

**ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT AWARD**

**AGREEMENT NO:** \_\_\_\_\_

**EFFECTIVE DATE:** \_\_\_\_\_ **2016**

**PR NO(S):** \_\_\_\_\_

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- AUTHORITY:** This is an Environmental Services Cooperative Agreement (ESCA) under the authority of Title 10 United States Code, Section 2701(d) of Environmental Restoration Program (10 U.S.C. §2701).
- TOTAL AMOUNT OF ESCA:** \$39,464,376
- GOVERNMENT OBLIGATION/ACCOUNTING AND APPROPRIATION DATA.** Federal funds, in the amounts set forth in B.5 are hereby made available to the following Accounting and Appropriation Data:
- 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.7 for EFT information.
- PARTIES.** This ESCA is entered into between the United States of America, represented by the Army (Government), and the Riverbank City Local Redevelopment Authority (Recipient or "RLRA") pursuant to and under United States federal law. The Army and the Recipient are referred to collectively as the "Parties" or individually as a "Party."

**SECTION A - EXECUTION OF ESCA**

**FOR THE RECIPIENT**

Jill Anderson, City Manager  
Riverbank Local Redevelopment Authority  
5300 Claus Road, Suite A  
Modesto, California 95357

**FOR THE UNITED STATES OF AMERICA**

U.S. Army Corps of Engineers, Huntsville Center  
ATTN: CEHNC-CTB/Sharon Butler  
4820 University Square  
Huntsville, AL 35816

\_\_\_\_\_  
(SIGNATURE)

**Jill Anderson**

\_\_\_\_\_  
(NAME)

**City Manager, Riverbank LRA**

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(SIGNATURE)

**Sharon H. Butler**

\_\_\_\_\_  
(NAME)

**Grants Officer**

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(DATE)

**SECTION B**  
**ESCA SCHEDULE**

1. **TERMS AND CONDITIONS.** By signing (acceptance of) this ESCA, 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 ESCA.
2. **ESCA TERM.**
  - 2.1 **Funding Period.** The federally funded term of this ESCA shall begin upon the Effective Date for a period of four years or as extended pursuant to Section B.5.4.
3. **ORDER OF PRECEDENCE.** Existing federal regulations, to include but not limited to 32 CFR Part 33 and DoD Directive 3210.06, take precedence over all terms and conditions of this ESCA; however, the Army is not aware of any inconsistencies between these regulations and this ESCA. Inconsistencies or conflicts in the terms and conditions of this ESCA shall be resolved according to the following order of precedence:
  - (a) Applicable United States statutes including Title 10 United States Code (U.S.C.) § 2701(d);
  - (b) Federal regulations, to include but not limited to 32 CFR Part 33;
  - (c) DoD Directive 3210.06;
  - (d) The *Environmental Services Obligations* in **SECTION C** of this ESCA and the Technical Specifications and Requirements Statement (TSRS) hereto, incorporated at **SECTION E**;
  - (e) The *General Terms and Conditions*, as set forth in **SECTION D**;
  - (f) The ESCA Schedule as set forth in this **SECTION B**; then,
  - (g) The Recipient's approved Application for Federal Assistance (SF 424), Budget Information ó Non-Construction Programs (SF 424A), Assurances ó Non-Construction Programs (SF 424B) 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 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (formerly OMB Circular No. A-133) and at 32 CFR § 33.26.
5. **FUNDING LIMITATIONS.** This ESCA Phase 2 for PCBs remediation has a Part A and a Part B. Each part will also include a Fixed Price for Remediation (Fixed Price); \$31,312,814 for Part A and \$4,981,649 for Part B, and a Variable Price for Off-Site Transportation and Disposal (Variable Price); a maximum of \$1,170,984 for Part A and a maximum of \$1,998,929 for Part B (see Table 1 below).
  - 5.1 The maximum funding obligation of the Government to the Recipient for this Agreement is **\$39,464,376**. This amount shall remain in effect unless modified by the Grants Officer. Fixed costs in excess of the maximum funding obligation will not be paid without prior approval from the Grants

Officer as provided in Sections C.2.1, and D.21. Variable costs in excess of the projected funding obligation may be paid, but only if approved by the Grants Officer in advance of the exceedance.

**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). The funding amount of **\$39,464,376** has been appropriated and is currently available for disbursement, subject to the terms of this Agreement. No other funding under this Agreement is available unless subsequently modified in writing by the Grants Officer.

**5.2.1** The funding Contract Line Item Numbers (CLINs) for this agreement are listed below:

PROPOSED

**TABLE 1**

CLIN	DESCRIPTION	PERIOD OF PERFORMANCE	MAXIMUM OBLIGATION	AMOUNT FUNDED*
	<b>PART A - TSCA AND CERCLA</b>			
001	WORK PLANS	Year 2016 - 2017	\$740,622	\$740,622
002	MOBILIZATION	Year 2016	\$512,643	\$512,643
003	PITS AND TRENCHES	Year 2016 - 2017	\$1,429,182	\$1,429,182
004	PAINT REMOVAL <8 FEET	Year 2016 - 2017	\$4,180,827	\$4,180,827
005	PAINT CLEANING >8 FEET	Year 2016 - 2017	\$4,043,185	\$4,043,185
006	WATER TREATMENT	Year 2016 - 2017	\$1,177,135	\$1,177,135
007	CONCRETE FLOOR HOT SPOT REMEDIATION	Year 2016 - 2017	\$846,958	\$846,958
008	PANEL REMOVAL	Year 2017 - 2018	\$8,815,948	\$8,815,948
009	MISCELLANEOUS ITEMS	Year 2016 - 2018	\$1,234,682	\$1,234,682
010	DEMOB	Year 2018	\$52,451	\$52,451
011	FIELD OFFICE SUPPORT	Year 2016 - 2018	\$3,888,345	\$3,888,345
012	CLOSURE REPORT	Year 2018	\$422,398	\$422,398
013	TRANSPORTATION & DISPOSAL (Variable Price Budget)	Year 2016 - 2018	\$1,170,984	\$1,170,984
014.1	SAMPLE AND CLEAN FOUR PRESSES	Year 2016 - 2017	\$215,688	\$215,688
014.2	ENCAPSULATE FOUR PRESSES	Year 2016 - 2017	\$113,400	\$113,400
015.1	PROJECT MANAGEMENT 6 PART A	Year 2016 - 2018	\$1,644,984	\$1,644,984
015.2	LRA PROGRAM MANAGEMENT 6 PART A	Year 2016 - 2018	\$1,593,440	\$1,593,440
015.3	PRE-AWARD COSTS	Year 2015	\$400,926	\$400,926
	<b>PART A FIXED PRICE TOTAL</b>		\$31,312,814	\$31,312,814
	<b>PART A VARIABLE PRICE TOTAL</b>		\$1,170,984	\$1,170,984
	<b>PART A TOTAL</b>		\$32,483,798	\$32,483,798
	<b>PART B – CERCLA</b>			
016.1	CERCLA PLANS AND REPORTS	Year 2016 - 2019	\$953,547	\$953,547
016.2	MOBILIZATION	Year 2017	\$84,223	\$84,223
016.3	STORMWATER CLEANING AND EXCAVATION	Year 2017 - 2018	\$608,492	\$608,492
016.4	SOIL EXCAVATION	Year 2017 - 2018	\$1,504,411	\$1,504,411
016.6	TRANSPORTATION & DISPOSAL (Variable Price Budget)	Year 2017 - 2018	\$1,998,929	\$1,998,929
016.7	DEMOB	Year 2018	\$28,500	\$28,500
016.9	FIELD OFFICE SUPPORT	Year 2017 - 2018	\$968,585	\$968,585
016.10	PROJECT MANAGEMENT 6 PART B	Year 2017 - 2019	\$485,857	\$485,857
016.11	LRA PROGRAM MANAGEMENT 6 PART B	Year 2017 - 2019	\$348,034	\$348,034
	<b>PART B FIXED PRICE TOTAL</b>		\$4,981,649	\$4,981,649
	<b>PART B VARIABLE PRICE TOTAL</b>		\$1,998,929	\$1,998,929
	<b>PART B TOTAL</b>		\$6,980,578	\$6,980,578
	<b>TOTAL OBLIGATION</b>		\$39,464,376	\$39,464,376

\*Amount Funded refers to the total dollars obligated for the execution of this agreement per CLIN.

Note: Work on CLIN 14.2 shall not be performed unless authorized by the Grants Officer. See Section C.4.1.1.

- 5.3 Pursuant to 32 CFR § 33.23(b), the Recipient must liquidate all encumbered funding incurred under this ESCA not later than 90 calendar days after the end of the term of this ESCA, to coincide with the submission of the final Federal Financial Report (SF 425). The Grants Officer may extend this deadline at the request of the Recipient. No additional charges can be incurred during this 90-day period without the written authorization from the Grants Officer.
- 5.4 The Recipient shall immediately notify the Grants Officer in writing if it has reason to believe that the costs it expects to incur under this agreement in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the maximum funding amount per CLIN stipulated in this document. The notice shall state the estimated amount of additional funds required to continue performance to complete the established milestones in the agreement. The Recipient shall also notify the Grants Officer in writing whenever it has reason to believe that the funding period identified in B.2.1 needs to be extended. The Grants Officer will issue a written decision whether to extend the funding period.
- 5.4.1 There is no legal liability on the part of the Government for any payment that may arise for performance under this Agreement beyond the maximum funding amount stipulated herein, until funds are made available to the Grants Officer and until the Recipient receives notice of availability, to be confirmed in writing by the Grants Officer.
- 5.4.2 The Recipient will have no obligation to provide off-site transportation and disposal services after the maximum Part A or Part B Variable Price amount has been expended unless additional funds are provided by the Army through a modification to the ESCA.
6. **BUDGET.** The total amount of this ESCA for Part A and Part B remediation, 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 ESCA, except as otherwise provided herein. The Recipient may not retain or otherwise use any excess funds (i.e., excess funds could result if the total T&D costs are less than the projected Variable Price budget) other than that which is identified in Section C of this ESCA, for any other purposes without express, prior written approval from the Grants Officer.
7. **ADVANCE/MILESTONE PAYMENTS.** Upon execution of this Agreement and the submission of a Request for Advance or Reimbursement (SF 270) to the Grants Officer, the Recipient shall be entitled to an initial payment of \$XXXX for the work identified in Part A of Table 1. Payments will be initiated no more frequently than quarterly upon receipt by the Grants Officer of the Recipient's SF 270. 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. The Government shall make requested payments to the Recipient in accordance with 32 CFR 33.21.
- 7.1 The Recipient shall be paid in advance on a quarterly basis, provided the Recipient demonstrates satisfactory completion of all agreed upon milestones stipulated for the previous quarter. Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement must be followed whenever advance payment procedures are used. When advances are made by electronic transfer of funds methods, the Recipient must make drawdowns as close as possible to the time of making disbursements.
- 7.2 Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), Recipients shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The

Recipient may keep interest amounts up to \$100 per year for administrative expenses. Pre-award costs are not considered an advance of funds.

- 7.3 Pre-Award costs should be submitted on a SF 270. All other payment requests should be performance based for work completed. The Recipient shall submit a completed SF 270 along with the Quarterly Performance Report to include work completed the past quarter and work projected for the next quarter to include an estimated cost.
- 7.4 Within 120 days after the execution of this agreement, the parties will agree upon the milestones that will be used to establish the quarterly payment amounts under this Agreement based upon the Periods of Performance in Table 1 above.
- 7.5 The Recipient shall submit Requests for Advance Payment electronically (PDF format) to the individuals listed in paragraph 11 below.
- 7.6 The Recipient's Central Contractor Registration Information for Electronic Funds Transfer (EFT) is incorporated as follows for System for Awards Management (SAM) including DUNS and CAGE numbers:

DUNS NUMBER	TIN/EIN	CAGE CODE
946310463	94-6000407	0RU61

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

<b>U.S. Army Corps of Engineers Finance Center (CEUFC)</b>	<b>U.S. Army Corps of Engineers Finance Center (CEUFC) 5722 Integrity Street Millington, TN 38054-5005</b>
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- 9. **PERFORMANCE REPORTING.** The Grants Officer's representative for progress and performance surveillance will be the Army's Environmental Representative, as identified in Section B.11. 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 ESCA, including all work plans, scheduling of activities and other requirements set forth in Section C and in the TSRS. Furthermore, the Recipient shall provide the Army Environmental Representative with all Performance Reports, as required under the TSRS (Section 5.2). The Army's Environmental Representative shall keep the Grants Officer informed of the progress and performance of the Environmental Services. Performance reports shall include a summary of funds expended and a projection of future funding requirements. They shall also include an earned value analysis to reflect the budgeted cost of work scheduled and performed and the actual cost of work performed.
- 10. **FINANCIAL REPORTS.** Financial reports shall be prepared in accordance with 32 CFR § 33.41.

- 10.1 The Recipient will report program outlays 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.

**10.2** The Recipient shall use SF 425, "Federal Financial 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 end of the year this ESCA becomes effective and each subsequent year until the Environmental Services are completed. A final report shall also be submitted no later than ninety (90) working days after the expiration or termination of ESCA support by the Government.

**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
Sharon Butler Grants Officer	U.S. Army Engineering & Support Center ATTN: CEHNC-CTB (Butler) 4820 University Drive Huntsville, AL 35816 E-mail: sharon.h.butler@usace.army.mil	FINANCIAL REPORTS SF 270 SF 425 (Annual/Final)  Written Correspondence affecting performance and/or proposed changes by Recipient Insurance Certificate  Quarterly Performance Reports	Original Original  Original  Original
XXXX Army Environmental Representative	ACSIM 6 ODB 2530 Crystal Drive Arlington, VA 22202 E-mail: richard.c.ramsdell2.civ@mail.mil	FINANCIAL REPORTS SF 270 SF 425 (Annual/Final)  Written Correspondence affecting performance and/or proposed changes by Recipient Insurance Certificate  Quarterly Performance Reports	1 Copy 1 Copy 1 Copy  Original
John Nebelsick CEHNC Program Mgr	U.S. Army Engineering & Support Center ATTN: CEHNC-EMM (Nebelsick) 4801 University Square, Suite 20 Huntsville, AL 35816 E-mail: John.d.nebelsick@usace.army.mil	FINANCIAL REPORTS SF 270 SF 425 (Annual/Final)  Written Correspondence affecting performance and/or proposed changes by Recipient  Quarterly Performance Reports	1 Copy 1 Copy  1 Copy  1 Copy
Robert Smith BEC	Mailing Address:  PO Box 670 Riverbank CA 95367	FINANCIAL REPORTS SF 270 SF 425 (Annual/Final)  Written Correspondence affecting performance and/or proposed changes by Recipient  Quarterly Performance Reports	1 Copy 1 Copy  1 Copy  1 Copy

<b>Warren Switzer</b> <b>Army BRACD</b> <b>Program</b> <b>Manager</b>	<b>ACSIM – ODB</b> <b>2530 Crystal Drive</b> <b>Arlington, VA 22202</b> <b>E-mail:</b> <b>warren.h.switzer.civ@mail.mil</b>	<b>FINANCIAL REPORTS</b>	
		<b>SF 270 As required</b>	<b>1 Copy</b>
		<b>SF 425 (Annual/Final)</b>	<b>1 Copy</b>
		<b>Written Correspondence</b> <b>affecting performance and/or</b> <b>proposed changes by Recipient</b>	<b>1 Copy</b>
		<b>Quarterly Performance Reports</b>	<b>1 Copy</b>

**12. EQUIPMENT AND SUPPLIES.** Title, use and disposition of equipment and/or supplies purchased by the Recipient with ESCA 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 its consultants, employees, tenants and 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 Environmental Services.

**14. PRE-AWARD COSTS.** The recipient is authorized a total amount of **\$400,926** (CLIN 15.3) for costs incurred between 1 January 2015 and 31 December 2015.

**15. GOVERNMENT AND RECIPIENT REPRESENTATIVES.**

<b>NAME</b>	<b>TITLE</b>	<b>OFFICE &amp; E-MAIL</b>	<b>TELEPHONE/FAX</b>
<b>Sharon Butler</b>	<b>Grants Officer</b>	<b>U.S. Army Engineering &amp; Support Center</b> <b>ATTN: CEHNC-CTB (Butler)</b> <b>4820 University Drive</b> <b>Huntsville, AL 35816</b> <b>E-mail:</b> <b><a href="mailto:sharon.h.butler@usace.army.mil">sharon.h.butler@usace.army.mil</a></b>	<b>PH: 256-895-1440</b> <b>FAX: 256-895-1197</b>
<b>John Nebelsick</b>	<b>ESCA Program Manager</b>	<b>Environmental &amp; Munitions Center of Expertice</b> <b>4801 University Square, Suite 20</b> <b>Huntsville, AL 35816</b> <b>E-mail:</b> <b><a href="mailto:John.d.nebelsick@usace.army.mil">John.d.nebelsick@usace.army.mil</a></b>	<b>PH: (256) 895-1795</b>
	<b>Army Environmental Representative</b>	<b>Department of Army, ACSIM (DAIM-ODB)</b> <b>2530 Crystal Drive</b> <b>Arlington, VA 22202</b> <b>E-mail:</b> <b><a href="mailto:richard.c.ramsdell2.civ@mail.mil">richard.c.ramsdell2.civ@mail.mil</a></b>	<b>PH: (703) 545-2504</b> <b>FAX: (703) 601-0544</b>
<b>Warren Switzer</b>	<b>ACSIM - OBD Program Manager</b>	<b>DA, ACSIM (DAIM-ODB)</b> <b>2530 Crystal Drive</b> <b>Arlington, VA 22202</b> <b>E-mail:</b> <b><a href="mailto:warren.h.switzer.civ@mail.mil">warren.h.switzer.civ@mail.mil</a></b>	<b>PH: (703) 545-2515</b> <b>FAX: (703)601-0544</b>

<b>Recipient: Debbie Olson</b>	<b>Executive Director</b>	<b>Riverbank Local Redevelopment Authority 5300 Claus Road, Suite A Modesto, California 95357 E-mail:<a href="mailto:dolson@riverbanklra.org">dolson@riverbanklra.org</a></b>	<b>PH: (209) 863-8352 FAX: (209) 863-8071</b>
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--- END OF SECTION B ---

PROPOSED

**SECTION C**  
**ENVIRONMENTAL SERVICES OBLIGATIONS**

1. **APPLICATION FOR FEDERAL ASSISTANCE.** The Recipient's *Application for Federal Assistance (and Supporting Documentation)* is incorporated herein at Section E, Attachment E.2.

2. **SCOPE AND PURPOSE.**

**2.1 Background.** The federal government, for and on behalf of the citizens of the United States of America, acts as the steward of certain real property on which it operates and maintains military facilities necessary for the defense of the United States of America. Certain military facilities are no longer required for that mission, and the Department of Defense (DoD) closed and plans to transfer ownership of certain real and personal property at those facilities in accordance with the authority of the Defense Base Closure and Realignment Act of 1990, Public Law 101-510 (10 U.S.C. § 2687 note, as amended). DoD is authorized to dispose of real and personal property on the former Riverbank Army Ammunition Plant (RBAAP, as defined in Section C.3.29 below) to the Riverbank Local Redevelopment Authority (RLRA or Recipient, as defined in Section C.3.26 below).

Pursuant to the Defense Environmental Restoration Act 10 U.S.C. § 2701(d), the Secretary of the Army may enter into an agreement with a local government agency, such as the Riverbank Local Redevelopment Authority, to obtain the services of the local governmental agency in carrying out the Secretary's responsibilities to identify, investigate, and cleanup contamination from hazardous substances or pollutants and contaminants. The Recipient may assume responsibility for certain environmental response activities pertaining to some limited personal property, real property, and adjacent or nearby soils and perform Environmental Services, as defined in Section C.3.14 below). The property to be the subject of the Environmental Services is identified herein as the Property Covered by Environmental Services (PCES) and Areas Covered by Environmental Services (ACES) (as defined in Section C.3.1). The geographic area in which the Environmental Services will be performed is RBAAP and offsite disposal sites. The environmental response activities required of the Recipient under this ESCA are identified herein as the Environmental Services. This ESCA provides the funding, specifications and requirements for the Recipient's performance and completion of the Environmental Services of the PCES and ACES. Certain obligations are retained by the Army with regard to residual environmental impacts on or relating to the PCES and ACES (Army Obligations as defined in Section C.3.3 below).

Cleanup of the PCES and categories 1 ó 3 of the ACES, as defined in § C.3.1., is governed by the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 *et seq* and other applicable laws and regulations. Cleanup of categories 4-6 of the ACES, as defined in § C.3.1, is governed by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 *et seq*. The Army has conducted investigations and site characterization under its own authorities, the Defense Environmental Restoration Program, and other applicable laws and regulations. The Environmental Services to be performed pursuant to this Agreement are limited to personal and real property and adjacent or nearby soils as provided in Figures E-1, E-2, and E-3 of the TSRS.

This ESCA is of mutual benefit to the Army and the Recipient because it will facilitate remediation of the PCES and ACES by allowing the Recipient to cause the Environmental Services to be performed in conjunction with redevelopment activities. This ESCA, executed in anticipation of a transfer, will allow the Recipient full access to the PCES and ACES in order to implement the Environmental Services.

This ESCA does not reduce or alter in any way the responsibilities and obligations of the Army under CERCLA, the National Contingency Plan (NCP), or Section 330 of Public Law 102-484 (Section 330), except as otherwise provided in Section C.4.1.8 of this ESCA.

The Parties will communicate and cooperate with each other in the execution of their respective obligations under this ESCA so as to reduce the likelihood of conflict in scheduling or otherwise. If a conflict should occur, the Parties shall meet and confer in an expeditious manner with an aim to resolve the conflict. However, it is expressly understood and agreed that the objective of this ESCA is for the Recipient to complete the Environmental Services, and if the handling by the Army of the Army Obligations results in an unreasonable increase in costs to complete the Environmental Services, the Recipient shall be entitled to seek compensation for such costs subject to the dispute resolution provisions set forth in Section D.9.

**2.2 Purpose.** The purpose of this Section of this ESCA is to establish the terms and conditions necessary for the completion of the Environmental Services. The TSRS, as defined in Section C.3.30 below and incorporated herein at Section E.1, establishes the process for obtaining Completion of Environmental Services of the PCES and ACES. By execution of this ESCA, the Army and the Recipient concur with the TSRS.

**2.3 Scope.** The Recipient shall cause to be performed the Environmental Services, in consideration of the payment of the Grant Amount by the Army in accordance with and subject to the provisions of this ESCA. The Environmental Services, to the extent required to be performed under this ESCA, shall satisfy the requirements of TSCA and CERCLA by satisfying the requirements provided in the TSRS. The Environmental Services will be performed by the approved contractors as described in the TSRS.

In addition to providing the specified funding, the Army will retain the responsibilities and liabilities specified within this ESCA and attachments. The Army's program oversight shall ensure that the remedies implemented by the Recipient pursuant to the TSRS are consistent with TSCA, CERCLA, and other applicable laws and/or regulations. The Recipient agrees to achieve Completion and perform the required remedial actions in accordance with and subject to the provisions of this ESCA.

**3. DEFINITIONS.** The following definitions apply to terms used throughout this ESCA, including the TSRS.

**3.1 Property and Areas Covered by Environmental Services.** The term Property Covered by Environmental Services or PCES means personal property listed in Table E-6 to the TSRS (excluding four large presses listed under the ACES definition). The term Areas Covered by Environmental Services (ACES) means the following structures or areas: 1) building interior and Galbestos panels associated with the Galbestos Buildings identified in Figure E-1 of the TSRS; 2) the non-Galbestos Buildings (pits only) identified in Figure E-1 of the TSRS; 3) four large presses in Galbestos Building 8 identified as USA # 14803, 4086, 4776, and 4702; 4) the soil excavation area adjacent to Building 6 as shown in Figure E-2 of the TSRS; 5) the stormwater conveyance system shown in Figure E-3 of the TSRS; and 6) the soil excavation areas within the Southeast and Northwest stormwater reservoirs as shown in Figure E-3 of the TSRS.

**3.2 Army and Government.** The terms Army and Government are used interchangeably herein to mean the U.S. Army.

**3.3 Army Obligations.** The term Army Obligations means, without limitation Army-Retained Conditions, as defined in Section C.3.5 below.

**3.4 Army Representative.** The term "Army Representative," means the Army Base Realignment and Closure Division, its designee, or successor agency, which is responsible to the office of the Secretary of the Army for environmental remediation of the PCES and ACES.

**3.5 Army-Retained Conditions.** The term "Army-Retained Conditions" means any of the following conditions, within and outside the PCES and ACES, for which the Army has full responsibility and for which the Recipient shall have no responsibility:

**3.5.1** Radiological Material;

**3.5.2** Chemical or biological warfare agents;

**3.5.3** Munitions and Explosives of Concern;

**3.5.4** Munitions Constituents;

**3.5.5** Military Munitions;

**3.5.6** Any real property environmental contamination within or beyond the boundaries of the location of PCES and ACES, including but not limited to any such contamination associated with easements held by the Army, except for contamination that is caused by the RLRA or its agents or is the subject of the Environmental Services, which contamination originated at or as a result of activities at the RBAAP prior to the Effective Date, except to the extent exacerbated by the Recipient's actions. The term "TSCA" means the Toxic Substance Control Act, 15 U.S.C., 15 U.S.C. § 2601 *et seq.* The term "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, *et seq.*;

**3.5.7** Endangered Species Act Section 7 Responsibilities;

**3.5.8** National Environmental Policy Act Responsibilities;

**3.5.9** Removal or remediation of any PCB Items;

**3.5.10** Groundwater contamination or remediation;

**3.5.11** Repairs to the RBAAP landfill geosynthetic cap materials; and

**3.5.12** Maintenance of the RBAAP Information or Administrative Repositories.

**3.6 CERCLA Terms.** The terms "release," "threatened release," "hazardous substance," "pollutant," "contaminant," "removal," "remedial action," and "response" have the meanings given such terms under CERCLA and USEPA regulations implementing CERCLA.

**3.7 Completion.** The term "Completion" means the point in time when the Recipient has completed the activities specified in the TSRS.

**3.8 Cooperative Agreement.** The terms "Cooperative Agreement" and "ESCA" mean this Environmental Services Cooperative Agreement.

**3.9 Cost Decrease.** The term "Cost Decrease" has the meaning set forth in Section C.4.1.1.

**3.10 Cost Increase.** The term "Cost Increase" has the meaning set forth in Section C.4.1.1.

**3.11 DoD.** The term "DoD" means the Department of Defense of the United States America.

**3.12 DTSC.** The term "DTSC" means the California Department of Toxic Substance Control.

**3.13 Effective Date.** The term "Effective Date" means the date by which both the Recipient and the Grants Officer have signed the ESCA and the agreement takes effect.

**3.14 Environmental Services.** The term "Environmental Services" means: (1) the investigation, remediation and related document preparation activities by the Recipient, necessary to achieve Completion with regard to the tasks identified in the TSRS for Known Conditions. In any event the term "Environmental Services" does not include any Army Obligations. Regulatory Response Costs are excluded from environmental services.

**3.15 ESCA.** See "Cooperative Agreement."

**3.16 Grant Amount.** The term "Grant Amount" means the funds referenced in Section B.5 to be paid by the Army to the Recipient pursuant to Section C.4.2.1.

**3.17 Known Conditions.** The term "Known Conditions" means those environmental conditions, on the PCES and ACES, identified in the TSRS. The term "Known Conditions" does not include any Army Obligations.

**3.18 Military Munitions.** The term "Military Munitions" means all ammunition products and components produced for or used by the armed forces for national defense and security, including ammunition products or components under the control of the DoD, the Coast Guard, the Department of Energy and the National Guard. The term includes but is not limited to confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smoke, and incendiaries, including bulk explosives and rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof.

**3.19 Munitions and Explosives of Concern.** The term "Munitions and Explosives of Concern" (MEC) means: (1) unexploded ordnance ("UXO"), as defined in 10 U.S.C. Section 101(e)(5); (2) discarded military munitions ("DMM"), as defined in 10 U.S.C. § 2710(e)(2); or (3) explosive Munitions Constituents (e.g., TNT, RDX), as defined in 10 U.S.C. § 2710(e)(3).

**3.20 Munitions Constituents.** The term "Munitions Constituents" means any materials originating from UXO, DMM or other Military Munitions, including explosive and non-explosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions (10 U.S.C. § 2710(e)(3)).

**3.21 PCB Bulk Product Waste** Galbestos panels associated with Galbestos Buildings at RBAAP as described in Section C.3.1 and the TSRS.

**3.22 PCB Items.** The term "PCB Items" as defined in 40 CFR § 761.3 means any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs. PCB Items are Army retained. PCB Items do not include PCB Bulk Product Waste or PCB Remediation Waste.

**3.23 PCB Remediation Waste.** For the purpose of this ESCA, the term PCB Remediation Waste includes paint up to a height of 8 feet removed from the interior of Galbestos Buildings, certain discarded non-fixed equipment, and concrete or soil contaminated with PCBs above cleanup goals within certain buildings or outdoor areas, all as described in Section C.3.1 and the TSRS, and including waste water or other waste materials contaminated or potentially contaminated with PCBs associated with the cleanup of PCB Remediation Waste.

**3.24 Performance Report.** The term "Performance Report" means a report submitted by the Recipient to the Army Representative, as described in Section B.9 of this ESCA and Section 5.2 of the TSRS.

**3.25 Radiological Materials.** The term "Radiological Materials" means solid, liquid, or gaseous material, derived from U.S. Government activities, that contains radio nuclides regulated under the Atomic Energy Act of 1954, as amended, and licensed by the Nuclear Regulatory Commission. It includes radioactive material, nuclear devices and nuclear components thereof, and radiographic and instrument calibration sources and various instrumentation and radio luminescent products manufactured for military applications. The term "Radiological Materials" does not include background radiation, radio luminescent dials, or products manufactured for non-military applications, such as radio luminescent signs, tungsten welding electrodes and household smoke detector components.

**3.26 Recipient.** The term "Recipient" means the Riverbank City Local Redevelopment Authority ("RLRA"), and its successors. The RLRA is an entity that is within the meaning of the term "local government agency" as such term is used in 10 U.S.C. § 2701(d)(1), with which the Army is authorized to enter into "agreements on a reimbursable or other basis."

**3.27 Regulatory Response Costs.** The term "Regulatory Response Costs" means labor costs, overhead costs, contractor costs, third party travel, and lodging costs and associated costs or fees relating to or arising from the activities other than for enforcement of the USEPA, DTSC, Water Board and/or other regulators relating to the Environmental Services.

**3.28 RLRA.** See "Recipient."

**3.29 Riverbank Army Ammunition Plant.** The term "Riverbank Army Ammunition Plant" ("RBAAP") means that portion of real and personal property covered by the PCES or ACES.

**3.30 Technical Specifications and Requirements Statement.** The term "Technical Specifications and Requirements Statement" or "TSRS" means the mutually agreed upon document attached hereto as Attachment E-1 in Section E that describes the Known Conditions for the PCES and ACES and identifies the specific scope of cleanup activities that will be performed by the Recipient as the Environmental Services.

**3.31 USEPA.** The term "USEPA" means the United States Environmental Protection Agency.

#### **4. OBLIGATIONS OF THE PARTIES.**

##### **4.1 Obligations of the Recipient.**

**4.1.1 General.** In consideration of the Army's payment of funds in accordance with Section C.4.2.1 of this ESCA, the Recipient shall perform the Environmental Services in accordance with and subject to the terms of this ESCA. The Recipient agrees that, subject to the provisions of Sections C.4.1.11 and B.5, it shall complete or cause to be completed the Environmental Services.

The Recipient shall perform the Environmental Services in accordance with and pursuant to TSCA, CERCLA, and the TSRS. The performance of the Environmental Services under the TSRS is expected to satisfy the Army's responsibilities with regard to the Environmental Services. By executing this ESCA, the Army concurs with the process set forth in the TSRS, including the documents and approvals therein. However, these concurrences in no way limit the Recipient's

authority, without obligation, to perform, as part of the Environmental Services, additional remedial actions and thereby satisfy other remedy requirements for the PCES and ACES. The Recipient shall perform the Environmental Services and shall submit Performance Reports to the Army in accordance with the TSRS.

The Recipient's obligation to complete the Environmental Services is expressly conditioned upon the Army providing the sum set forth in Section B.5 as the funding obligation of the Government as required under Section C.4.2.1, for performing the Environmental Services in accordance with the terms of this ESCA. In the event the Government fails to make payment of the Grant Amount in accordance with Sections B.5 and C.4.2.1, the Recipient's obligations hereunder shall not take effect. To the extent that the Army pays a portion of the funding set forth in Section B.5 and required to be paid under Section C.4.2.1, but fails to pay the full amount set forth in Section B.5, the Recipient's obligations under this ESCA shall be limited only to that portion of the Environmental Services and reasonable demobilization costs that can be performed (based on reasonable charges) for the funds actually paid by the Army.

In the event it is determined that any of the TSRS details are incorrect, or it is discovered that there has been an omission from the TSRS details, notice will be provided to the Army in accordance with the TSRS, and a report will be generated in accordance with the TSRS, indicating whether the effect will be to decrease the cost of achieving Completion and, if so, the amount of that decrease ("Cost Decrease") or whether the effect will be to increase the cost of Completion and, if so, the amount of that increase ("Cost Increase"). Cost Decreases will be used to offset Cost Increases, and in the event, at the time of Completion, the aggregate Cost Decreases are greater than the aggregate Cost Increases, the net savings will be returned to the Army. However, in the event any of the TSRS details are incorrect, or an omission from the TSRS details has been discovered, and as a result the Recipient expects to incur aggregate Cost Increases that are (i) not eliminated by way of a mutually agreed reallocation of funds from the Grant Amount and/or (ii) not satisfied by way of additional Army funding, the Recipient is relieved of the obligation to perform additional Environmental Services for which the allocated funds are exhausted. Also, the Recipient may utilize alternative remediation methods to meet clean-up criteria, but only with prior approval from the Grants Officer.

In the event this ESCA terminates pursuant to Section D.8, the Recipient's obligations shall be terminated. In such event, the Recipient may use funds to complete demobilization, and then shall return all funds yet to be expended from the amount paid by the Army under this ESCA.

Work included in CLIN 14.2, Encapsulate Four Presses (see Attachment E.1 TSRS, Table E-1), shall not be performed unless authorized by the Grants Officer. If authorized by the Grants Officer, then encapsulation should follow the EPA clean-up criteria identified in Section 3.4 of the TSRS.

The conditions set forth above in this Section C.4.1.1 shall be subject to dispute resolution pursuant to Section D.9.

**4.1.2 Notice of a Complaint.** The Recipient shall provide the Army notice as soon as possible, but no later than seven days after receiving notice of a claim by federal, state, or local regulators, or other third parties, of the existence of any environmental condition of the PCES and ACES that suggests an action is necessary for which the Army is responsible under this Agreement. If the Recipient is served with a complaint or written notice of a claim by the federal, state or local regulators, or other third parties, the Recipient shall provide the Army with a copy of such document no later than seven days following service of such document.

**4.1.3 Discovery of an Army Obligation.** In the event the Recipient discovers an Army Retained Condition at, on, from or affecting the PCES and ACES, the Recipient shall notify the Army of such conditions within seven days of receiving actual notice of such conditions, except that the Recipient shall notify the Army of the discovery of Radiological Materials; or Chemical or Biological Warfare Material; within twenty-four hours of such discovery.

Failure of Recipient to provide timely notice as provided in Sections C.4.1.2 and C.4.1.3 shall not limit in any way the responsibility of the Army under this Agreement, or under applicable law, except to the extent the Army's interests are materially or adversely affected by such late notice. However, the Recipient could be held responsible for incremental liabilities resulting from a delay in notification.

**4.1.4 Imminent Threat.** The Recipient shall take action to address an imminent threat to human health or the environment if required by a regulatory agency, or if in Recipient's reasonable judgment, such action is necessary to address an imminent threat to human health or the environment, and may seek reimbursement from the Army for response costs related to such imminent threat where: (a) notification cannot practicably be provided to the Army in accordance with the terms of Section C.4.1.3 above before such action needs to be taken; or (b) notification is provided to the Army before such action needs to be taken and the Army agrees to permit the Recipient to take such action under terms agreed to by the parties.

In the event that Recipient provides notification to the Army before such action needs to be taken but the Army cannot or will not provide a timely response to such threat other than as provided in (b) above, the parties reserve their rights but will expedite dispute resolution provided in Section D.9.

**4.1.5 Notice and Dispute.** To the extent the Recipient takes or causes to be taken actions in response to an Imminent Threat, the Recipient shall provide notice of such action to the Army as soon as practicable. If the Army disputes an action taken by the Recipient under this Section, the Army may engage in dispute resolution in accordance with Section D.9.

**4.1.6 Covenant Not to Sue.** The Recipient covenants not to sue and hereby waives any potential claims against the Army for consequential damages related to performance delays caused by the Army's performance of, or failure to perform, investigations or remediation activities.

**4.1.7 Discovery of Unknown Conditions.**

**4.1.7.1** In the event that the Recipient discovers any previously Unknown Condition(s), which were not included in the TSRS details, the Recipient shall not be obligated to perform Environmental Services for such previously Unknown Conditions in accordance with the TSRS, and as required by applicable law; subject to the limitations of Section C.4.1.11. The Environmental Services rendered will not be subject to Completion for such Unknown Conditions.

**4.1.7.2** In the event that the Recipient discovers any Unknown Condition(s), the Recipient shall provide timely notice to the Army.

**4.1.8 Indemnification/Limited Waiver of Statutory Rights.** In consideration of the funds paid, and to the extent of the Environmental Services performed under this ESCA, the Recipient agrees that, except for Army Obligations, it shall, irrespective of termination pursuant to Section D.8, indemnify the Army for its costs and expenses to the extent arising from:

**4.1.8.1** Any associated response cost claims for activities required to be performed or actions taken as a result of the Recipient's failure to perform all or part of the Environmental Services,

subject to the limitations described in Section C.3.14, for which the Recipient does not return funds that it received for the Environmental Services;

All personal injury or property damage claims but only to the extent caused by the Recipient or its contractors in the course of performing the Environmental Services;

**4.1.8.3** All costs associated with or arising from any negligent acts or omissions or willful misconduct of the Recipient in the course of performing or in the performance of the Environmental Services, including but not limited to claims for personal injury or property damage.

The Army shall, with respect to the above indemnities, reasonably cooperate with and assist the Recipient in the defense, including, but not limited to, providing prompt notice of any claims, lawsuits, or notices from any claimant or agencies. The Parties agree that the provisions of this Section limit the Army's indemnification obligations under Section 330 of Public Law 102-484 to the extent that the Recipient has assumed certain indemnification obligations under this Section C.4.1.8.

**4.1.9 Financial & Technical Assurances.** The Parties agree that the Recipient has provided financial and technical assurances reasonably acceptable to the Army.

**4.1.10 Reports.** The Army may request that the Recipient provide additional information concerning the environmental condition of the PCES and ACES. The Recipient shall provide reasonable access to any such documents related to the Environmental Services in its possession containing such requested information to the Army as soon as reasonably possible after such request is made.

**4.1.11 Recipient's Performance Obligation.**

**4.1.11.1** The Recipient shall be responsible for all actions necessary to accomplish the performance of all Environmental Services, as defined in the TSRS.

**4.1.11.2** The Recipient shall not be responsible for remediation of Unknown Conditions discovered after the Effective Date, except to the extent agreed to in writing by the Parties.

## **4.2 Obligations of the Army.**

**4.2.1 Payment to the Recipient.** The Army shall pay the recipient in accordance with Section B.5 of this ESCA.

**4.2.2 Access.** The Army shall, upon request, promptly provide the Recipient and any party performing Environmental Services with all rights of access onto or into any real property, buildings or equipment for which the Army has legal authority to provide such rights, and with all rights to conduct any activities necessary to perform the Environmental Services upon such real property, buildings or equipment for which the Army has legal authority to provide such rights. The Army may condition the provision of such rights on reasonable restrictions on the time and manner of access and conduct of activities, provided that such restrictions do not unreasonably delay or interfere with the performance of the Environmental Services.

**4.2.3 Liability.** If the death of or injury to any person, or the loss of or damage to any property, is caused by the Government in the course of its use of the PCES and ACES or in the performance by the Government of Army Obligations hereunder, the liability, if any, of the Government therefore shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act (28 U.S.C. §§ 2671, *et seq.*, as amended) or otherwise provided by law.

**4.2.3.1** In performing environmental cleanup activities hereunder, the Government shall minimize interference by the Army, its contractors or agents with the use of the leased property by the Recipient

and its successors, assigns, transferees and tenants. The Government assumes no liability for any interference with or business loss due to the Recipient and/or its contractor's access to or use of the PCES and ACES that may be caused by environmental cleanup activities. The Recipient, its successors, assigns, transferees and tenants shall have no claim against the Government for any such interference or business loss. However, to the extent permissible under federal rules and regulations, the Government shall require that its contractors have general liability insurance and errors and omissions insurance.

**4.2.3.2** The Army will perform its obligations under Section 4.2.1 in a manner that will not unreasonably delay the Recipient's performance of Environmental Services.

**4.2.3.3** Wherever the terms of this ESCA provide for approval by the Army, such approval shall not be unreasonably withheld or delayed.

**4.2.3.4** With regard to Army Obligations, the Army will reasonably provide to the Recipient copies of any and all documents submitted to the USEPA, DTSC and/or Water Board at the same time said documents are submitted to USEPA, DTSC and/or Water Board. The Recipient shall have the right, hereunder, to review and comment on these documents.

**4.2.3.5** Upon notice as required under Section E.9 of the TSRS, from the Recipient, of any incorrect TSRS Detail(s) that result in an aggregate Cost Increase, the Army shall negotiate with the Recipient toward a mutually agreed reallocation of funds from the Grant Amount or the Army shall provide additional funding adequate to achieve Completion associated with the incorrect TSRS Detail(s).

### **4.3 Insurance and Related Liability.**

**4.3.1 General Liability.** The Recipient or its contractor(s) shall either self-insure or shall carry and maintain general liability insurance, to afford protection with limits of liability not less than \$1,000,000 each occurrence and \$2,000,000 aggregate. All policies issued for general liability insurance required by this ESCA will provide that no cancellation will be effective until at least thirty (30) days after receipt by the Army of written notice thereof; and provide a waiver of subrogation by the Recipient of any claims the Recipient may have against the Army, its officers, agents, or employees. In no circumstances will the Recipient be entitled to assign to any third party rights of action without prior written consent by the Army.

**4.3.2 Environmental Insurance.** The Recipient or its contractor(s) shall obtain, carry and maintain environmental insurance through the Contractor's Pollution Liability Insurance Policy to afford protection with limits of liability not less than \$2,000,000 each occurrence and \$2,000,000 aggregate.

**4.3.3 Worker's Compensation.** If and to the extent required by applicable law, the Recipient or its contractor(s) will either self-insure or carry and maintain worker's compensation or similar insurance in form and amounts required by law. Any such insurance policy will provide a waiver of subrogation by the Recipient of any claims the Recipient may have against the Army, its officers, agents, or employees except for those asserted by third parties in their own right. In no circumstances will the Recipient be entitled to assign to any third party rights of action, which the Recipient may have against the Army.

**4.3.4 Delivery of Policies.** The Recipient will provide to the Army on or prior to the Effective Date a certificate of insurance evidencing the insurance required of the Recipient in this Section C.4.3. The Recipient will also deliver, no later than thirty (30) days prior to cancellation or the expiration of any such policy, a certificate of insurance evidencing new coverage satisfying the requirements of this Section C.4.3.

## 5. GENERAL PROVISIONS.

### 5.1 Term of ESCA.

**5.1.1** Notwithstanding anything to the contrary in this ESCA, the obligations of the Parties herein are triggered only upon the occurrence of the Effective Date.

**5.1.2** This ESCA shall remain in effect in accordance with Section B.2 subject to earlier termination pursuant to Section D.8, or extension pursuant to a written agreement of the Parties.

**5.1.3** The obligations of the Parties that shall survive the term of this ESCA, identified in Section B.2, shall include but are not limited to the following:

The Recipient's responsibilities and Army Obligations under Sections C.4.1.1, C.4.1.2, C.4.1.7, C.4.1.8, C.4.2.1, C.4.2.3, and Section D.

### 5.2 Successors and Assigns.

**5.2.1** The Recipient shall remain liable for performing its obligations under this ESCA, without regard to the potential for portions of the PCES and ACES to be transferred to future owners or tenants, in furtherance of the redevelopment objectives for the leased property. Nothing in this ESCA shall be construed to authorize the Recipient to assign any of its responsibilities or obligations under this ESCA to a third party without the prior written approval of the Army or make any subsequent owners or users of the PCES and ACES a successor or assign under this ESCA. All obligations and covenants made by the Parties under this ESCA will bind and inure to the benefit of any successors and assigns of the respective Parties, whether or not expressly assumed by such successors or assigns, and may not be assigned in whole or in part without the written consent of the other party.

**5.2.2** The Parties agree that if the RLRA dissolves or terminates, its designated successor shall become the Recipient hereunder, and shall assume all liabilities, obligations and responsibilities under this ESCA.

**5.3 Severability.** If any provision of this ESCA is held invalid, the remainder of the ESCA 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 ESCA upon any event of breach by the other Party and no course of conduct shall be considered to be such a waiver, absent a writing expressly waiving such a provision.

**5.5 Notices.** Any notice, transmittal, approval, or other official communication made under this ESCA will be in writing and will be delivered by hand, facsimile transmission, electronic mail, or by mail to the other party at the address or facsimile transmission telephone number set forth below, or at such other address as may be later designated:

To the Army:

Mr. Warren Switzer  
Program Manager  
Office of the Assistant Chief of Staff for Installation Management (DAIM-ODB)  
600 Army Pentagon  
Washington, D.C. 20310-0600

To the RLRA:

Debbie Olson, Executive Director

## **5.6 Representations.**

### **5.6.1** The Army represents that:

1. It is fully authorized to enter into this ESCA
2. The Recipient can fully rely on the data provided to the Recipient or its contractors by the Army or the Army's contractors for purposes of performing the Environmental Services and making disclosures required under applicable law; and
3. The information contained in the documents identified in the applicable documents Section of the TSRS, fairly and accurately represents the Army's actual knowledge of the nature and extent of contamination of the PCES and ACES.

### **5.6.2** The Recipient represents that:

1. It is fully authorized to enter into this ESCA; and
2. It enters this ESCA cognizant of the requirements and prohibitions set forth in the Anti-Deficiency Act and that any provision of this ESCA that states or implies that the Army will reimburse the RLRA for specific costs incurred are wholly subject to the Anti-Deficiency Act and that the Army's obligations are subject to that law.

**5.7 Conflict of Interest.** The RLRA shall ensure that its employees are prohibited from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others.

**5.8 Access to and Retention of Records.** The Recipient shall afford any authorized representative of the Army, the Department of Defense, or the Comptroller General, or other officially concerned federal government agency access to and the right to examine all records, books, papers, and documents, including records in automated forms ("Records") that are within the Recipient's custody or control and that relate to its performance under this ESCA. This right of access to records shall not include attorney client communications, attorney work product, or other legally privileged documents. The Recipient shall retain records subject to the access rights established in this Section 5.8 intact in such form, if not original documents, as may be approved by the Army or other officially concerned government agency, which approval shall not be unreasonably withheld, for at least thirty (30) years following completion or termination of this ESCA or transfer all such records into Army custody. Access to the Recipient's records will be during normal business hours, and the Army or other officially concerned federal government agency will give the Recipient seventy-two (72) hours prior notice of its intention to examine the Recipient's records, unless the Army or other officially concerned federal government agency determines that more immediate entry is required by special circumstances. The Recipient will have no claim based solely upon such entries against the Army or other officially concerned government agency, or any officer, agent, employee, or contractor thereof.

**5.9 Change of Circumstances.** Each Party will promptly notify the other Party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect such Party's ability to carry out any of its obligations under this ESCA.

**5.10 Officials Not to Benefit.** The Recipient acknowledges that no member or delegate to the United States Congress, or resident Commissioner, shall be permitted to share in any part of this ESCA or receive any benefit that may arise therefrom.

**5.11 Force Majeure.** The Parties shall perform the requirements of this ESCA except to the extent performance is prevented or delayed by events that constitute force majeure. A force majeure is defined as any event arising from causes which are beyond the control of a Party and which cannot be overcome with due diligence, and include but are not limited to war, terrorism, riots, strikes and other labor issues, severe weather, legal action by private citizens or organizations that result in injunctions, and acts of God, to the extent such events result in delays or cessation of Environmental Services. If either Party disputes whether an event constituting force majeure has occurred hereunder, the dispute resolution set forth in Section D.9 may be invoked.

**5.12 No PRP Status.** The Recipient's potential or actual future status as owner and/or operator of the ACES, or portions thereof, shall not make the Recipient a potentially responsible party, or relieve the Army of its obligations under this ESCA or under 42 U.S.C. § 9620(h). These terms will not apply if and to the extent the Recipient would be deemed to be a potentially responsible party as a result of activities or operations that cause a release or a threatened release of a hazardous substance under CERCLA.

--- 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 Part 33, and DoDD 3210.6<sup>1</sup> take precedence over all terms and conditions of this ESCA.
2. **ADMINISTRATION AND COST PRINCIPLES.** Applicable to the award as described in Sections B.5 and required to be paid under Section C.4.2.1, and incorporated herein by reference, are the requirements of the following Office of Management and Budget (OMB) Circulars<sup>2</sup>, as of the effective date of the award:
  - (a) OMB A-87 ó *Cost Principles for State, Local and Indian Tribal Governments* (Revised 04 May 1995, as further amended on 29 August 1997)
  - (b) OMB A-102 ó *Grants and Cooperative Agreements with State and Local Governments* (Revised 07 October 1994, as further amended on 29 August 1997)
  - (c) OMB A-133 ó *Audits of States, Local Governments, and Non-Profit Organizations* (Revised 24 June 1997)
3. **CERTIFICATIONS.** By acceptance (signing) of this award or by accepting funds under the award, the Recipient thereby makes the following certifications:
  - (a) Appendix A to 32 CFR Part 25 regarding debarment, suspension, and other responsibility matters;
  - (b) Appendix C to 32 CFR Part 25 regarding drug-free workplace requirements; and,
  - (c) Appendix A to 32 CFR Part 28 regarding lobbying.
4. **AWARD PROVISIONS FOR NATIONAL POLICY REQUIREMENTS.** By acceptance (signing) of this award, or by accepting funds under the award, the Recipient assures that it will comply with applicable provisions of the following national policy requirements (as applicable) with respect to the prohibition of discrimination:
  - (a) On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DoD regulations at 32 CFR Part 195;
  - (b) On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 [3 CFR, 1964-1965 Comp.p.229], as implemented by Department of Labor Regulations at 41 CFR Part 60];
  - (c) On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR Part 90; and,
  - (d) On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), implemented by Department of Justice regulations at 28 CFR Part 41 and DoD regulations at 32 CFR Part 56.
5. **RETENTION AND EXAMINATION OF RECORDS.** Retention and access requirements for records shall be as set out at 32 CFR § 33.42.

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<sup>1</sup> DoD Grant and Agreement Directive at <http://www.dtic.mil/whs/directives/corres/pdf/321006r.pdf>

<sup>2</sup> OMB Circulars/Forms at <http://www.whitehouse.gov/omb/grants/index.html>

6. **ENVIRONMENTAL PROTECTION.** By acceptance (signing) of this ESCA and accepting funds under this ESCA, the Recipient agrees to comply with applicable federal environmental laws in undertaking activities for the PCES and ACES that are not covered by the ESCA, including:

6.1 The Recipient agrees that its performance under this ESCA, 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.) the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387), which relate generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder; the Resource Conservation and Recovery Act ("RCRA", 42 U.S.C. §§ 6901, *et seq.*); the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA," 42 U.S.C. §§ 9601, *et seq.*); 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 performance under this ESCA.
- (b) The Government's rights under this ESCA 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 reasonably 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 Effective Date, 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.4.1.8. This provision will survive the expiration or termination of this ESCA.

6.2 The Recipient 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 The Recipient will identify to the Grants Officer any impact on underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and assist the Grants Officer in compliance with the Safe Drinking Water Act of 1974 (42 U.S.C. § 300h-3).

## 7. **CHANGES.**

7.1 **Relation to Cost Principles.** The cost principles set forth in OMB A-87 ó *Cost Principles for State, Local and Indian Tribal Governments*, contain requirements for prior approval of certain types of costs. These prior approval requirements apply to all federal assistance instruments (and subgrants) entered into by the Army. In addition to the prior approvals required under OMB A-87, capital expenditures for equipment, including replacement equipment, other assets, and improvements which materially increase the value or useful life of equipment or other capital assets are allowable as direct costs.

**7.2 Budget Changes.** Pursuant to 32 CFR § 33.30, the Recipient is permitted to re-budget within the approved budget to meet unanticipated requirements and may make limited program changes to the approved project. Request for prior approval shall be in the same budget format the Recipient used in its application and shall be accompanied by a narrative justification for the proposed revision. The Recipient shall obtain written approval of the Grants Officer prior to initiating:

- (a) Any revision which would result in additional Government funding; or a change in scope;
- (b) Cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects functions, or activities which exceed or are expected to exceed ten (10) percent of the current total approved budget.

This section does not apply to any redistribution as may be necessitated by the discovery of any incorrect Scope Details.

**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;
- (b) Changes to the TSRS incorporated herein at Section E, Attachment E.1.;
- (c) Modification to the requirements and/or funding needed for insurance and related liability incorporated herein at Section C.

## **8. ENFORCEMENT AND TERMINATION FOR CONVENIENCE.**

**8.1 Remedies for Noncompliance.** The Government's remedies for noncompliance are as set forth at 32 CFR § 33.43(a).

**8.2 Suspension and Termination.** The bases for and effects of suspension and termination are as set forth at 32 CFR Part 33.

**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 Executive Order 12549.

**8.4 Termination for Convenience.** This ESCA may also be terminated, in whole or in part, only by the Grants Officer with the consent of the Recipient in which case the 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 or equity, 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) During the dispute process with respect to the portion not in dispute, the Recipient shall proceed diligently with performance of the Environmental Services, 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 of the Grants Officer, 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 ESCA 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 Environmental Services, in accordance with the Recipient's Application for Federal Assistance (and supporting documentation), and the terms and conditions specified in this ESCA. The Recipient is encouraged to suggest, or propose to discontinue, or modify unpromising efforts.

**11. ACKNOWLEDGEMENT OF SPONSORSHIP.** The Recipient agrees that in the release of information relating to this ESCA, 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.** Pursuant to 32 CFR § 33.36(a), the Recipient will follow the same policies and procedures it uses for procurements from its non-federal funds. The Recipient will ensure that every purchase order or other contract includes any clauses required by federal statutes and Executive Orders and their implementing regulations, as set forth under 32 CFR § 33.36(i)(1) through (13) inclusive.

**13. SUBGRANTS.** The Recipient shall follow State law and procedures when awarding and administering subgrants (whether on a cost-reimbursement or fixed amount basis), pursuant to 32 CFR § 33.37(a)(1) through (4) inclusive.

- 14. ALLOWABILITY OF COSTS.** Allowability of costs shall be in accordance with 32 CFR §§ 33.22 and 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 ESCA, 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 ESCA.
- 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 Part 800 and Executive Order 11593.
- 18. PROTECTION OF THREATENED AND ENDANGERED SPECIES AND NATURAL HABITAT.** The Recipient agrees that its performance under this ESCA will comply with all applicable federal, state, and local laws and regulations related to the protection of threatened and endangered species and natural habitat, if any, included but not limited to the requirements of the Endangered Species Act of 1973 (16 U.S.C. § 1531, *et seq.*) except as provided herein. The Recipient is aware of and understands its obligations to protect and conserve threatened and endangered species and to take all reasonable precautions to protect trees and natural habitat during maintenance and future operations and to restore the ground surface after completion of maintenance or other operations as near to its former condition as may be possible for protection against erosion.
- 19. HATCH ACT.** The Recipient agrees to comply with the Hatch Act (5 U.S.C. §§ 1501-1508 and §§ 7324-7328), as implemented by the Office of Personnel Management at 5 CFR Part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or in part with federal funds.
- 20. AFTER THE AWARD REQUIREMENTS.**
- (a) Closeout, subsequent adjustments, continuing responsibilities, and collection of amounts due are subject to the requirements in 32 CFR §§ 33.50 through 33.52.
  - (b) Pursuant to 32 CFR § 33.50, the Recipient shall submit, within 90 calendar days after the date of expiration of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Grants Officer may approve extensions when requested by the Recipient.
- 21. MODIFICATION OF ESCA.** The only method by which the ESCA can be modified is through formal, written modification, initiated by the Grants Officer on behalf of the Government. No other communications, whether oral or in writing, shall be binding on the Parties.

--- END OF SECTION D ---

**SECTION E**  
**ATTACHMENTS**

**NO.**                    **ATTACHMENT/EXHIBIT DESCRIPTION**

E.1.                    Attachment E.1.  
**Technical Specifications and Requirements Statement**

E.2.                    Attachment E.2.  
**Application for Federal Assistance (SF 424)**  
**Budget Information – Non-Construction Programs (SF 424A)**  
**Assurances – Non-Construction Programs (SF 424B)**  
**Federal Financial Report (SF 425)**  
**Certifications Regarding Lobbying; Debarment, Suspension and other Responsibility Matters; and Drug-Free Workplace Requirements for Cooperative Agreements**  
**Request for Advance or Reimbursement (SF 270)**

---ATTACHMENTS FOLLOW ---