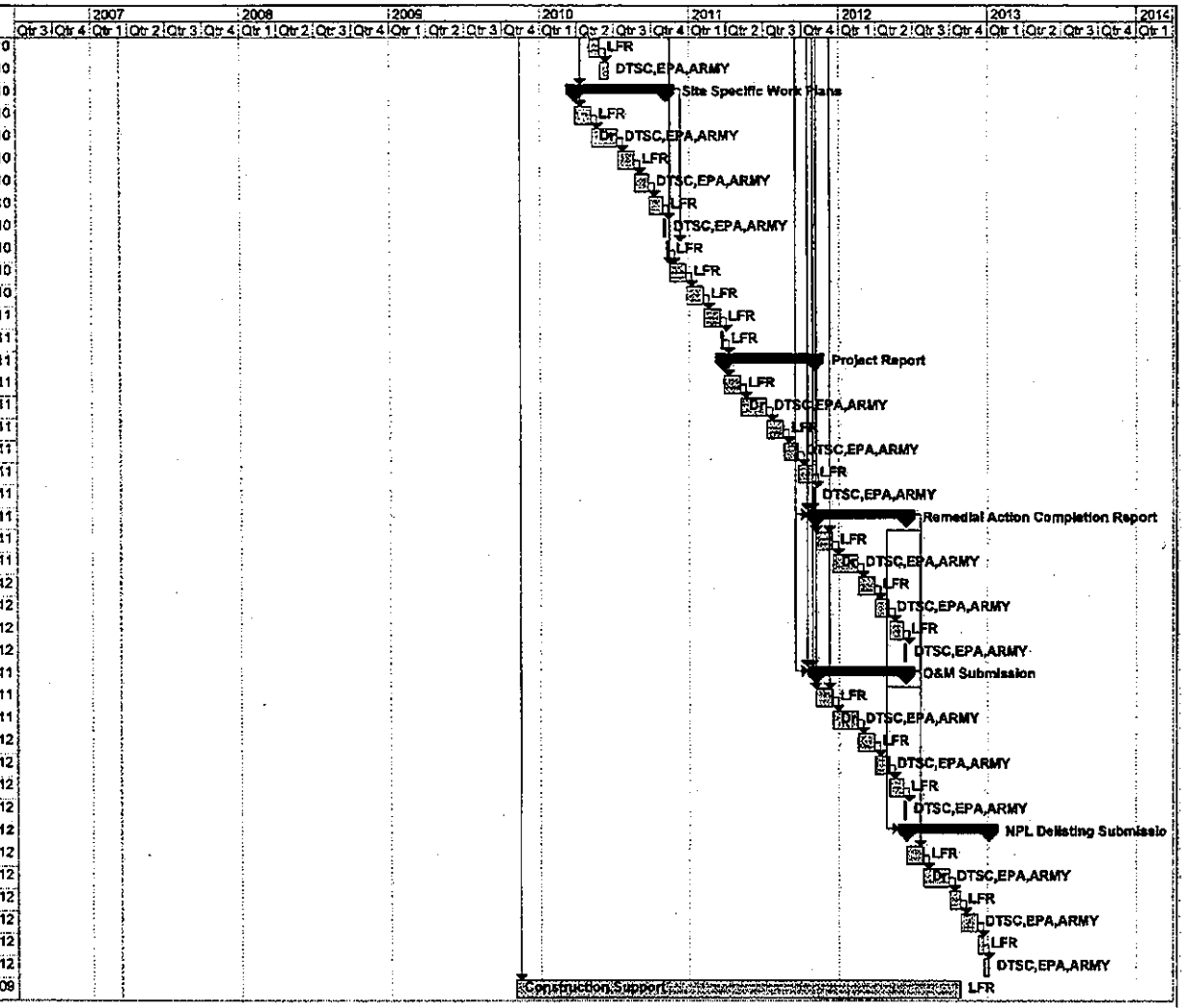
ID	WBS	Task Name	Duration	Start
130	17.1.1	Draft Preparation	60 days	Mon 9/8/08
131	17.1.2	Draft Review	45 days	Mon 12/1/08
132	17.1.3	Draft Final Preparation	30 days	Mon 2/2/09
133	17.1.4	Draft Final Review	25 days	Mon 3/16/09
134	17.1.5	Final Edition Preparation	20 days	Mon 4/20/09
135	17.1.6	Final Review and Approval	15 days	Mon 5/18/09
136	17.2	**Proposed Plan/ROD**	**165 days**	**Mon 2/2/09**
137	17.2.1	Draft Preparation	30 days	Mon 2/2/09
138	17.2.2	Draft Review	45 days	Mon 3/16/09
139	17.2.3	Draft Final Preparation	30 days	Mon 5/18/09
140	17.2.4	Draft Final Review	25 days	Mon 6/29/09
141	17.2.5	Final Edition Preparation	20 days	Mon 8/3/09
142	17.2.6	Final Review and Approval	15 days	Mon 8/31/09
143	17.3	**Site Specific & RI/FS Work Plans**	**160 days**	**Mon 6/29/09**
144	17.3.1	Draft Preparation	30 days	Mon 6/29/09
145	17.3.2	Draft Review	45 days	Mon 8/10/09
146	17.3.3	Draft Final Preparation	30 days	Mon 10/12/09
147	17.3.4	Draft Final Review	25 days	Mon 11/23/09
148	17.3.5	Final Edition Preparation	25 days	Mon 12/28/09
149	17.3.6	Final Review and Approval	5 days	Mon 2/1/10
150	17.4	Mobilization	5 days	Mon 2/8/10
151	17.5	MEC Field Work - Map 1	8 wks	Mon 5/3/10
152	17.6	Demobilization	5 days	Mon 6/28/10
153	17.7	**Project Report**	**160 days**	**Mon 7/5/10**
154	17.7.1	Draft Preparation	30 days	Mon 7/5/10
155	17.7.2	Draft Review	45 days	Mon 8/16/10
156	17.7.3	Draft Final Preparation	30 days	Mon 10/18/10
157	17.7.4	Draft Final Review	25 days	Mon 11/29/10
158	17.7.5	Final Edition Preparation	25 days	Mon 1/3/11
159	17.7.6	Final Review and Approval	5 days	Mon 2/7/11
160	18	**Group 4 - Maps 3, 4, 7, and 8**	**630 days**	**Mon 6/8/09**
161	18.1	**RI/FS**	**195 days**	**Mon 6/8/09**
162	18.1.1	Draft Preparation	60 days	Mon 6/8/09
163	18.1.2	Draft Review	45 days	Mon 8/31/09
164	18.1.3	Draft Final Preparation	30 days	Mon 11/2/09
165	18.1.4	Draft Final Review	25 days	Mon 12/14/09
166	18.1.5	Final Edition Preparation	20 days	Mon 1/18/10
167	18.1.6	Final Review and Approval	15 days	Mon 2/15/10
168	18.2	**Proposed Plan/ROD**	**165 days**	**Mon 11/2/09**
169	18.2.1	Draft Preparation	30 days	Mon 11/2/09
170	18.2.2	Draft Review	45 days	Mon 12/14/09
171	18.2.3	Draft Final Preparation	30 days	Mon 2/15/10
172	18.2.4	Draft Final Review	25 days	Mon 3/29/10



Project: Fort Ord ESCA Schedule.mpp
Date: Fri 3/9/07

Task		Progress		Summary		External Tasks		Deadline	
Split		Milestone		Project Summary		External Milestone			

ID	WBS	Task Name	Duration	Start
173	18.2.5	Final Edition Preparation	20 days	Mon 5/3/10
174	18.2.6	Final Review and Approval	15 days	Mon 5/31/10
175	18.3	**Site Specific Work Plans**	**160 days**	**Mon 3/29/10**
176	18.3.1	Draft Preparation	30 days	Mon 3/29/10
177	18.3.2	Draft Review	45 days	Mon 5/10/10
178	18.3.3	Draft Final Preparation	30 days	Mon 7/12/10
179	18.3.4	Draft Final Review	25 days	Mon 8/23/10
180	18.3.5	Final Edition Preparation	25 days	Mon 9/27/10
181	18.3.6	Final Review and Approval	5 days	Mon 11/1/10
182	18.4	Mobilization	5 days	Mon 11/8/10
183	18.5	MEC Field Work - Map 4	6 wks	Mon 11/15/10
184	18.6	MEC Field Work - Map 7	6 wks	Mon 12/27/10
185	18.7	MEC Field Work - Map 9	6 wks	Mon 2/7/11
186	18.8	Demobilization	5 days	Mon 3/21/11
187	18.9	**Project Report**	**160 days**	**Mon 3/28/11**
188	18.9.1	Draft Preparation	30 days	Mon 3/28/11
189	18.9.2	Draft Review	45 days	Mon 5/9/11
190	18.9.3	Draft Final Preparation	30 days	Mon 7/11/11
191	18.9.4	Draft Final Review	25 days	Mon 8/22/11
192	18.9.5	Final Edition Preparation	25 days	Mon 9/26/11
193	18.9.6	Final Review and Approval	5 days	Mon 10/31/11
194	19	**Remedial Action Completion Report**	**160 days**	**Mon 11/7/11**
195	19.1	Draft Preparation	30 days	Mon 11/7/11
196	19.2	Draft Review	45 days	Mon 12/19/11
197	19.3	Draft Final Preparation	30 days	Mon 2/20/12
198	19.4	Draft Final Review	25 days	Mon 4/2/12
199	19.5	Final Edition Preparation	25 days	Mon 5/7/12
200	19.6	Final Review and Approval	5 days	Mon 6/11/12
201	20	**O&M Submission**	**160 days**	**Mon 11/7/11**
202	20.1	Draft Preparation	30 days	Mon 11/7/11
203	20.2	Draft Review	45 days	Mon 12/19/11
204	20.3	Draft Final Preparation	30 days	Mon 2/20/12
205	20.4	Draft Final Review	25 days	Mon 4/2/12
206	20.5	Final Edition Preparation	25 days	Mon 5/7/12
207	20.6	Final Review and Approval	5 days	Mon 6/11/12
208	21	**NPL Delisting Submission**	**145 days**	**Mon 6/18/12**
209	21.1	Draft Preparation	30 days	Mon 6/18/12
210	21.2	Draft Review	45 days	Mon 7/30/12
211	21.3	Draft Final Preparation	20 days	Mon 10/1/12
212	21.4	Draft Final Review	30 days	Mon 10/29/12
213	21.5	Final Edition Preparation	10 days	Mon 12/10/12
214	21.6	Final Review and Approval	10 days	Mon 12/24/12
215	22	Construction Support	156 wks	Mon 11/2/09



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Task | Progress | Summary | External Tasks | Deadline
Split | Milestone | Project Summary | External Milestone

EXHIBIT F

LFR ENVIRONMENTAL MANAGEMENT & CONSULTING ENGINEERING

March 27, 2007

Fort Ord Reuse Authority
100 12th Street
Building 2880
Marina, California 93933
Attention: Michael Houlemard

Re: Allocation and Disbursement of ESCA Grant Proceeds, Grant No. W9128F-07-2-0162.

Dear Michael:

The following is a breakdown of the proceeds of the above-referenced ESCA grant and shall serve as disbursement instructions with respect to the same pursuant to that certain Remediation Services Agreement by and between the Fort Ord Reuse Authority ("FORA") and LFR Inc. ("LFR") of even date herewith (the "RSA"). All capitalized terms not otherwise defined herein shall have the meanings given to them in the RSA.

A. The first grant installment of $40,000,000 is scheduled to be received by FORA on or before March 31, 2007. Immediately upon receipt of such funds, FORA shall make the following disbursements and/or allocations:

1. $6,100,000 to LFR for surplus lines taxes payable as a result of the purchase of the Insurance Policy and associated risk transfer and mobilization fees. Such payment shall be credited against the Contract Price for Remediation Services under the RSA.

2. $542,656 to FORA for program management expenses.

3. $500,000 to FORA for Regulatory Response Costs.

4. $477,344 to LFR, which amount shall be paid over to American International Specialty Lines Company ("AISLIC") for premium and to Aon Risk Services, Inc. for a portion of the surplus lines taxes due on account of that certain Contractors Pollution Legal Liability policy as per the quotation dated March 27, 2007.

5. $32,380,000 to AISLIC as payment of premium for the Insurance Policy, which amount shall be credited against the Contract Price for Remediation Services under the RSA.

B. The second grant installment of $30,000,000 (subject to reduction as set forth in B(3) below) is scheduled to be received by FORA on or before June 1, 2008. Immediately upon receipt of such funds, FORA shall make the following disbursements and/or allocations:

510.652.4500 m
510.652.2246 f
1900 Powell Street, 12th Floor
Emeryville, California 94608
Offices Nationwide
www.lfr.com

LFR

1. $500,000 to FORA for Regulatory Response Costs.

2. $1,000,000 to FORA for program management expenses.

3. $28,500,000 to AISLIC as payment of premium for the Insurance Policy, which amount shall be credited against the Contract Price for Remediation Services under the RSA; provided, however, such amount shall be reduced by $5,283 for each day before June 1, 2008 that the payment is made to AISLIC.

C. The final grant installment of the balance of the funds (up to $29,316,187 but subject to reduction as set forth in C(3) below) is scheduled to be received by FORA on or before June 1, 2009. Immediately upon receipt of such funds, FORA shall make the following disbursements and/or allocations:

1. $1,850,000 to FORA for program management expenses.

2. $3,725,000 to FORA for Regulatory Response Costs.

3. $22,825,131 to AISLIC as payment of premium for the Insurance Policy, which amount shall be credited against the Contract Price for Remediation Services under the RSA; provided, however, such amount shall be reduced by $4,064 for each day before June 1, 2009 that the payment is made to AISLIC.

4. $916,056 to be used by FORA for the future purchase of pollution legal liability ("PLL") coverage, which coverage shall name LFR and Weston Solutions, Inc. as additional insureds. FORA covenants and agrees to use good faith commercially reasonable efforts to obtain such PLL coverage from a third party carrier on or before March 31, 2010.

Please acknowledge your assent to these disbursements and allocations by signing this letter in the space marked below and returning an executed copy to me, In the meantime, if you have any questions or require additional information, please do not hesitate to contact me.

[SIGNATURES ON NEXT PAGE]

LFR

LFR INC.

By: _____
Frank Lorincz
Chief Executive Officer

ACCEPTED AND AGREED TO
THIS 28th DAY OF MARCH, 2007

FORT ORD REUSE AUTHORITY

By: _____
Michael Houlemard
Executive Director