

**ESCA AGREEMENT
BETWEEN
ARMY AND OBRA/ORA**

Final

September 27, 2002

COOPERATIVE AGREEMENT AWARD

AGREEMENT NO: DASW01-02-2-0004
 PR NO(S): W31W3H-2213-0001-000

EFFECTIVE DATE: 30 SEPTEMBER 2002

<u>SECTIONS</u>	<u>DESCRIPTION</u>	<u>PAGE(S)</u>
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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:** \$13,000,000.00

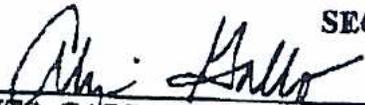
3. **GOVERNMENT OBLIGATION/ACCOUNTING AND APPROPRIATION DATA.** Federal funds, in the amount of \$13,000,000.00 are hereby made available to the following Accounting and Appropriation Data:

ACRN AA: 97X051040H1222140061337R12000252G W31W3H22130001B3GP S23185
 (US) \$13,000,000.00

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**, Article No. 7.1 for EFT information.

5. **PARTIES.** This Agreement is entered into between the United States of America, represented by Defense Contracting Command-Washington (hereinafter called the Government), and the Oakland Base Reuse Authority (hereinafter called the Recipient) pursuant to and under U.S. Federal law.

SECTION A - EXECUTION OF AGREEMENT


 ALIZA GALLO, Executive Director
 Oakland Base Reuse Authority (OBRA)
 700 Mirmansk Street, Suite 3
 Oakland, CA 94607

9/27/2002
 Date



ROBERT C. BOBB, Agency Administrator/City Manager
 City of Oakland Redevelopment Agency
 Oakland, CA

September 27, 2002
 Date


 KATHY J. DOBECK, Grants Officer
 Department of the Army
 Defense Contracting Command – Washington
 5200 Army Pentagon

27 Sep 02
 Date

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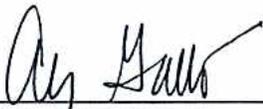
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SECTION A - EXECUTION OF AGREEMENT



ALIZA GALLO, Executive Director
Oakland Base Reuse Authority (OBRA)
700 Murmansk Street, Suite 3
Oakland, CA 94607

9/30/2002

Date



ROBERT C. BOBB, Agency Administrator/City Manager
City of Oakland Redevelopment Agency
Oakland, CA

9/30/2002

Date



KATHY J. DOBECK, Grants Officer
Department of the Army
Defense Contracting Command – Washington
5200 Army Pentagon
Washington, DC 20310-5200

9/30/02

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.**

(a) The term of the Agreement shall be from 30 September 2002, with payments authorized only after the date of the EDC property conveyance, which is anticipated to be no later than 31 July 2003, for ten years thereafter, which is anticipated to be no later than 31 July 2013. Subject to agreement by the Recipient, the term may be extended to coincide with the implementation period for the Remedial Action Plan and Risk Management Plan ("RAP and RMP") as identified in the Consent Agreement, without an increase to the total funded amount of the Agreement.

(b) Prior to completion of the term of the Agreement, the Recipient shall implement, to the extent required by CERCLA and other applicable laws and regulations, Long-Term Obligations as set forth in Section C.3.15 herein, to assure ongoing compliance with the Environmental Restrictions. The anticipated length of the Recipient's Long-Term Obligations under this Agreement will be for thirty (30) years, unless modified as provided in Section D of this Agreement.

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 33 and DoD 3210.6-R.

(c) The "**Environmental Services Obligations**" at **SECTION C** and Attachments 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 **\$13,000,000.00**. Costs in excess of the maximum funding obligation will not be paid.

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. 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.**

(a) 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. 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.

(b) The maximum funding obligation of the Government for the term of this Agreement is as follows:

PERIOD	INCLUSIVE DATES	AMOUNT
Term of Agreement and Long Term Obligations	See Section B, Article 2	\$13,000,000.00

7. **ADVANCE PAYMENT.** Upon conveyance of the EDC Property to the Recipient, and the submission of a Request for Advance or Reimbursement (SF 270) in an original and two (2) copies, to the Grants Officer, the Recipient shall be entitled to an initial payment of \$5,000,000.00. Subsequent payments will be initiated (no more frequently than quarterly) upon receipt by the Grants Officer of the Recipient's SF270. The Grants Officer may adjust the amounts or dates of the payments based on the data contained on the Recipient's SF 270 submissions or additional information provided by the Recipient; provided, however, that the Grants Officer may in no event decrease the amount where the Recipient's request is consistent with performance of Environmental Services under the ESCA and does not cause the Government's cumulative payment to Recipient under this Agreement to exceed \$13,000,000.00, except as otherwise provided in 32 CFR 33.21 (g). The Government shall make requested payments to the Recipient in accordance with 32 CFR 33.21. To the extent the Government disputes any portion of a request or otherwise requires additional information from the Recipient before making payment, the Government shall provide notice to Recipient no later than thirty (30) days after the Government receives the request. In the case of such dispute or additional information need, the Government shall make payment with the initial payment period, unless a dispute still exists for which the Government has initiated the dispute resolution procedures in Section D.9, in which case the Government shall within the initial payment period make all payments not subject to dispute, and the payments that are subject to dispute will not be paid until the dispute is resolved.

The Recipient's Central Contractor Registration (CCR) Information (for Electronic Funds Transfer (EFT)) is incorporated as follows:

DUNS NUMBER	TIN/EIN	CAGE CODE
034168505	94-3337453	1ZA60

8. **PAYMENT OFFICE.** The Defense Finance and Accounting Service (DFAS) Office responsible for making payments under this Agreement is as follows:

PAYMENT OFFICE	ADDRESS
DFAS Indianapolis	DFAS-IN Director, Network Ops/Capital Region Department 3800 8899 East 56 th Street Indianapolis, IN 46249-3800

9. **PERFORMANCE REPORTING.** The Grants Officer's representative for performance surveillance will be the Army's Environmental Representative, 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, all work plans, scheduling of activities and other requirements set forth 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. Financial Reports are not required for performance under the Long-Term Obligations requirement after the ten-year Term of the Agreement.

(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 quarter following conveyance. 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 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:

ADDRESSEE	ADDRESS	REPORTS & CORRESPONDENCE	ORIGINAL & COPIES
Grants Officer	Defense Contracting Command-Washington ATTN: Ms. Kathy J. Dobeck 5200 Army Pentagon (Room 1C-243) Washington, DC 20310-5200	<u>FINANCIAL REPORTS</u> SF 272 (Interim) SF 269 (Annual / Final) Written Correspondence affecting performance and/or proposed changes by Recipient	Original and 2 Copies Original and 2 Copies 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. **AWARD COSTS.** The Recipient is not authorized to incur costs prior to the date of the EDC Property conveyance.

15. **DISBURSEMENT PROHIBITION.** No funds will be authorized for disbursement prior to the date of the EDC Property Conveyance. In the event the EDC Property conveyance is not accomplished, the Government will terminate the Agreement at no cost.

16. **GOVERNMENT AND RECIPIENT REPRESENTATIVES.**

NAME	TITLE	OFFICE & E-MAIL	TELEPHONE/FAX
Mrs. Kathy J. Dobeck	Grants Officer	Defense Contracting Command-Washington (DCC-W) E-Mail: dobeckj@hqda.army.mil	PH: (703) 695-2562 FAX: (703) 695-9746
Mr. Robert J. Lavelle	Grants Specialist	Defense Contracting Command-Washington (DCC-W) E-Mail: lavelrj@hqda.army.mil	PH: (703) 614-4578 FAX: (703) 695-9746
MAJ Adam Shepherd	Army's Environmental Representative	Army Base Realignment and Closure Office (BRACO) E-Mail: ShepherdAB@hqda.army.mil	PH: (703) 614-0041 FAX: (703) 693-7621
Ms. Aliza Gallo	Executive Director	Oakland Base Reuse Authority (OBRA) agallo@oaklandnet.com	PH: (510) 238-7256 FAX: (510) 238-2936

--- END OF SECTION B ---

SECTION C
ENVIRONMENTAL SERVICES OBLIGATIONS

1. APPLICATION FOR FEDERAL ASSISTANCE. The OBRA's "Application for Federal Assistance (and Supporting Documentation)" (dated 09 September 2002) is incorporated herein at **SECTION E, Attachment E.2.**

2. SCOPE AND PURPOSE.

2.1. Background. The Department of the Army ("Army"), 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, 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), the Army closed and plans to dispose of real and personal property at those facilities. The Army is authorized to dispose of real and personal property on the Oakland Army Base (hereinafter "OARB", as defined in Section C.3.16. below) to the Oakland Base Reuse Authority (hereinafter "OBRA", as defined in Section C.3.7. 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. Under this early transfer authority, DoD may transfer portions of OARB (hereinafter the "Economic Development Conveyance ("EDC") Property", as said term is defined in Section C.3.8. below) to the OBRA, which may assume responsibility for certain environmental response activities (hereinafter the "Environmental Services," as defined in Section C.3.9. below) for the EDC Property. The geographic area in which work will be performed under this Agreement is set forth in the Technical Specifications and Requirements Statement ("TSRS") and identified as the Area Covered by Environmental Services ("ACES"). This Agreement provides the specified funding, the scope of specifications and requirements for the OBRA's performance and completion of the Environmental Services in the ACES, in compliance with CERCLA, the NCP and other applicable laws and/or regulations, which the parties agree will be accomplished by compliance with a Remedial Action Plan ("RAP") as defined in Section C.3.18 and Risk Management Plan ("RMP") as defined in Section C.3.21, and a Consent Agreement between the California Department of Toxic Substances Control ("DTSC") as defined in Section C.3.8, OBRA and the Oakland Redevelopment Agency ("Consent Agreement") as defined in Section C.3.6.

The Army has conducted investigations and site characterization under CERCLA, the NCP and the Defense Environmental Restoration Program ("DERP") and has identified both contaminated areas as well as potentially uncontaminated areas.

It is in the public interest and will be mutually beneficial for the OBRA to perform and complete the Environmental Services at the ACES. This Agreement does not reduce or alter in any way the responsibilities of the United States under CERCLA, the NCP or Section 330 of Public Law 102-484 ("Section 330").

This Agreement is of mutual benefit to the Army and the OBRA (the "Parties") because it will facilitate transfer and redevelopment of the EDC Property, by allowing the OBRA to perform certain environmental remediation activities and redevelopment simultaneously. This Agreement, in conjunction with the transfer of the property, will expedite OBRA's redevelopment efforts, transfer responsibility for the environmental remediation of the property and will facilitate the conveyance of EDC Property under the No-Cost Economic Development Conveyance. OBRA assumes responsibility for obtaining Regulatory Closure (as defined in C.

3.20) in accordance with the Consent Agreement as consideration for the specified funds provided under this agreement and the EDC Property.

2.2. Purpose. The Environmental Services Obligations provided under this Section establish the terms and conditions necessary for the completion of the Environmental Services required to achieve Regulatory Closure with respect to Known and Unknown Conditions within the ACES and ensure execution of Long Term Obligations associated with Regulatory Closure. The TSRS establishes the Army process and requirements for OBRA to follow and ensure proper performance of Environmental Services. By the execution of this Agreement, the Army and the OBRA concur with the TSRS. The parties also concur that the Environmental Services performed by OBRA will result in Equivalent State Compliance (as defined in C. 3.11) through implementation of the RAP and RMP, in accordance with the associated Consent Agreement with the State of California.

2.3. Scope. The OBRA agrees to assume responsibility and liability for completing environmental investigation, remediation, and related document preparation services necessary to satisfy CERCLA, the NCP and other applicable laws and/or regulations, which the parties agree will be accomplished by compliance with the Consent Agreement and the RAP and RMP. Such services will be done in furtherance of the OBRA's approved Reuse Plan and as part of consideration for the Army's transfer of the EDC Property to OBRA.

The Army is responsible for providing the specified funding, transferring the property and addressing those responsibilities and liabilities specified within this Agreement and attachments. The Army's program oversight, under this Agreement, including any needed approvals, concurrences, and comments necessary to achieve Regulatory Closure, will assure that the remedies implemented by OBRA pursuant to the Consent Agreement and RAP and RMP are consistent with CERCLA and the NCP, and other applicable laws and/or regulations to the degree needed to ensure that all necessary remedial action is taken. The parties agree that the implementation of Consent Agreement, the RAP and RMP will be consistent with remedy requirements of CERCLA, the NCP, and other applicable laws and regulations, and that future modifications to the Consent Agreement, RAP or RMP that result in alternate remedies will likewise be consistent with such remedy requirements. OBRA agrees to achieve Regulatory Closure and perform the required remedial actions in accordance with and subject to the provisions of this Agreement. In accordance with 42 USC 9620(h)(3)(C)(iii), after all remedial actions necessary to protect human health and the environment with respect to hazardous substances on the EDC property have been taken, the Army will grant to OBRA the CERCLA warranty that all necessary response action has been taken.

3. DEFINITIONS.

3.1. Area Covered by Environmental Services. The term "Area Covered by Environmental Services" or "ACES" means the area identified as the EDC Property in the map attached as Appendix 2 to Attachment E.1, for which Environmental Services are required, including without limitation specific RAP sites, RMP locations, and the RMP Implementation Area as these terms are defined in the RAP and RMP, petroleum impacted locations, or other contaminated areas outside the boundaries of the EDC Property but only and expressly limited to the extent such contamination in areas outside the boundaries of the EDC property is caused by a release or releases onto the EDC Property which has migrated offsite and is required to be remediated pursuant to the RAP and RMP and Consent Agreement. Areas excluded from the ACES include but are not limited to the Parcel 1 "Spit" area, and the off-site wetland area, and the area adjacent to Building 991.

3.2. Army and Government. The terms "Army" and "Government" are used interchangeably herein.

3.3. Army's Representative. The Army's environmental representative, for performance surveillance, is [the BRAC Office- Army to complete], which is responsible to the office of the Secretary of the Army for oversight of environmental remediation of the ACES.

3.4. Army-Retained Conditions. The term "Army-Retained Conditions" means: radiological material, chemical or biological warfare agents, unexploded ordnance or abandoned ordnance, and natural resource injuries occurring as a result of contamination releases that have occurred historically, except to the extent such injuries are a result of OBRA's activities on the property. This 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 the ACES, in its unaltered form, or altered solely through natural occurring processes or phenomena.

3.5. 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 United States Environmental Protection Agency ("EPA") regulations implementing CERCLA.

3.6. Consent Agreement. The term Consent Agreement shall mean the enforceable Agreement between DTSC and OBRA, as approved by Army, that requires OBRA to remediate the ACES in conformance with the RAP and RMP and achieve Regulatory Closure and thereby satisfy the Army's CERCLA obligations. It also requires OBRA to enter into necessary restrictions on the EDC Property to assure the temporary and long term protection of human health and the environment.

3.7. Cooperative Agreement. The term "Agreement" or "ESCA" means this Cooperative Agreement for the completion of Environmental Services.

3.8. Department of Toxic Substances Control. "Department of Toxic Substances Control" or "DTSC" shall mean the state regulatory agency providing concurrence, oversight and other enforcement authority, consistent with the Consent Agreement.

3.9. EDC Property. The term "EDC Property" means that 366 acre portion of OARB which will be transferred under an economic development conveyance to OBRA prior to the completion of the environmental restoration pursuant to 42 U.S.C. Section 9620(h)(3)(C) as was specifically identified in the deed executed by the Army, set forth in Exhibit E.3.

3.10. Environmental Insurance Policies. The term "Environmental Insurance Policies" means the Cleanup Cost Cap Policy and the Pollution Legal Liability Insurance Policy, or similar policies, and any other environmental insurance coverage issued to OBRA, by an insurance carrier that is rated A.M. Best's A- FSC IX, or better.

3.10.1. Environmental Restrictions. The term "Environmental Restrictions" means the land use restrictions applicable to the EDC property following transfer to OBRA and for which OBRA will be responsible. The Environmental Restrictions are documented hereto in Appendix 5 to Attachment E.1, EDC Property Restrictions and Disclosures, and include the Covenant to Restrict Use of Property (CRUP) established pursuant to California Civil Code section 1471 and California HSC Section 25000 et seq., and the RMP restrictions, as established and enforced by Consent Agreement and other Army Deed restrictions.

3.11. Environmental Services. The term Environmental Services means investigation, remediation and related document preparation activities by the OBRA, necessary to achieve Regulatory Closure of the ACES, with respect to any Known or Unknown Conditions, as well as any associated Long-Term Obligations.

3.12. Equivalent State Compliance. "Equivalent State Compliance" shall mean the remediation requirements and process established under the Consent Agreement that OBRA shall comply with, that are considered by the DTSC and the Army to be functionally equivalent to and consistent with those substantive and procedural requirements promulgated pursuant to CERCLA, the NCP, the California Health and Safety Code Section 25100 et seq., as amended, applicable state laws and regulations, as amended and other current and applicable U.S. EPA guidance and standards.

3.12.1 Finding of Suitability for Early Transfer ("FOSET"). A Finding of Suitability for Early Transfer that represents a written determination by the Army that Property containing areas of suspected Hazardous Substances and contaminants may be transferred by Deed before all necessary remedial action has been taken pursuant to Section 120(h)(3)(C) of CERCLA.

3.13. Known Conditions. The term "Known Conditions" means those environmental conditions, including petroleum impacted locations, identified in the RAP and RMP.

3.15. Long-Term Obligations. The term "Long-Term Obligations" means any long-term review, monitoring, and operation and maintenance requirements that are required in support of Regulatory Closure and ongoing compliance with the RAP and RMP pursuant to the Consent Agreement, including compliance with the Environmental Restrictions identified in the EDC Property Restrictions and Disclosures. The OBRA shall use the Oakland Urban Land Reuse ("ULR") program or other appropriate measure for monitoring and enforcing compliance with Institutional Controls to assure ongoing compliance with the Environmental Restrictions. The Environmental Restrictions implementation period is anticipated to be effective for thirty (30) years, unless modified as provided for in Section 8 of this Agreement

3.16. OARB. The term "Oakland Army Base" or "OARB" means that real property consisting of approximately 425 acres of land including all buildings, facilities, utilities, and other infrastructure and improvements located thereon.

3.17. OBRA. "OBRA" means the Oakland Base Reuse Authority and shall mean the entity that is within the meaning of the term "local government agency" as such term is used in 10 USC Section 2701(d)(1), with which the Army is entitled to enter into "agreements on a reimbursable or other basis". Upon Deed Conveyance, OBRA's rights, duties and obligations are transferred to and assumed by the Oakland Redevelopment Agency ("ORA") acting as a successor to OBRA pursuant to the Joint Powers Agreement of 1995 that creates OBRA. For ease of reference in this Agreement, OBRA and ORA are collectively hereinafter referred to as "OBRA".

3.18 Remedial Action Plan. The term "Remedial Action Plan" or "RAP" means the remedial requirements approved by DTSC and applicable to the EDC Property, including the Risk Management Plan ("RMP"), required to be implemented by OBRA pursuant to the Consent Agreement.

3.19. Reuse Plan. The term "Reuse Plan" means the Final Reuse Plan, dated **July 31, 2002.**

3.20. Regulatory Closure. Regulatory Closure shall include issuance of state certification under the Consent Agreement or documentation equivalent to a conditional No Further Action letter, that the RAP and RMP have been implemented, subject to any necessary Long Term Obligations and the Environmental Restrictions identified in the EDC Property Restrictions and Disclosure, prior to the Army amending the Early Transfer Parcel deed and granting the deferred CERCLA covenant.

3.21 Risk Management Plan. The term "Risk Management Plan" or "RMP" means the remediation requirements applicable to the Known and Unknown Conditions on the ACES as set forth in the RAP, required to be implemented by OBRA pursuant to the Consent Agreement.

3.22. Technical Specifications and Requirements Statement. The term "Technical Specifications and Requirements Statement" or "TSRS" means the mutually agreed upon document attached hereto at Section E, Attachment E.1 that identifies the scope of environmental services that will be performed by the OBRA for the Army.

3.23. Unknown Conditions. The term "Unknown Conditions" means those environmental conditions, including petroleum impacted locations, in the ACES that are not Known Conditions or Army Retained Conditions.

4. OBLIGATIONS OF THE PARTIES.

4.1. Obligations of the OBRA.

4.1.1. General. In consideration of the Army's agreement to provide the full amount of funds under this Agreement, OBRA shall perform the necessary Environmental Services and comply with the Environmental Restrictions in Appendix 5 in accordance with and subject to the terms of this Agreement, to include document review as specified in Section 4.2 herein, and the TSRS in order to achieve Regulatory Closure. The OBRA shall also ensure Equivalent State Compliance during performance of the Environmental Services by compliance with the Consent Agreement and the RAP and RMP. Full implementation of the RAP and RMP, and Consent Agreement with Equivalent State Compliance, shall satisfy the remedy requirements of CERCLA, the NCP, and applicable laws and regulations regarding remediation of the ACES, thereby resulting in Regulatory Closure and the granting by the Army of the Deferred Covenant. By executing this agreement, Army concurs with the process set forth in the Consent Agreement and the documents and approvals therein. However, this concurrence in no way limits the OBRA's responsibility to perform Environmental Services and thereby fulfill its obligation to satisfy CERCLA remedy requirements for the EDC Property by implementing the RAP and RMP to Regulatory Closure as set forth in the Consent Agreement. OBRA's obligation to perform Environmental Services is expressly conditioned upon the Army providing up to the sum of \$13 million for performing the Environmental Services in accordance with the terms of this Agreement; provided, however, that to the extent the Army pays a portion of the funding set forth in Section B.5 of this Agreement but fails to pay the full amount set forth in that Section, or in the event the Agreement terminates pursuant to Section D.8, OBRA's obligations shall be limited to the portion of Environmental Services which have been performed with funding actually provided by the Army.

4.1.2. Indemnification/ Limited Waiver of Statutory Rights. In consideration of the funds available under this Agreement, the transfer of the EDC Property and other terms of this Agreement, OBRA, agrees that it shall, upon the execution of this Agreement, regardless of possible termination pursuant to Section D.9, indemnify the Army for:

1. any response cost claims for any environmental conditions which OBRA has assumed under this ESCA, including hazardous substances, pollutants and chemicals, petroleum, and petroleum derivatives. OBRA's indemnification obligation shall exist with respect to all Known and Unknown Conditions on the EDC Property, including remediation of Building 1 contamination and all costs associated with correction of a failure of any remedy implemented by the OBRA.
2. all personal injury or property damage claims to the extent caused by the acts or omissions of OBRA or its contractors in the course of performing the Environmental Services;
3. all natural resource damages to the extent caused by or contributed to by the actions of OBRA;
4. all costs associated with or arising from any negligent acts or omissions or willful misconduct of the OBRA, in the course of performing the Environmental Services or implementing the RAP and RMP in accordance with the Consent Agreement;
5. regulatory oversight costs for any remedy implemented by the OBRA to the extent the OBRA is responsible for such costs in accordance with the terms of this Agreement; provided, however that DTSC oversight costs for RAP and RMP implementation (as provided for under the Consent Agreement) are paid by the Army as provided for under the Defense-State Memorandum of Agreement ("DSMOA") under Section 4.2.7 below;
6. all costs associated with additional remediation required on or within the ACES after OBRA achieves Regulatory Closure, except for those associated with Army Retained Conditions;
7. all costs associated with additional remediation required on or within the ACES, as a result of a change in land use from that anticipated at the time of the execution of this Agreement.

4.1.3. Notice of a Complaint. The OBRA shall provide the Army notice as soon as possible, but no later than fourteen (14) days of receiving notice of a claim by Federal, State, or local regulators, or other third parties, of the existence of any environmental condition at the ACES that suggests an action is necessary for which the Army is responsible under the definition of Army-Retained conditions, outlined in Section C.3.4. If the OBRA is served with a complaint or written notice of a claim by the federal, state or local regulators, or other third parties, the OBRA shall provide the Army with a copy of such document as soon as possible, but no later than fourteen (14) days following service of such document.

4.1.4. Discovery of Army Retained Conditions. In the event the OBRA discovers Army-Retained Conditions at, on, or affecting the ACES, OBRA shall notify the Army of such conditions within twenty-four (24) hours of such discovery. Failure of the OBRA to provide timely notice as provided in Sections 4.1.3 and 4.1.4 shall not limit the responsibility of the Army for Army-Retained Conditions under this Agreement, except to the extent that the Army's interests are materially or adversely affected by such late notice.

4.1.5. Actions with Respect to Army Retained Conditions. Notwithstanding the provisions of the preceding Section C.4.1.4, the OBRA 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-Retained Conditions:

4.1.5.1. Identification and Investigation Activities. Any activity necessary to determine the existence, nature, character and extent of conditions that may constitute Army-Retained Conditions. If the OBRA discovers a condition it reasonably believes is an Army-Retained Condition other than a

condition subject to Section C.4.1.5.2, it shall use its reasonable efforts to avoid incurring costs or obligations with respect to the condition by seeking to ascertain whether such condition is in fact an Army-Retained Condition before incurring such costs or obligations.

To the extent OBRA incurs costs or obligations with respect to an Army-Retained Condition despite its use of reasonable efforts to avoid incurring such costs, OBRA may seek reimbursement from the Army, subject to the dispute resolution provisions of Section D.9. Nothing in this Agreement shall be construed to authorize the OBRA 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-Retained Condition to the extent that the initial investigation demonstrates that the conditions at issue are not Army-Retained Conditions

4.1.5.2. Imminent Threat. OBRA may take any immediate action in accordance with this Section C.4.1.5.2 to address an imminent threat to human health or the environment if required by a regulatory agency, or if in OBRA's reasonable judgment, such action is necessary to address an imminent threat to human health or the environment. OBRA shall have a right, but not the duty to take action and may seek reimbursement from the Army where (a) notification cannot practicably be provided to the Army 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 OBRA to take such action under terms agreed to by the parties. In the event that notification is provided to the Army, by OBRA 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.

4.1.5.4. Notice and Dispute. To the extent the OBRA takes or causes to be taken actions in accordance with Section C.4.1.5.1. or in accordance with Section C.4.1.5.2. (a), OBRA shall provide notice of such action to the Army as soon as practicable. If the Army disputes an action taken by OBRA under this Section C.4.1.5.2. the Army may engage in dispute resolution in accordance with Section D.9.

4.1.5.5. Information obtained by the OBRA. In the event Army-Retained Conditions are discovered, the OBRA shall provide to the Army all information obtained or developed by the OBRA with respect to such Conditions.

4.1.5.6. The OBRA 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 Retained Conditions.

4.1.6. Financial Assurances. The Parties agree that the OBRA has provided adequate financial assurances pursuant to its Consent Agreement with DTSC. The combination of these assurances and the Army's financial assurances provided by this Agreement meet the requirements of 42 U.S.C. Section 9620(h)(3)(C).

4.1.7. Reports. In order to assure appropriate documentation for the Army to execute the CERCLA covenant, the Army may request that the OBRA provide additional information concerning the environmental condition of the ACES. The OBRA shall provide access to any non-privileged documents containing such requested information to the Army as soon as possible after such request is made. The OBRA agrees to provide such access within a reasonable time of such request.

4.1.8. Access. The OBRA shall, upon request, promptly provide the Army and any officially concerned Federal Government agency with all rights to access onto the Early Transfer Property pursuant to environmental remediation access rights reserved by the Army in the transfer documents. The OBRA 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 the environmental responsibilities. The OBRA recognizes and agrees to accommodate, within OBRA's office space, the Army's periodic need for office space for on-site personnel to review documents and meet with personnel as needed to oversee the OBRA's performance of Environmental Services in accordance with this Agreement.

4.1.9. Discovery of Unknown Conditions. In the event that the OBRA discovers any unknown condition during the performance of the Environmental Services of the ACES, OBRA shall notify the Army representative as soon as possible, but no later than within five (5) days of discovery. OBRA shall perform all the necessary environmental restoration for such Unknown Conditions, with appropriate Army oversight, consistent with the Consent Agreement and TSRS, and as required by applicable law in order for OBRA to achieve Regulatory Closure.

4.2. Obligations of the Army.

4.2.1. General. The Army agrees to fund OBRA's performance of the Environmental Services in accordance with the terms and conditions of this Agreement. The Army also agrees that it shall execute and perform various duties and responsibilities as necessary to satisfy the requirements of CERCLA, the NCP and other applicable laws and regulations, as set forth in this Agreement and the TSRS.

4.2.2 Oversight of RAP and RMP Implementation. In accordance with the TSRS and in addition to the opportunity to review and comment on general remedial documents, the Army shall review for concurrence as set forth below, drafts of all proposed amendments to, or work/ design plans required by, the RAP, RMP and the Consent Agreement, in order to assure that the remedies implemented by OBRA 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.

1. OBRA shall provide to the Army draft proposed amendment to, or work/design plans required by, the RAP, RMP or Consent Agreement.

2. The Army shall notify OBRA, within thirty (30) days of receipt of such proposed amendment or plan, if the Army has objections to the proposed amendment or plan in regard to whether the proposed amendment or plan may result in failure to implement a remedy that sufficiently meets CERCLA and NCP remedy requirements.

3. Within 30 days of notification, the Army shall provide and specifically describe to OBRA and DTSC, in writing, comments on the proposed amendment or plan, to include objections to amendment or plan implementation.

4. OBRA and the Army shall meet and confer to negotiate in good faith to resolve any disputed amendment or plan.

5. For any proposed amendment or plan that remains disputed after thirty (30) days of OBRA's receipt of Army's written objection, the dispute shall be submitted to the Dispute Resolution Process set forth in Section D.9 of this Agreement.

4.2.3. CERCLA Covenant. The Army shall issue the warranty required by Section 120(h) of CERCLA ("CERCLA Section 120") within thirty (30) days of the OBRA providing a written request to the Army for the issuance of the warranty, provided that such written request includes proof that Regulatory Closure has been achieved. To the extent new legal descriptions must be prepared in order for the warranty to be recorded, the OBRA shall bear the costs of preparing such legal descriptions.

4.2.4. Army Retained Conditions. For Army Retained Conditions, as defined in Section C.3.4., as the conditions for which the Army remains responsible, under the terms of this Agreement, the Army will timely:

1. Assess, inspect, investigate, study and remove or remediate, as appropriate, such conditions, 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 such conditions;
3. Confer with the OBRA, with regard to the Army's obligations, as soon as possible after receiving such notice from the OBRA pursuant to Sections C.4.1.3, C.4.1.4 and/or C.4.1.5.4.; and
4. Identify the actions to be taken by the Army, in coordination with the OBRA and appropriate regulatory agencies, with respect to the Army Retained Conditions.

4.2.5. In performing environmental cleanup activities, the Army shall use its best efforts to minimize interference with the use of the Property by the OBRA and its successors, assigns, transferees and tenants to the extent practicable. Subject to the preceding sentence, the Army assumes no liability for any interference with the use of the Property, which may be caused by environmental cleanup activities, and the OBRA shall have no claim against the Army for any such interference; provided, however, OBRA's obligation to perform Environmental Services shall be suspended on ACES locations impacted by such conditions to the extent OBRA is unable to fulfill its obligations on such locations as a result of the presence of Army Retained Conditions, or the Army's actions or inactions with regard to such conditions, until such time as the Parties agree that Environmental Services may be re-commenced on such locations in coordination with OBRA's activities conducted under the Consent Agreement.

4.2.6. To the extent the Parties disagree as to whether an environmental condition constitutes an Army Retained Condition, as to the required response action, or whether such required actions result in unreasonable interference or delay of the OBRA's performance of Environmental Services, the matter may be submitted to dispute resolution in accordance with Section D.9.

4.2.7. The Army shall pay DTSC for regulatory oversight costs incurred in the implementation of the Consent Agreement, subsequent to the Early Transfer, and as required to achieve Regulatory Closure of the ACES; provided, however, that the Army shall not pay penalties or fines assessed by DTSC against OBRA in connection with OBRA's responsibilities under the RAP, RMP or Consent Agreement. Such payment to DTSC will be made by Army as provided for pursuant to the Defense-State Memorandum of Agreement and shall not be credited against the \$13 million to be paid to OBRA under this Agreement

4.2.8. The Federal Government recognizes its obligation to hold harmless, defend, and indemnify OBRA and any successor, assignee, transferee, lender, or lessee of OBRA, or its successors or assigns, as required and limited by Section 330 of the Department of Defense Authorization Act of 1993, as amended, and to otherwise meet its obligations under the law, subject to the availability of appropriated funds.

4.3. Insurance and Related Liability.

4.3.1. General Liability. The OBRA shall either self-insure or shall carry and maintain general liability insurance to afford protection with limits of liability of not less than \$2 million in the event of bodily injury and death to any number of persons in any one accident.

4.3.2. Environmental Insurance. OBRA shall carry and maintain environmental insurance as set forth in the TSRS. The Army must review these policies for consistency with the requirements outlined in the TSRS.

4.3.3. Worker's Compensation. If and to the extent required by applicable law, the OBRA 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 regarding any waiver by the OBRA of any claims the OBRA may have against the Army, its officers, agents, or employees except for those asserted by third parties in their own right.

4.3.4. Delivery of Policies. The OBRA will provide to the Army a certificate of insurance evidencing the insurance required and the terms of the provisions for Army review upon demand.

5. GENERAL PROVISIONS.

5.1. Term of Agreement.

5.1.1. This Agreement shall remain in effect in accordance with B.2, subject to extension or earlier termination, pursuant to Section D.8. or D.9.

5.1.2. The obligations of the Parties that shall survive the term of this Agreement, identified in Section B.2, and the associated definitions, shall include the following:

1. the obligations of the OBRA required to maintain compliance with the Environmental Restrictions as recorded, the Consent Agreement, and the RAP and RMP, with respect to both Known Conditions and Unknown Conditions

2. the OBRA and Army Obligations under Sections C.4.1.2 to C.4.1.9 and C.4.2.4 to C.4.2.8 and C.4.3.2.

5.2. Successors and Assigns. OBRA, and upon Deed Conveyance, OBRA's successor ORA, shall remain liable for performing OBRA's obligations under this Agreement, without regard to the potential for portions of the OARB to be transferred to future owners or tenants, in furtherance of the Site redevelopment objectives and without regard to the possible transfer of portions of the OBRA's liability under the Consent Agreement. Nothing in this Agreement shall be construed to authorize OBRA to assign any of its responsibilities or obligations under this agreement to a third party without the prior approval of the Army or make any subsequent owners or occupants of any EDC Property a Successor or Assign under this Agreement.

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 such writing.

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:

Department of the Army
Defense Contracting Command – Washington
ATTN: Grants Officer
5200 Army Pentagon
Washington, DC 20310-5200

Oakland Base Reuse Authority (OBRA)
ATTN: Executive Director
700 Murmansk Street, Suite 3
Oakland, CA 94607

City of Oakland Redevelopment Agency
ATTN: Agency Administrator/City Manager
Oakland, CA

5.6. Representations.

5.6.1. The Army represents that:

1. It is fully authorized to enter into this Agreement;
2. The OBRA may rely on the data provided to the OBRA 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, incorporated herein at Section E, attachment E.1, fairly and accurately represents the Army's actual knowledge of the nature and extent of contamination within the ACES. The information contained in these documents generally represents the Army's actual knowledge of the nature and extent of contamination within the ACES.

5.6.2. The OBRA and ORA represent that:

1. Each is fully authorized to enter into this Agreement;

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 OBRA for specific costs incurred are wholly subject to the Anti-Deficiency Act and that the Army's obligations are subject to that law; and

3. It is fully authorized, under local and state law, to fulfill its indemnification obligations under this Agreement

5.7. Access to and Retention of Records. The OBRA shall afford any authorized representative of the Army, the Department of Defense, 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 OBRA'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 OBRA shall retain all such records intact in such form, for at least ten (10) years following completion or termination of this Agreement. Access to the OBRA's records will be during normal business hours, and the Army or other officially concerned federal government agency will give the OBRA seventy-two (72) hours prior notice of its intention to examine the OBRA's records, unless the Army or other officially concerned federal government agency determines that more immediate entry is required by special circumstances. The OBRA 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.

5.8. 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.

5.9. 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 OBRA or the Army with respect to the EDC Property.

--- 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-R¹, 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) Circulars², 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 certifications set out at 32 CFR Parts 25 and 28.
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.
 - (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.
 - (e) On the basis of handicap, in the Architectural Barriers Act of 1968 (42 U.S.C. 4151, et seq.).
 - (f) Rules of the Department of Interior (50 CFR Parts 10-24) and Commerce (50CFR Parts 217-227) implementing laws and conventions on the taking, purchase, sale, export, or import of wildlife and plants, including the: Endangered Species Act of 1973 (16 U.S.C. 1531-1543); Marine Mammal Protection Act (16

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>

U.S.C. 1361-1384); Lacey Act (18 U.S.C. 42); and Convention on International Trade in Endangered Species of Wild Fauna and Flora.

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.4.1. 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).

6.4. It will identify to the Grants Officer any impact on coastal zones, and assist the Grants Officer in compliance with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et. Seq.), concerning protection of U.S. coastal resources.

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 Defense Contracting Command-Washington. 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 any revision which would result in additional Government funding.

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, or the Environmental Restrictions incorporated herein at Section E, Appendix 5 to Attachment E.1.

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. The Army also explicitly reserves the right to terminate the Agreement if (1) the Army has not approved the Consent Agreement or amendments thereof, prior to execution by DTSC and the Recipient; or (2) the EDC Property Conveyance is not completed by 31 July 2003.

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.

(c) 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.

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. 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.

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, symposia, etc.

12. **SUBCONTRACTS.** The Recipient will use its own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in 32 CFR 33.36 (b) through (i), subject to the Grants Officer's review as follows.

12.1. Pursuant to 32 CFR 33.36 (g)(2), the Recipient shall make available to the Grants Officer for a pre-award review, procurement documents such as request for proposals or invitation for bids, independent cost estimates, etc., when any of the following conditions apply:

(a) The Recipient's procurement system fails to comply with the procurement standards of 32 CFR 33.36;

(b) The procurement is expected to exceed \$100,000 and is to be awarded without competition or only one offer or bid is received in response to a solicitation;

(c) The procurement, which is expected to exceed \$100,000, specifies a "brand name" product;

(d) The proposed award, which is expected to exceed \$100,000, is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(e) A proposed contract modification changes the scope of a contract or increases the contract amount by more than \$100,000.

12.2. The Recipient's contracts and/or subcontracts must contain the provisions as set forth under 32 CFR 33.36 (i) (1) through (13) inclusive.

13. **SUBGRANTS.** The Recipient shall follow the provisions of 32 CFR 37 (b) through (c) inclusive which are applicable to the Recipient when awarding and administering subgrants (whether on a cost-reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments.

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.). 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. **ASSIGNMENT OF ADMINISTRATIVE GRANTS OFFICE (AGO).** Pursuant to 32 CFR 22.714 through 715, the Grants Officer may enter into a cross-servicing arrangement to delegate responsibility for post-award administration to a cognizant grants administration office. The primary responsibility of a cognizant grants office is to help and ensure that Recipients fulfill all requirements in law, regulation, and award terms and conditions. In the event that post-award administration is delegated under this Agreement, the Recipient will be notified through a unilateral modification issued by the Grants Officer; provided, however, that such unilateral modification shall be for assignment of post-award administrative functions only as authorized by 32 CFR 22.714.
21. **MODIFICATION OF AGREEMENT.** Except for administrative modifications that are authorized by Section 20 of this Agreement, and modifications to administrative terms that do not affect the rights or obligations of the Recipient under this Agreement. The only method by which this Agreement can be modified is through formal, written modification signed by an authorized representative of each party. Only the Grants Officer is authorized to agree to a modification 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

<u>NO.</u>	<u>ATTACHMENT/EXHIBIT DESCRIPTION</u>	<u>PAGES</u>
E.1.	Environmental Response & Associated Documents	
	Appendix 1 of Attachment E.1 Technical Specifications and Requirements Statement	01 - 14
	Appendix 2 of Attachment E.1 EDC Property Description & Map of ACES	01 - 02
	Appendix 3 of Attachment E.1 Consent Agreement Between Recipient and California Department of Toxic Substances Control	RESERVED
	Appendix 4 of Attachment E.1 Remedial Action Plan (RAP) and Risk Management Plan (RMP)	
	NOTE: This Appendix is in the possession of all parties And is hereby incorporated by reference with the same force and effect as if set forth in full text	
	Appendix 5 of Attachment E.1 Environmental Covenants, Conditions and Restrictions	
	NOTE: This Appendix is in the process of being "cleaned up" To remove redlines and to incorporate headers. Upon receipt, this Appendix will be incorporated in the ESCA.	
E.2.	Application for Federal Assistance (SF 424) And Budget Information (SF 424C) (Dated 09 September 2002)	01 - 04

---APPENDICES FOLLOW ---

APPENDIX 1 to ATTACHMENT E.1
TECHNICAL SPECIFICATIONS AND REQUIREMENTS STATEMENT

1.0 INTRODUCTION

In accordance with the terms of this ESCA, this Technical Specifications and Requirement Statement (TSRS) provides the Army's general requirements for Oakland Base Reuse Authority (OBRA) to conduct the Environmental Services, address environmental scheduling and regulatory issues and assume liability and responsibility for Regulatory Closure of the Areas Covered by Environmental Services (ACES) on the EDC Property of the Oakland Army Base, except for Army Retained Conditions. The Environmental Services will be performed in conjunction with the redevelopment of the ACES and in accordance with the Remedial Action Plan (RAP), the Risk Management Plan (RMP) and the Consent Agreement, including petroleum-impacted locations, to achieve Regulatory Closure as defined in Section C 3.20 of the ESCA. Implementation of the RAP, RMP and Consent Agreement will also satisfy the remedy requirements of CERCLA, the NCP, and other applicable environmental laws and regulations regarding remediation of the EDC property. The Army will provide funding for the Environmental Services required in the RAP, RMP and Consent Agreement, as provided for in the Environmental Services Cooperative Agreement (ESCA) and this TSRS. The mechanism for funding these services is the ESCA. Unless otherwise defined, the terms in this TSRS shall have the same meaning as defined in the ESCA.

1.1 Background

This task proposal is for support of the U.S. Department of the Army (Army), Base Realignment and Closure Office (BRACO). As provided in Section C.4 of the ESCA, the OBRA will manage the cleanup efforts at the ACES and the Army will provide the appropriate level of oversight to ensure the Army's fiscal and environmental obligations are met. The Army's involvement in the cleanup at the Oakland Army Base, Oakland, California (the Installation) 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 OBRA have chosen to pursue an early transfer of the EDC Property, in order for the OBRA to obtain title of the property requiring remediation in an expedited manner. In conjunction with the early transfer, the OBRA and the Army chose to pursue a process whereby OBRA assumes the responsibility and liability for the Environmental Services to be provided under an ESCA. The Army will meet its obligations under CERCLA and other applicable laws and regulations, as the federal landholding agency, by providing the funds under the same ESCA and overseeing the completion of the Environmental Services necessary for Regulatory Closure in conjunction with the Consent Agreement. In accordance with its responsibilities, the Army shall remain involved, and will provide appropriate program oversight of the cleanup efforts at the EDC Property, to include document review as specified in Section C 4.2. of the ESCA.

1.3 Applicable and Relevant Documents – [see other attached document]

1. A list of applicable and relevant documents is attached as Exhibit A.

2.0 TECHNICAL SERVICES REQUIRED

2.1 Task Description

The major component activities of this TSRS are outlined herein.

1. Project management
2. Site Assessment and Monitoring
3. Natural Resources Trustees Coordination & Damage Claims
4. Regulatory Requirements
5. Environmental Insurance
6. Remedy Implementation
7. Remedial Action Report and Regulatory Closure
8. Public Involvement
9. Period of Performance
10. Submittal of Documents and Project Schedule

The OBRA shall provide all the necessary qualified and licensed personnel, equipment, and resources to successfully execute the cleanup of the ACES in accordance with the ESCA, RAP, RMP, and Consent Agreement.

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 to be conducted under the ESCA by OBRA on behalf of the Army. Nothing in this TSRS shall limit the OBRA from conducting environmental activities above and beyond those activities specified in the TSRS and required to perform Environmental Services under the ESCA, at its sole cost and expense.

2.1.1 Project Management

The complexity, magnitude, and unique nature of the cleanup at the EDC Property requires coordination of project activities to ensure that all stakeholders are kept informed of the project status, existing or potential problems, and any changes that may be required to prudently manage the project and meet the needs of the Army and this TSRS. Project stakeholders include the Department of the Army (BRAC Office (BRACO), U.S. Army Corps of Engineers, Army Environmental Center (AEC), Department of Toxic Substances Control (DTSC), the Regional Water Quality Control Board (RWQCB), the U. S. Environmental Protection Agency (USEPA) Region IX, the Port of Oakland and the local community and other local and state organizations that make up the West Oakland Citizens Advisory Group (WOCAG) and the Army Restoration Advisory Board (RAB) or its OBRA-operated successor public forum for environmental actions. The OBRA will use the DTSC approved RAP and RMP as a management tool to guide the cleanup of the ACES, in conjunction with redevelopment and implement the RAP, RMP and Consent Agreement to achieve Regulatory Closure to satisfy the 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 OBRA, review and comment on documents, and review for concurrence any revisions, modifications, or amendments to the RAP, RMP and Consent Agreement as required in ESCA Section C 4.2.

The OBRA shall maintain a project repository as required by CERCLA, the NCP, and other applicable laws and regulations. The OBRA 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, the OBRA shall hold conference calls as defined in Section 3.3 with the Army representative approximately quarterly to discuss the progress of the cleanup of the ACES

and the status of ongoing documents/reports being reviewed by the Army representative. Additional details on the project management responsibilities are found in Section 3.1 through Section 3.3 of this TSRS.

2.1.2 Site Assessment and Monitoring

The OBRA shall conduct any additional site assessment, including sampling and analysis that may be necessary to accurately delineate areas requiring remedial actions in accordance with the RAP, RMP, Consent Agreement and ESCA. As additional delineation or other site characterization work is completed during the period of performance, the OBRA shall record any changes needed to the necessary documents (e.g., remedial design documents, RAP and RMP) and provide changes to the Army for review in accordance with the procedures specified in the ESCA Section C 4.2. To the extent additional site assessment results in additional decision documents or amendments, independent of the currently existing RAP, RMP, and Consent Agreement, the Army will review for concurrence, in order to ensure the CERCLA sufficiency of any remedial requirements that differ from those specified in the RAP, RMP and Consent Agreement, pursuant to the review procedures set forth in Section C 4.2 of the ESCA.

The OBRA will comply with the RAP, RMP and the Consent Agreement to achieve Regulatory Closure, as defined in the ESCA, of the ACES covered by this TSRS.

Prior to the end of the Period of Performance, discussed in Section 2.1.8, the OBRA shall implement, to the extent required by the Consent Agreement, the RAP and RMP, a plan to meet its Long-Term Obligations for the ACES. This Plan will provide for the ongoing applicability of the Environmental Restrictions, including without limitation, ongoing remediation activities required under the RMP. In addition, the OBRA shall prepare all necessary monitoring reports as required by the RAP and RMP and the Consent Agreement, 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 Natural Resources Trustees Coordination and Damage Claims

The OBRA 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 shall undertake any official discussions with Natural Resource Trustees, the OBRA shall assist in efforts to resolve Trustee concerns during implementation of any remedial activities under the Consent Agreement. Any Natural Resource injuries caused or contributed to by the actions of OBRA, and any Natural Resource Damage claims arising from OBRA actions are OBRA responsibilities pursuant to the terms of the ESCA.

2.1.4 Regulatory Requirements According to the Consent Agreement

The OBRA shall be responsible for negotiating with appropriate local, state, and/or federal environmental agencies in order to achieve Regulatory Closure, pursuant to the Consent Agreement and the ESCA.

2.1.5 Environmental Insurance.

In order to prevent delays in the cleanup and to protect OBRA from Unknown Conditions, as defined in the ESCA, encountered during the cleanup of the ACES, OBRA will obtain Environmental Insurance meeting the requirements set forth in Section 3.4 of this TSRS.

2.1.6 Remedy Implementation

The OBRA shall utilize the funds provided under the ESCA to conduct the tasks outlined here and to implement remedial actions required by the RAP and, RMP and the Consent Agreement. The OBRA 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 Final Reuse Plan dated July 31, 2002, as approved by the governing board of OBRA (the "Reuse Plan").

All changes in land use, from the Reuse Plan that increases the amount or scope of remedial activities required on the ACES or compromises the effectiveness of an Environmental Restriction and/or requires the modification, variance or termination of such Restriction, shall be the sole expense and responsibility of OBRA. If such a change is planned, OBRA shall notify the Army representative before proceeding with any of its associated obligations under the Consent Agreement.

The OBRA is responsible for all additional costs associated with a change in reuse from the Reuse Plan. Regardless of such changes; the OBRA must ensure that all remedial activities contemplated for the ACES meet the remedy requirements of CERCLA.

Remedial Design

The OBRA shall be responsible for developing all remedial design documents associated with the remedial actions to achieve Regulatory Closure as described in the RAP, RMP and the Consent Agreement. To the extent required by the RAP, RMP and Consent Agreement, OBRA will develop and use a Remedial Design and Implementation Plan (RDIP) to implement the remediation for each RAP site as described in the RAP. If additional remedial action is necessary, as a result of changes to the RAP, RMP or Consent Agreement, the Army will review the same in accordance with the procedures specified in Section C 4.2 of the ESCA. Additional details on Remedial Action responsibilities are found in Section 3.5 of this TSRS.

RAP Sites

The RAP sites identified in the RAP consist of seven areas that could potentially influence or delay planned land reuse because the residual contamination at these locations may not be sufficiently characterized, , or are not likely to be adequately remediated as part of activities performed as part of redevelopment. Environmental conditions at RAP sites tend to be unique in one or more respects. The RAP Site remediation requirements shall be complete upon achievement of Regulatory Closure in accordance with the Consent Agreement.

RMP Sites

All of the EDC Property is included in the RMP Implementation Area, within which the RMP protocols will be implemented during and after remediation activities, as well as during and after redevelopment. The RMP describes the health protective measures to be implemented in the future, during and after redevelopment, for identified chemical release sites, land uses, and potential exposure pathways in the RMP Implementation Area. The RMP protocols will be implemented unless and until the need for such protocols are terminated on a location-specific or base-wide basis with the approval of DTSC and of the Army in accordance with the procedures specified in the RMP. The RMP implementation area, consisting of all of the EDC Property, is accordingly most of the ACES. RMP implementation requirements will be addressed in a phased manner that is consistent with the schedule for redevelopment of the EDC Property. In the event that the nature and extent of the releases at RMP locations are found to differ significantly from the conditions described in the RAP, the appropriateness of response measures contained in the RAP will be re-evaluated for such specific RMP locations. The RMP specifies the situations under which response measures will be re-evaluated for potential elevation to RAP Site status.

2.1.6.1 Areas Covered by Environmental Services (ACES)

Specific locations and contamination issues of concern in the ACES are more fully described in the attached RAP, RMP and Consent Agreement and are shown by map in Appendix 2 to Attachment E.1. Those locations may require more investigation before determining the required remedial actions. This investigation and any subsequent remediation may be conducted in conjunction with the redevelopment and as described in Section C 4.1 of the ESCA.

If (i) the investigation shows that there are chemicals of concern that require additional remediation and (ii) DTSC requires a Remediation Design and Implementation Plan (RDIP) pursuant to the RAP or Consent Agreement, then the OBRA shall develop a DTSC-approved RDIP that will adequately remediate the contamination as required by the RAP and RMP and the Consent Agreement and coordinate with the Army as needed for review and concurrence pursuant to Section C 4.2 of the ESCA and as part of progress reports provided in accordance with Section 3 herein.

2.1.7 [Intentionally Omitted]

2.1.8 Remedial Action Report and Regulatory Closure

In order to ensure Equivalent State Compliance, including those actions relating to petroleum, in the documentation necessary to achieve Regulatory Closure, the OBRA shall develop a Remedial Action Report (RAR) following completion of remediation for RAP Sites and RMP locations at the EDC Property. The OBRA shall determine if it is more suitable to develop one site-wide RAR or several RARs corresponding to the RAP sites and one or more RMP locations or RMP implementation areas found within the ACES. These RARs shall include the information required in Completion Reports (CR) under the RAP and RMP (including a summary of the background information in the Remedial Investigation, and a statement of the remedial action undertaken pursuant to the RAP and RMP, and the findings of the remedial efforts), and evidence of DTSC's written concurrence as to the completion of all remedial work required for the area(s) covered by a RAR. The end of the period of performance will result in the Army's grant of the CERCLA warranty that all necessary remedial action has been taken following Regulatory Closure. The end of the period of performance, and of the OBRA's environmental responsibilities under the TSRS, will occur upon the earlier of (i) issuance of the State Certification under Consent Agreement or (ii) DTSC documentation equivalent to a conditional No Further Action letter, that the RAP site remedial work has been completed and no

further action is necessary, conditional upon ongoing Long Term Obligations and the Environmental Restrictions, and RMP implementation protocols have been fully applied to the redevelopment of the EDC Property.

2.1.8. Public Involvement

The opportunity for public involvement is essential for obtaining community input and maintaining community understanding and support for the CERCLA cleanup actions on the ACES.

The OBRA shall be responsible for notification to, involvement with, and solicitation of input from the public as required by the Consent Agreement and consistent with CERCLA and the NCP; provided, however, that the Army will remain responsible for all matters relating to the Restoration Advisory Board ("RAB"). The Parties will work cooperatively to provide the RAB with information pertaining to the environmental services being conducted on the ACES. The OBRA will be responsible for initiating, coordinating, and scheduling all public activities relating to the remedial activities on the ACES. As required by the Consent Agreement, the OBRA shall be responsible for developing briefings, presentations, fact sheets, developing additional statement of works for performing remedial actions of the ACES, interfacing with the RAB, taking meeting minutes, and sending articles to news media if needed.-The OBRA shall also comply with all other requirements for public participation as prescribed under the Consent Agreement.

2.1.9. Period of Performance

The OBRA 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, for RAP sites and the RMP Implementation Area as required by the RAP, RMP and Consent Agreement;

- Forward all the RAR(s) and any other documentation requested by the Army to the Army Representative; and
- Upon completion of the remedial action for the ACES pursuant to the RAP and RMP and in accordance with the Consent Agreement, submit proof of Regulatory Closure by a state certification or DTSC documentation equivalent to a conditional No Further Action letter, that the RAP site remedial work has been completed and no further action is necessary, conditional upon ongoing Long Term Obligations and the Environmental Restrictions, and RMP implementation protocols have been fully applied to the redevelopment of the EDC Property.

The period of performance for this TSRS is as follows:

Start Date: Day the EDC Property is conveyed to OBRA.

End Date: Date the ESCA is terminated.

Any variation or modifications to this TSRS must be made in accordance with Section D.8 and D.21 of the ESCA.

2.1.10. Submittal of Documents and Achievement of Project Schedule

The OBRA will be responsible for assuring that the milestones and deliverables listed in Section 2.1.10, in conjunction with the Remedial Action Implementation Schedule set forth in the RAP, are met. The Army Representative shall be responsible for verifying that deliverables are submitted and shall also be responsible for reviewing and approving all documents/reports submitted to the Army, in a timely manner to support the project schedule. The Army reserves the rights to obtain professional assistance, at its own cost, to review, approve and perform quality assurance on all the documents and reports submitted by the OBRA 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 or remediation performance in accordance with the ESCA and the deed covenant.

3.0 ADDITIONAL INFORMATION

3.1 Project Progress Reports

The OBRA 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 DTSC, and regardless of whether any substantial remediation activities have occurred at the EDC Property. The project progress reports must be up-to-date and reflect recent activities. In general, the project progress reports should contain sufficient information to keep the Army representative aware of the status of the RAP and RMP implementation activities at the ACES. The project progress reports shall address the following topics:

- Document technical progress or work completed to date and total ESCA grant funds spent during the previous quarter.
- Implementation status vs. project timeline as shown in the RAP/RMP.
- Depict upcoming work for the next quarter and the ESCA grant funds needed for the upcoming work.
- Total ESCA grant funds spent to date.
- Technical or regulatory issues that may impact project schedule.
- Status of comments submitted by the Army on documents/reports developed by the OBRA.
- Remedial Action Reports
- Needed Notifications in accordance with the ESCA
- Changes to RAP/RMP to be reviewed in accordance with Section C.4.2 of ESCA
- Public participation

The OBRA can modify or adapt those progress reports that may be submitted to DTSC so as to address the topics listed above. However, the progress report should not be shorter than 2 pages and not longer than 10 pages. If the Army Representative determines that there is not sufficient information contained in the project progress reports to meet the intent of the above requirements, the Army representative has the right to request that the OBRA provide copies of other available documentation within 2 weeks after the initial review of the project progress report.

During discussions following the signing of the ESCA, the Army representative and the OBRA shall

establish a schedule for submitting quarterly reports. The Army's review of project progress reports shall be subject to the same procedures specified in the ESCA. In the event the parties cannot resolve a dispute, either party may invoke dispute resolution procedures under ESCA section D.9.

3.2 Project Repository

The Army has maintained a project repository of all environmental activities at the Installation. In order to ensure consistency with CERCLA, the NCP, and other applicable laws and/or regulations, OBRA shall continue to maintain a project repository at an easily accessible yet-to-be-determined repository in Oakland of all project-related environmental remediation information. This repository will ensure that pertinent documentation is available for project reviews or justification and to provide a clear record of the approach used to achieve the remedial action goals for the Installation. After Regulatory Closure the full and original administrative record maintained at this repository will be provided to the Army representative and will become Army property. The OBRA shall make a copy of the entire administrative record and keep this copy for its own records.

3.3 Conference Calls and Briefings

The OBRA shall brief the Army representative monthly on the status of the remediation activities at the ACES during the period of performance. Briefings will be conducted by means of conference calls that OBRA shall arrange. During the conference call the Army Representative shall:

- Request verbal updates on the status of the remedial actions at the ACES.
- Provide information to the OBRA on the status of the Army's review of specific documents/reports.
- Address issues or concerns regarding the content of the quarterly project progress reports.
- Address issues or concerns regarding document/reports submitted by the OBRA.

If significant remedial actions of the ACES have not occurred since the previous conference call, the Army representative and the OBRA may agree to postpone the conference call for an additional 30 days.

3.4 Environmental Insurance

OBRA shall obtain environmental Remediation Cost Cap and Pollution Liability insurance coverage for the EDC Property for both cost overruns during cleanup (implementation of the Remedial Action Plan and Risk Management Plan) as well as potential ongoing environmental exposures after cleanup is

completed, at no additional cost to the Army (beyond the funding committed by the Army under the ESCA), in accordance with the following minimum requirements.

- Named Insured: Oakland Base Reuse Authority
- Additional Insured(s): U.S. Department of the Army
- Bodily Injury, Property Damage and Remediation Costs – Pre-Existing Pollution Incidents
- Bodily Injury, Property Damage and Remediation Costs – New Pollution Incidents
- Bodily Injury, Property Damage and Remediation Costs – Non-Owned Locations
- Remedial Action of Known and Unknown Pollutants, with a minimum coverage limit of \$15,000,000
- Term: Ten (10) Years

The OBRA will provide to the Army a certificate of insurance evidencing the insurance required and will also deliver if necessary, no later than thirty (30) days prior to the expiration of any such policy, a certificate of insurance evidencing each renewal policy covering the same risks.

3.5. Remedial Action

The Army has followed the CERCLA Remedial Investigation/Feasibility Study process in the prior characterization of environmental conditions and analysis of remedial action alternatives of the ACES. Site characterization data is available in the various reports constituting the Remedial Investigation and any appendixes or addendums for the ACES. All of that site characterization data has been used in evaluating various remedial alternatives for each site at the Installation at which some remediation activities will have to be undertaken. The evaluation of those remedial alternatives, and the site-specific remedial measures to be implemented, are contained in the approved RAP, RMP and Consent Agreement for the ACES. The RAP and RMP identify the remedial actions that are to be implemented at the ACES. The remedial actions and institutional controls implemented with Equivalent State Compliance at the ACES by the RAP, RMP and Consent Agreement are consistent with the remedy requirements of CERCLA, and the NCP, and other applicable laws and/or regulations and are protective of human health and the environment. The OBRA shall implement the RAP and RMP in undertaking remedial actions of the ACES.

The Army has identified the presence of Contaminants of Concern that may have impact to marine sediments near storm drain outfalls from portions of the ACES, Caltrans, the East Bay Municipal Utility District, the Union Pacific Railroad, and the City and Port of Oakland properties. These outfalls discharge to the Oakland Outer Harbor in San Francisco Bay. Contaminants of concern have been detected at Outfalls 8 through 11 and the Army finds that marine sediments at these outfalls, if not capped in the future, may result in limited impacts to aquatic communities. The Port of Oakland intends to fill approximately 26 acres to provide additional terminal capacity and create two container terminals in the Oakland Outer Harbor ("New Berth 21"). The Port of Oakland's project will result in covering the marine sediments adjacent to Outfalls 8 through 11, thereby addressing potential impacts. OBRA will achieve Regulatory Closure for the site through the Port of Oakland's fill project which will sufficiently address the Contaminants of Concern in the impacted marine sediments associated with the Outfalls 8 through 11 within the ACES/ EDC Property in order to achieve Regulatory Closure in accordance with the RAP, RMP, and Consent Agreement.

3.6 Amendments to RAP, RMP and Consent Agreement

The Parties acknowledge that the RAP, RMP and Consent Agreement may be amended, and the remedial activities performed at the EDC Property may ultimately differ from the remedies identified in the RAP and RMP requirements that may be approved by DTSC in September of 2002. Unless any such amendments or modified remedial activities authorize remedies or actions that would not be sufficiently protective of human health and the environment under the remedy requirements of CERCLA and the NCP, or which would not result in a state certification or Regulatory Closure, the Parties hereby acknowledge and agree that such Amendments are anticipated and acceptable as modifications to this TSRS, provided that OBRA complies with the ESCA provisions requiring notice and consultation with the Army regarding such RAP, RMP and Consent Agreement modifications/ amendments.

4.0 PERFORMANCE MANAGEMENT

4.1 Place of Performance

The EDC Property and at OBRA 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

The OBRA 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

The OBRA shall prepare and author all remedial designs, removal action approval papers, and other documents, as required. The Army Representative will sign off on the RAR(s), and will prepare any other Army-required closure documentation.

5.0 GOVERNMENT FURNISHED RESOURCES

The Army shall provide the following resources to the OBRA (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-RETAINED CONDITIONS

All Army Retained Conditions will be addressed in accordance with the terms and conditions in the ESCA and pursuant to the MOA between the Army and DTSC. Activities regarding Army Retained Conditions will be part of the progress report consultation.

--- END of TSRS --