

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

August 9, 2013

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 10OD-159

OAHU

Authorization to Execute the Administrative Order on Consent for Remedial Investigation/Feasibility Study between the United States Department of the Navy, Environmental Protection Agency, State Department of Health, Department of Land and Natural Resources, and the City and County of Honolulu in the matter of Waipahu Ash Landfill, Waipahu, Ewa, Oahu (1) 9-3-002:027

APPLICANT:

City and County of Honolulu

LEGAL REFERENCE:

Section 171-6, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waipahu, Ewa, Oahu, identified by Tax Map Key: (1) 9-3-002:027, as shown on the attached map labeled **Exhibit 1**.

AREA:

6.720 acres, more or less.

ZONING:

State Land Use District: Conservation
City and County of Honolulu LUO: P-1

TRUST LAND STATUS:

Section 5(e) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Encumbered by General Lease No. 3808 issued to the City and County of Honolulu for sewage treatment plant and incinerator ash disposal site purposes, expiring on June 16, 2029.

REMARKS:General Lease No. 3808

General Lease No. 3808 was issued to the City and County of Honolulu (the “City”) commencing on June 17, 1964 for a 65-year term for sewage treatment plant and incinerator ash disposal site purposes. The lease encumbered (1) 9-3-001:004, 12 and (1) 9-3-002:027 for a total area of 45.810 acres.

On April 12, 2002, under agenda item D-3, the Board approved the withdrawal of (1) 9-3-001:004 (21.720 acres) from the lease and set aside such area for wildlife sanctuary purposes. Governor’s Executive Order No. 4146 was issued in 2006 recording such withdrawal.

The current acreage of GL 3808 is 24.090 acres encumbering (1) 9-3-001:012 and (1) 9-3-002:027 (“Parcel 27”).

Waipahu Ash Landfill

According to the Administrative Order on Consent for Remedial Investigation/Feasibility Study (the “AO”) attached as **Exhibit 2**, approximately from 1960 to 1972, the City was operating the Waipahu Ash Landfill (which received the municipal solid waste) over Parcel 27 and other properties owned by the City in the vicinity. From 1972 until the closure of the landfill in 1991, the landfill was receiving ash from the combustion of the municipal solid waste from the Waipahu Incinerator.

For the Board’s information, the Finding of No Significant Impact Statement regarding the closure of the Waipahu Ash Landfill was published on November 8, 2004 at the Office of Environmental Quality Control’s Environmental Notice.

Prior analyses indicate that the site represents a significant source of dioxins, furans, and metals including arsenic antimony, barium, cadmium, copper, lead, mercury, nickel, and zinc. See Appendix B of the administrative order depicting the WALF, comprising lands

owned by the Federal, State, and City governments.

Pursuant to the discussions among the City, the Navy, Environmental Protection Agency, Department of Health, and this Department, the AO was prepared. In fact, the City has signed the AO, as noted on Exhibit 2. The City is the Respondent as named in the AO, which is responsible for the remedial mitigation work to the satisfaction of the federal and State regulatory agencies.

According to the AO, the Department being the lessor for Parcel 27 will be providing access to Parcel 27 to the City to facilitate the remedial mitigation work to be carried out by the City. There are no other pertinent issues or concerns and staff has no objection to the request.

RECOMMENDATION: That the Board authorize the Chairperson to execute the Administrative Order on Consent for Remedial Investigation/Feasibility Study in the matter of the Waipahu Ash Landfill further subject to the following:

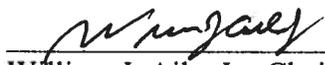
- A. Review and approval by the Department of the Attorney General; and
- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

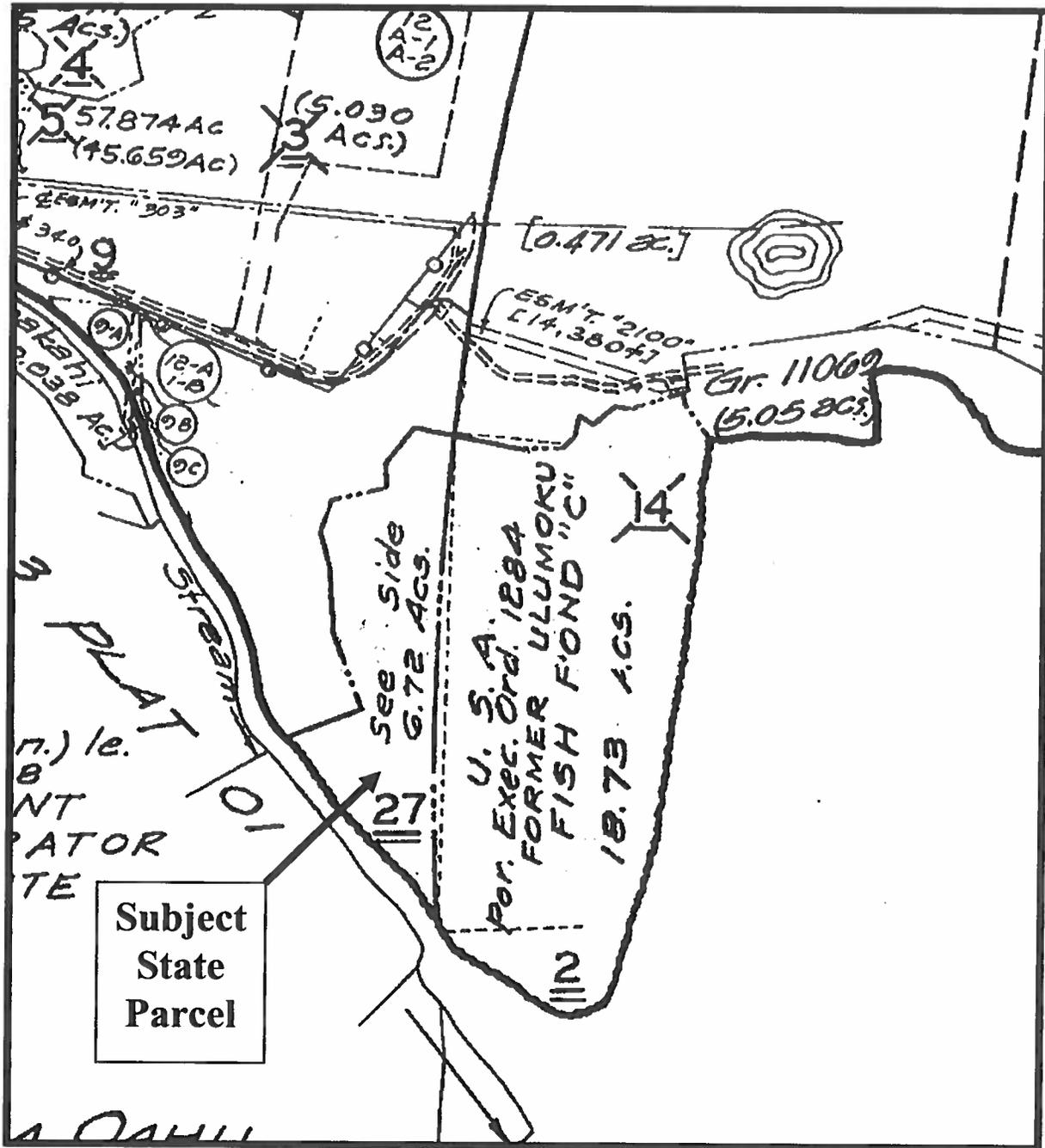


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



TMK (1) 9-3-002:027

EXHIBIT 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

**IN THE MATTER OF
WAIPAHU ASH LANDFILL
CITY AND COUNTY OF HONOLULU, HI**

City and County of Honolulu

Respondent.

**ADMINISTRATIVE ORDER ON
CONSENT FOR REMEDIAL
INVESTIGATION/FEASIBILITY
STUDY**

**U.S. EPA, Region IX
CERCLA Docket No. 2013-3
Proceeding under Sections 104, 107
and 122 of the Comprehensive,
Environmental Response
Compensation and Liability Act, as
Amended, 42 U.S.C. §§ 9604, 9607,
and 9622.**

EXHIBIT " 2 "

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study ("Settlement Agreement") is entered into voluntarily by the United States Department of the Navy ("Navy"), the Environmental Protection Agency, Region IX ("EPA") (collectively, the "Federal Agencies"), the Hawaii Department of Land and Natural Resources ("DLNR"), an agency of the State of Hawaii and the Hawaii Department of Health ("DOH"), an agency of the State of Hawaii (collectively, the "State"), the City and County of Honolulu, a political subdivision of the State of Hawaii ("Respondent" or "CCH"). The Settlement Agreement concerns the preparation and performance of a remedial investigation/feasibility study ("RI/FS") by Respondent at the Waipahu Ash Landfill, located at Waipahu, Hawaii ("Site") and the reimbursement for Future Response Costs, including oversight costs, incurred by the Federal Agencies in connection with the RI/FS, as well as Past Response Costs incurred by the Navy.
2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of CERCLA (as defined below), 42 U.S.C. §§ 9604, 9607, and 9622. This authority was delegated to the Federal Agencies by Executive Order No. 12580 (as amended).
3. In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), the Navy and EPA notified the U.S. Fish and Wildlife Service on March 11, 2013 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship.
4. Respondent has agreed to undertake responsibility for conducting a RI/FS for this Site. The Navy and the DLNR, owners of parts of the Site, have agreed to provide access to the Site and certain other assistance to facilitate performance of the RI/FS by Respondent.
5. The Federal Agencies, State and Respondent (the "Parties") recognize that this Settlement Agreement has been negotiated in good faith and that the actions taken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of fact, conclusions of law, and determinations in Sections V and VI of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

6. This Settlement Agreement applies to and is binding upon the Parties.
7. Respondent shall ensure that its Supervising Contractors, and all other contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

8. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind that Party to this Settlement Agreement.

III. STATEMENT OF PURPOSE

9. In entering into this Settlement Agreement, the objectives of the Parties are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site, by conducting a Remedial Investigation as more specifically set forth in the Statement of Work ("SOW") attached as Appendix A to this Settlement Agreement; (b) to identify and evaluate response action alternatives to prevent, mitigate, or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at the Site, by conducting a Feasibility Study as more specifically set forth in the SOW in Appendix A to this Settlement Agreement. Respondent shall reimburse the Navy and EPA for response and oversight costs incurred by the Federal Agencies with respect to the RI/FS as required by this Settlement Agreement, including Past Costs.

10. Respondent shall complete the RI/FS as required by this Settlement Agreement. It is specifically contemplated that the Federal Agencies will prepare the Proposed Plan and Record of Decision for the remedial action selected for this Site. If additional response actions are required pursuant to the Record of Decision, Respondent's obligations to perform such response actions will be addressed in a subsequent separate agreement or order.

11. Pursuant to a Memorandum of Understanding ("MOU") among the Federal Agencies and the DOH, one Lead Agency will be responsible for coordinating, overseeing, and enforcing the response actions required by this Settlement Agreement. The EPA has been designated as the Lead Agency, at this time.

12. The Work conducted under this Settlement Agreement is subject to notice of approval by the Lead Agency and shall provide all appropriate and necessary information to assess Site conditions and evaluate alternatives to the extent necessary to select a remedy that will be consistent with CERCLA and the NCP (as defined below). Respondent shall conduct all Work under this Settlement Agreement in compliance with CERCLA, the NCP, and all applicable EPA guidelines, policies, and procedures.

IV. DEFINITIONS

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

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

b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period is to be included unless it is a

Saturday, Sunday, or federal holiday, in which event the period of time runs until the close of business of the next day that is neither a Saturday, Sunday nor a federal holiday.

c. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXX (Effective Date and Subsequent Modification).

d. "Engineering Controls" shall mean constructed containment barriers or systems that control one or more of the following: downward migration, infiltration or seepage of surface runoff or rain; or natural leaching migration of contaminants through the subsurface over time. Examples include caps, engineered bottom barriers, immobilization processes, and vertical barriers.

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

f. "Federal Agencies" shall mean the United States Department of the Navy, and all associated and subordinate commands, any office or subdivision thereof, and its successor department or agency of the United States and United States Environmental Protection Agency and its successor departments, agencies or instrumentalities of the United States.

g. "Federal Natural Resource Trustee" shall mean those federal officials designated pursuant to Section 107 (f)(2)(A) of CERCLA, 42 U.S.C. § 9607 (f)(2)(A), as public trustees for natural resources.

h. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs that the Navy and EPA incur in reviewing or developing plans, reports, and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, Agency for Toxic Substances and Disease Registry ("ATSDR") costs, DOH oversight costs pursuant to the Department of Defense and State Memorandum of Agreement (Sept. 10, 1991) and the current Department of Defense and State Memorandum of Agreement, Cooperative Agreement (July 9, 2012), the costs incurred pursuant to Section XII (Site Access and Institutional Controls) (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 42 (Emergency Response and Notification of Release), and Paragraph 89 (Work Takeover), to the extent that such costs are not inconsistent with the National Contingency Plan. 42 U.S.C. § 9607(a) and 40 C.F.R. §300.700(c).

i. "FFA" shall mean the Federal Facility Agreement for Pearl Harbor Naval Complex Superfund Site, Administrative Docket No. 94-05, executed March 17, 1994.

j. "Institutional Controls" shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of Institutional Controls include easements and covenants, zoning restrictions, special building permit requirements, and well drilling prohibitions.

k. "Interest" shall mean interest at the same rate as specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. §§ 9507, compounded annually, in accordance with 42 U.S.C. sec, 9707(a). The applicable rate of interest

shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

- l. "Lead Agency" shall initially mean the United States Environmental Protection Agency and any successor departments or agencies of EPA, unless there is a change in designated lead agency by mutual agreement of the EPA and the Navy.
- m. "Municipal solid waste" shall mean waste material: (i) generated by a household (including a single or multifamily residence); or (ii) generated by a commercial, industrial or institutional entity, to the extent that the waste material – (I) is essentially the same as waste normally generated by a household; (II) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste disposal services; and (III) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waster material generated by a typical single-family household.
- n. "Natural Resource Damages" shall mean "Damages" as defined in Section 101(6) of CERCLA, 42 U.S.C. § 9601(6).
- o. "Navy" shall mean the United States Department of the Navy, and all associated and subordinate commands, any office or subdivision thereof, and any successor department or agency of the United States.
- p. "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. §§ 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.
- q. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.
- r. "Parties" shall mean the Navy, EPA, State and Respondent.
- s. "Past Response Costs" shall mean all costs, including but not limited to, direct or indirect costs, that the Navy paid at or in connection with the Site through December 10, 2012, plus Interest on all such costs that has accrued pursuant to 42 U.S.C. § 9607(a) through such date, to the extent that such costs are not inconsistent with the National Contingency Plan. 42 U.S.C. § 9607(a) and 40 C.F.R. § 300.700(c)(1).
- t. "RCRA" shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*
- u. "Respondent" shall mean the City and County of Honolulu, a municipal subdivision of the State of Hawaii and any successor political subdivision created under the laws of the State of Hawaii.
- v. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.
- w. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent, the SOW, all appendices attached hereto (listed in Section XXVII, Integration/Appendices) and all documents incorporated by reference into this document, including without limitation approved submissions. Approved submissions (other than progress

reports), as communicated to Respondent by the Lead Agency, are incorporated into and become part of the Settlement Agreement upon notice of approval by the Lead Agency. In the event of conflict between this Settlement Agreement and any appendix or other incorporated documents, this Settlement Agreement shall control.

x. "Site" shall mean the Waipahu Ash Landfill, encompassing approximately 54 acres, located at the end of Waipahu Depot Street, opposite the former Waipahu Incinerator, spanning portions of Tax Map Key Nos. 9-3-002:001; :002; :009; :027 and :028, including certain accreted land in the southern portion having no assigned Tax Map Key, and wherever contamination from the landfill has come to be located. The Site is southeast of Kapakahi Stream, is located in an area formerly occupied by Ulumoku Fishpond, and abuts the West Loch of Pearl Harbor on the western and southern perimeters, and depicted generally on the map attached as Appendix "B."

y. "State" shall mean the State of Hawaii, including the Hawaii Department of Natural Resources and the Hawaii Department of Health.

z. "Statement of Work" or "SOW" shall mean the Statement of Work for development of a CERCLA Response Plan for the Site, as set forth in Appendix A to this Settlement Agreement. The Statement of Work is incorporated into this Settlement Agreement and is an enforceable part of this Settlement Agreement as are any modifications thereto in accordance with this Settlement Agreement.

aa. "Supervising Contractor" shall mean the contractor selected by Respondent pursuant to Section VIII (Designation of Project Coordinators and Contractors) with the primary responsibility to accomplish the Work.

bb. "United States" shall mean the United States of America including all of its departments, agencies and instrumentalities, which include without limitation, EPA, Navy, and any Federal Natural Resource Trustee.

cc. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. §§ 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" under Hawaii Revised Statutes § 128E-1.

dd. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement, except those required by Section XIV (Retention of Records).

V. FINDINGS OF FACT

14. The Site is partially located on Joint Base Pearl Harbor-Hickam, which includes the Pearl Harbor Naval Complex Superfund Site. The Pearl Harbor Naval Complex Superfund Site was listed on the National Priorities List on October 14, 1992, as referenced in the FFA under CERCLA. Parties to the FFA include the Federal Agencies and the State of Hawaii. The southern two-thirds of the Site are located within the boundaries of Joint Base Pearl Harbor-Hickam, which is under the jurisdiction, custody and control of the Navy. The northern one-third of the Site includes: (a) land owned by Respondent (Tax Map Key No. 9-3-002:009 via Quitclaim Deed, dated June 14, 1966, by and between the United States of America, as grantor, and

Respondent, as grantee, filed in the Office of the Assistant Registrar, Land Court, State of Hawaii as Document No. 398742; and (b) land leased by the State of Hawaii to Respondent via General Lease No. S-3808, dated June 17, 1964 (as amended) for a 65-year term ending June 16, 2029 (Tax Map Key No. 9-3-002:027).

15. Environmental response and oversight under CERCLA at the Pearl Harbor Naval Complex are under the jurisdiction of the Navy, pursuant to its delegated presidential authority under E.O. 12580 (as amended). The northern one-third of the Site is located on land owned by Respondent and DLNR and would come within the jurisdiction of EPA. In addition, it is suspected that Waste Material from the Site may have migrated into adjacent areas, including but not limited to Pearl Harbor sediments and the groundwater, for which environmental response actions are also under the jurisdiction of the Federal Agencies.

16. Respondent is a political subdivision of the State of Hawaii, and operated the Site as a modified area fill landfill from the early 1960's until November 1991. It was used for disposal of municipal solid waste until approximately 1972, when it was used exclusively for the disposal of ash from the combustion of MSW from Respondent's Waipahu Incinerator. The Site stopped operating in 1991.

17. In coordination with the EPA, the Navy, and the State, Respondent constructed a cap to satisfy RCRA in compliance with 40 Code of Federal Regulations (CFR) Part 258 (Subtitle D) and Hawaii Administrative Rules (HAR), Title 11, Chapter 58.11 (11-58.1) solid waste regulations because the landfill accepted municipal solid waste after October 9, 1991. Compliance with CERCLA is required because hazardous substances may have been released from the landfill into the environment surrounding the landfill, including Pearl Harbor sediments and the groundwater. As such, this contamination may not have been addressed fully by the capping and closure of the landfill.

18. Design and construction of the landfill cap, post-closure groundwater monitoring and care, and long-term monitoring is subject to both RCRA Subtitle D, HAR 11-58.1, and CERCLA requirements (i.e., protection of human health and the environment, and compliance with applicable or relevant and appropriate requirements (ARARs)). A Closure/Post-Closure (C/PC) Plan (Earth Tech 2002) defined existing conditions at the Site, presented a cost-effective and environmentally responsible landfill cap design, and identified post-closure maintenance and monitoring requirements. Construction of the landfill cap was completed in September 2011. In addition to RCRA post-closure groundwater monitoring and care that is currently being implemented, sampling for hazardous substances under CERCLA is necessary in the area adjacent to the landfill, including sediments in Pearl Harbor, soils adjacent to the landfill, and groundwater not part of the post-closure groundwater monitoring program.

19. The Site is composed primarily of the inactive Waipahu Ash Landfill that received MSW from approximately 1960 through 1972 and ash from the combustion of MSW from the Waipahu Incinerator from 1972 to 1991. The landfill was operated by Respondent. Prior analyses indicate that the Site represents a significant source of dioxins, furans, and metals including arsenic, antimony, barium, cadmium, copper, lead, mercury, nickel, and zinc.

20. The Remedial Investigation to be conducted pursuant to this Settlement Agreement will examine and determine whether any wastes from the landfill are exposed to the environment surrounding the closed landfill and whether they pose an unacceptable risk to human health and the environment over the long-term due to exposure to hazardous substances associated with those wastes.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

21. The Site is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
22. The contamination found at the Site, as identified in the Findings of Fact above, includes “hazardous substances” as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
23. The conditions described in the Findings of Fact constitute an actual and/or threatened “release” of a hazardous substance from the facility as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
24. Respondent is a “person” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
25. Respondent is a “responsible party” under Sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607, and 9622.
 - a. Respondent is a person who generated the hazardous substances found at the Site; is a person who at the time of disposal of any hazardous substances owned or operated the Site; or is a person who arranged for disposal or transport for disposal of hazardous substances at the Site. Respondent therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
 - b. Respondent was an “owner” and/or “operator” of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).
 - c. Respondent is a current owner of part of the facility under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).
 - d. Respondent is the “owner” and/or “operator” of the facility as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
 - e. Respondent arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607 (a)(3).
26. The actions required by this Settlement Agreement are necessary to protect the public health, welfare, or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).
27. The Federal Agencies have determined that Respondent is qualified to conduct the CERCLA Response Action within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondent complies with the terms of this Settlement Agreement.

VII. SETTLEMENT AGREEMENT AND ORDER

28. Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all appendices to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VIII. DESIGNATION OF PROJECT COORDINATORS AND CONTRACTORS

29. On or before the effective date of this Settlement Agreement, the Navy, EPA, DOH and Respondent shall each designate a Remedial Project Manager ("RPM") or Project Coordinator. Subject to the provisions in this Section, each RPM or Project Coordinator shall be responsible for overseeing implementation of the work required under the Settlement Agreement. Unless otherwise specified in individual paragraphs of this Settlement Agreement, Respondent is to submit all deliverables, including primary and secondary documents, reports, and other correspondence submitted under this Settlement Agreement to the Navy and EPA's RPM or Project Coordinators. In accordance with the MOU, the Lead Agency for this Response Action shall be EPA.

30. The following shall be the RPMs/Project Coordinators:

For Respondent:

Steven Serikaku, P.E., Project Coordinator
Refuse Division
Department of Environmental Services
1000 Uluohia Street, Suite 201
Kapolei, HI 96707

For Hawaii Department of Health:

Steven Mow
Hazard Evaluation and Emergency Response Office
Hawaii Department of Health
919 Ala Moana Blvd, Room 206
Honolulu, HI 96814

For the Navy:

Bruce Tsutsui, Remedial Project Manager
Janice Fukumoto, Supervisor, Environmental Restoration
NAVFAC Hawaii
400 Marshall Road, Building X-11
Pearl Harbor, Hawaii 96860-3139

For the EPA:

Chris Lichens, Remedial Project Manager
Federal Facilities & Site Cleanup Branch
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

31. The Lead Agency RPM, in consultation with the non-lead state and federal RPMs/Project Coordinators will coordinate and transmit consolidated Federal Agency comments on all deliverables, reports, or other communications, to Respondent. The Lead Agency RPM will also serve as the primary point of contact for Respondent's Project Coordinator and other authorized representatives as work proceeds under this Settlement Agreement. Approvals required pursuant to this Settlement Agreement shall be communicated to Respondent in writing by the Lead Agency RPM.

32. All final versions of submissions by Respondent, communicated as approved by the Lead Agency RPM, as well as copies of correspondence to the Federal Agency RPMs and payments to the Navy shall also be transmitted to the following Navy representative:

Mr. Perry H. Sobel or
Current Assistant Director (Affirmative Environmental Restoration Claims)
Navy Office of General Counsel Litigation Office
720 Kennon Street, SE
Bldg. 36, Rm. 233
Washington Navy Yard, D.C. 20374-5013

33. The Parties may change their respective RPMs or Project Coordinators. All Parties must be notified in writing at least 10 days prior to any change. The Lead Agency retains the right to disapprove of Respondent's designated Project Coordinator. If the Lead Agency disapproves of Respondent's designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify the Lead Agency RPM of that person's name, address, telephone number, and qualifications within 5 days following the disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from the Lead Agency RPM relating to this Settlement Agreement shall constitute receipt by Respondent.

34. Selection of Contractors, Personnel. All Work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. Within 30 days of the Effective Date of this Settlement Agreement, and before the Work outlined below begins, Respondent shall notify the Federal Agency RPMs in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such Work. With respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995, or most recent version), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA.R-2)," (EPA/240/B-01/002, March 2001 or subsequently issued guidance) or equivalent documentation as determined by the Lead Agency. The qualifications of the persons undertaking the Work for Respondent shall be subject to the Lead Agency's review, for verification that such persons meet minimum technical background and experience requirements. The Lead Agency RPM will issue a notice of disapproval or an authorization to proceed within 30 days of Respondent's notice. If at any time thereafter, Respondent proposes any additions or changes in any contractor doing Work, Respondent shall give written notice to the Lead Agency of the additional or changed contractor's name, title, and qualifications. The Lead Agency RPM shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

Respondent shall not retain as a contractor any person or entity found on the Excluded Parties List System, accessible at <http://epls.arnet.gov>, or its replacement. This Settlement Agreement is contingent on Respondent's demonstration to the Lead Agency's satisfaction that Respondent is qualified to perform properly and promptly the actions set forth in this Settlement Agreement.

35. The Federal Agency RPMs shall have the authority vested by the NCP. In addition, the Lead Agency RPM shall have the authority, consistent with the NCP, to halt any Work required by this Settlement Agreement, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to the public health or welfare or the environment. The absence of the Lead Agency RPM from the area under study pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of Work; however if the Lead Agency RPM is unavailable, the other federal (initially Navy) RPM shall have the authority, consistent with the NCP, to halt any Work required under this Settlement Agreement, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to the public health or welfare or the environment.

36. The Lead Agency RPM shall arrange for a qualified person to assist in its oversight and review of the conduct of the CERCLA Response Action, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). Such person shall have the authority to observe Work and make inquiries in the absence of the Lead Agency RPM or other federal RPM, but not to modify the CERCLA remedial investigation/feasibility study Workplan (RI/FS Workplan).

IX. WORK TO BE PERFORMED

37. Activities and Deliverables. Respondent shall conduct activities and submit plans, reports or other deliverables as provided by the attached SOW, which is incorporated by reference, for the development of the RI/FS. All such Work shall be conducted in accordance with the provisions of this Settlement Agreement, the SOW, CERCLA, the NCP and EPA guidance, including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01, October 1988 or subsequently issued guidance), "Guidance for Data Useability in Risk Assessment" (Office of Solid Waste and Emergency Response) Directive #9285.7-05, October 1990 or subsequently issued guidance), and guidance referenced therein, and guidances referenced in the SOW, as may be amended or modified by the Lead Agency. The general activities that Respondent is required to perform are identified below, followed by a list of plans, reports and other deliverables. The tasks that Respondent must perform are described more fully in the SOW and guidances. The activities, plans, reports and other deliverables identified below shall be developed as provided in the RI/FS Workplan (as defined in the SOW) and shall be submitted to Lead Agency or as otherwise provided herein. All Work performed under this Settlement Agreement shall be in accordance with the schedules herein or established in the SOW, and in full accordance with the standards, specifications, and other requirements of the RI/FS Workplan, as initially approved or modified and as may be amended or modified by the from time to time, as communicated by the Lead Agency. In accordance with the schedules established in this Settlement Agreement or in the SOW, Respondent shall submit to the Lead Agency and the Navy copies of all plans, reports and other deliverables required under this Settlement Agreement, the SOW and the RI/FS Workplan. All plans, reports and other deliverables will be reviewed and approval communicated by the Lead Agency pursuant to Section X (Lead Agency Notice of Approval of Plans and Other Submissions). Upon request by the Lead Agency, Respondent shall submit in electronic form all portions of any plan, report or other deliverable Respondent is required to submit pursuant to provisions of this Settlement Agreement.

a. Scoping. The Lead Agency will determine the Site-specific objectives of the RI/FS and devise a general management approach for the Site, as stated in the attached SOW. Respondent shall conduct the remainder of scoping activities as described in the attached SOW and referenced guidances. At the conclusion of the project planning phase, Respondent shall provide the Lead Agency with the following plans, reports and other deliverables:

(1) Summary of Existing Data Report ("SEDR"). Within 60 days after the scoping meeting, Respondent shall submit the SEDR to the Lead Agency. See Task 1 of the SOW for a description of the project scoping meeting.

(2) RI/FS Workplan. Within 60 days after approval of the SEDR, Respondent shall submit to the Lead Agency a complete RI/FS Workplan. Upon notice of its approval by the Lead Agency pursuant to Section X (Lead Agency Notice of Approval of Plans and Other Submissions), the RI/FS Workplan shall be incorporated into and become enforceable under this Settlement Agreement. The RI/FS Workplan shall consist of a Field Sampling Plan ("FSP"), a Quality Assurance Project Plan ("QAPP"), and Site Health and Safety Plan, as described in the Statement of Work and guidances, including, without limitation, ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed project manager's Quality Management Plan (QMP). The QMP should be prepared in accordance with the specifications set forth in "EPA Requirements for Quality Management Plans (QA/R-5)," (EPA/240/B-01/003 March 2001), Guidance for Quality Assurance Project Plans (G-5), December 2002, EPA/240/R-02/009 or equivalent documentation as determined by EPA. Upon notice of approval by the Lead Agency pursuant to Section X (Lead Agency Notice of Approval of Plans and Other Submissions), the RI/FS Workplan shall be incorporated into and become enforceable under this Settlement Agreement. The Health and Safety Plan ensures the protection of on-site workers and the public during performance of on-site Work under this Settlement Agreement. The Health and Safety Plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992 or subsequently issued guidance). In addition, the Health and Safety Plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If the Lead Agency determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by the Lead Agency, in consultation with the other federal agency (initially, the Navy), and shall implement the plan during the pendency of the RI/FS.

b. Community Relations Plan. The Lead Agency, in consultation with the other federal agency, will prepare a community relations plan, in accordance with EPA guidance and the NCP. As requested by the Lead Agency, Respondent shall provide information supporting the Lead Agency's community relations plan and shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by the Lead Agency to explain activities at or concerning the Site.

c. Site Characterization. Following Lead Agency notice of approval or modification of the RI/FS Workplan, Respondent shall implement the provisions of these plans to characterize the Site. Respondent shall complete Site characterization and submit all plans, reports and other deliverables in accordance with the schedules and deadlines established in this Settlement Agreement, the SOW, and the approved RI/FS Workplan.

d. Reuse Assessment. If the Lead Agency, in its sole discretion, determines that a Reuse Assessment is necessary, Respondent will perform the Reuse Assessment in accordance with the SOW, RI/FS Workplan and applicable guidance. The Reuse Assessment should provide sufficient information to develop realistic assumptions of the reasonably anticipated future uses for the Site. Respondent shall prepare the Reuse Assessment, in accordance with, but not limited to, EPA Guidance: "Reuse Assessments: A Tool To Implement The Superfund Land Use Directive," OSWER Directive 9355.7-06P, June 4, 2001 or subsequently issued guidance.

e. Draft Remedial Investigation (RI) Report. Respondent shall submit to the Lead Agency for review and notice of approval by the Lead Agency pursuant to Section X (Lead Agency Notice of Approval of Plans and Other Submissions), a Draft Remedial Investigation Report consistent with the SOW and the RI/FS Workplan. The Draft Remedial Investigation Report shall also contain the Risk Assessments

f. Baseline Human Health Risk Assessment and Ecological Risk Assessment. Respondent will perform the Baseline Human Health Risk Assessment and Ecological Risk Assessment ("Risk Assessments") in accordance with the SOW, RI/FS Workplan and applicable EPA guidance, including but not limited to: "Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part A)," (RAGS, EPA-540-1-89-002, OSWER Directive 9285.7-01A, December 1989); "Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments)," (RAGS, EPA 540-R-97-033, OSWER Directive 9285.7-01D, January 1998); "Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments" (ERAGS, EPA-540-R-97-006, OSWER Directive 9285.7-25, June 1997) or subsequently issued guidance.

g. Draft Feasibility Study (FS) Report. Respondent shall submit to the Lead Agency, a Draft Feasibility Study Report which reflects the findings in the Risk Assessments. Respondent shall refer to Table 6-5 of the RI/FS Guidance for report content and format. The report as amended, and the administrative record, shall provide the basis for the proposed plan under CERCLA Sections 113(k) and 117(a), 42 U.S.C. §§ 9613(k) and 9617(a) by the Lead Agency, and shall document the development and analysis of remedial alternatives. Upon receipt of the Draft FS Report, the Lead Agency will evaluate, as necessary, the estimates of the risk to the public and environment that are expected to remain after the particular remedial alternative has been completed and will evaluate the durability, reliability and effectiveness of any proposed Institutional Controls. The Draft FS Report shall include the Development and Screening of Alternatives and Detailed Analysis of Alternatives as described below and in the SOW.

h. Development and Screening of Alternatives. Respondent shall develop an appropriate range of waste management options that will be evaluated through the development and screening of alternatives, as provided in the SOW and RI/FS Workplan.

i. Detailed Analysis of Alternatives. Respondent shall conduct a detailed analysis of remedial alternatives, as described in the SOW and RI/FS Workplan. In accordance with the deadlines or schedules established in this Settlement Agreement, the SOW and/or the approved RI/FS Workplan Respondent shall provide the Lead Agency with the following deliverables and presentation for review and notice of approval by the Lead Agency pursuant to Section X (Lead Agency Notice of Approval of Plans and Other Submissions):

(1) Comparative Analysis and Presentation to Lead Agency. Respondent will present to the Lead Agency a summary of the findings of the remedial

investigation and remedial action objectives, and present the results of the nine criteria evaluation and comparative analysis, as described in the SOW.

(2) Alternatives Analysis for Institutional Controls and Screening. The Alternatives Analysis for Institutional Controls and Screening shall (1) state the objectives (i.e., what will be accomplished) for the Institutional Controls; (2) determine the specific types of Institutional Controls that can be used to meet the remedial action objectives; (3) investigate when the Institutional Controls need to be implemented and/or secured and how long they must be in place; (4) research, discuss and document any agreement with the proper entities (e.g., state, local government entities, local landowners, conservation organizations, Respondent) on exactly who will be responsible for securing, maintaining and enforcing the Institutional Controls. The Alternatives Analysis for Institutional Controls and Screening shall also evaluate the Institutional Controls against the nine evaluation criteria outlined in the NCP (40 C.F.R. 300.430(e)(9)(iii)) for CERCLA cleanups, including but not limited to costs to implement, monitor and/or enforce the Institutional Controls. The Alternatives Analysis for Institutional Controls and Screening shall be submitted as an appendix to the Draft FS Report.

38. Modification of the RI/FS Workplan.

a. If at any time during the RI/FS process, Respondent identifies a need for additional data, Respondent shall submit a memorandum documenting the need for additional data to the Lead Agency RPM within 30 days of identification. The Lead Agency RPM in its discretion, and in consultation with the other federal agency RPM, will determine whether the additional data will be collected by Respondent and whether it will be incorporated into plans, reports and other deliverables.

b. In the event of unanticipated or changed circumstances at the Site, Respondent shall notify the Lead Agency Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In the event that the Lead Agency determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the RI/FS Workplan, the Lead Agency shall modify or amend the RI/FS Workplan in writing accordingly. Respondent shall perform the RI/FS Workplan as modified or amended.

c. The Lead Agency may determine that in addition to tasks defined in the initially approved RI/FS Workplan, other additional Work may be necessary to accomplish the objectives of the RI/FS. Respondent agrees to perform these response actions in addition to those required by the initially approved RI/FS Workplan, including any approved modifications, if the Lead Agency determines that such actions are necessary for a complete RI/FS.

d. Respondent shall confirm its willingness to perform the additional Work in writing to the Lead Agency within 7 days of receipt of the Lead Agency request. If Respondent objects to any modification determined by Lead Agency to be necessary pursuant to this Paragraph, Respondent may seek dispute resolution pursuant to Section XV (Dispute Resolution). The SOW and/or RI/FS Workplan shall be modified in accordance with the final resolution of the dispute.

e. Respondent shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by the Lead Agency in a written modification to the RI/FS Workplan or written RI/FS Workplan supplement. The Federal Agencies reserve the right to conduct the Work themselves at any point, to seek reimbursement from Respondent, and/or to seek any other appropriate relief.

f. Nothing in this Paragraph shall be construed to limit the Federal Agencies' authority to require performance of further response actions at the Site.

39. Off-Site Shipment of Waste Material. Respondent shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the Lead Agency RPM. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

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

b. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the remedial investigation and feasibility study. Respondent shall provide the information required by subparagraph 39.a and 39.c as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

c. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

40. Meetings. Respondent shall make presentations at, and participate in, meetings at the request of the Lead Agency RPM during the initiation, conduct, and completion of the Work. In addition to discussions of the technical aspects of the Work, topics will include anticipated problems or new issues. Meetings will be scheduled as mutually agreed upon by the Lead Agency and Respondent.

41. Progress Reports. In addition to the plans, reports, and other deliverables set forth in this Settlement Agreement, Respondent shall provide to the Lead Agency monthly progress reports by the last business day of the following month. At a minimum, with respect to the preceding month, these progress reports shall (1) describe the actions which have been taken to comply with this Settlement Agreement during that month, (2) include all results of sampling and tests and all other data received by Respondent, (3) describe Work planned for the next two months with schedules relating such Work to the overall project schedule for Work completion, and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

42. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence during performance of the Work, which causes or threatens a release of Waste Material from the Site that constitutes an emergency

situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate, or minimize such release or endangerment threatened or caused by the release. Respondent shall also notify the Agency Project Coordinators or, in the event of their unavailability, the Navy Region Hawaii OSC, the EPA Regional Duty Officer, and the Hawaii Hazard Evaluation and Emergency Response Office of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and the Navy or EPA take such action instead, Respondent shall reimburse the Navy or EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVIII (Payment of Response Costs to Navy) and Section XIX (Payment of Response Costs to EPA).

b. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately upon discovery notify both Federal Agency RPMs, the National Response Center at (800) 424-8802, and the State Hazardous Evaluation and Emergency Response Office at (808) 586-4249. Respondent shall submit a written report to the Lead Agency within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 303 of the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. §§ 11004, *et seq.*

X. LEAD AGENCY NOTICE OF APPROVAL OF PLANS AND OTHER SUBMISSIONS

43. After review by the Lead Agency of any plan, report, or other item that is required to be submitted for approval pursuant to this Settlement Agreement, in a notice to Respondent the Lead Agency RPM shall provide notice of: (a) approval, in whole or in part, the submission; (b) approval of the submission upon specified conditions; (c) modification of the submission to cure deficiencies; (d) disapproval, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above. However, the Lead Agency RPM shall not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Work, where previous submission(s) have been disapproved due to material defects, or where more timely response is required by Respondent to address an imminent and substantial endangerment to human health or the environment.

44. In the event of notice of approval, approval upon conditions, or modification by the Lead Agency, pursuant to Subparagraph 43(a), (b), (c), or (e). Respondent shall proceed to take action required by the plan, report, or other deliverable, as approved or modified by the Lead Agency RPM subject only to Respondent's right to invoke the procedures set forth in Section XV (Dispute Resolution) with respect to the modifications or conditions made by the Lead Agency RPM. Following Lead Agency RPM notice of approval or modification of a submission or portion thereof, Respondent shall not thereafter alter or amend such submission or portion thereof unless directed by the Lead Agency RPM. In the event that the Lead Agency RPM modifies the submission to cure the deficiencies pursuant to Subparagraph 43(c) and the submission had a material defect, the Lead Agency retains the right to seek stipulated penalties, as provided in Section XVI (Stipulated Penalties).

45. Resubmission.

a. Upon receipt of a notice of disapproval, Respondent shall, within 30 days or such longer time as specified by the Lead Agency RPM in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XVI (Stipulated Penalties) shall accrue during the 30 day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 46 and 47.

b. Notwithstanding the receipt of a notice of disapproval, Respondent shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by the Lead Agency RPM. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties under Section XVI (Stipulated Penalties).

c. Respondent shall not proceed further with any subsequent activities or tasks until receiving Lead Agency RPM notice of approval, approval on condition, or modification of any of the following deliverables required in this Settlement Agreement and SOW: Summary of Existing Data Report, RI/FS Workplan; Draft RI Report; and Draft FS Report. While awaiting Lead Agency RPM notice of approval, approval on condition, or modification of these deliverables, Respondent shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth in this Settlement Agreement.

d. For all remaining deliverables not listed above in Subparagraph 45.c, Respondent shall proceed with all subsequent tasks, activities, and deliverables without awaiting Lead Agency RPM notice of approval on the submitted deliverable. The Lead Agency reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity, or deliverable at any point during the Work.

46. If the Lead Agency RPM provides notice of disapproval of a resubmitted plan, report, or other deliverable, or portion thereof, the Lead Agency RPM may again direct Respondent to correct the deficiencies. The Lead Agency shall also retain the right to modify or develop the plan, report, or other deliverable. Respondent shall implement any such plan, report, or deliverable as corrected, modified or developed by the Lead Agency, subject only to Respondent's right to invoke the procedures set forth in Section XV (Dispute Resolution).

47. If upon resubmission, a plan, report, or other deliverable is again communicated to Respondent as disapproved or modified by the Lead Agency RPM due to a material defect, Respondent shall be deemed to have failed to submit such plan, report, or other deliverable timely and adequately unless Respondent invokes the procedures in accordance with Section XV (Dispute Resolution) and the Lead Agency RPM's action is revoked or substantially modified pursuant to a Dispute Resolution decision issued by the Lead Agency or superseded by an agreement reached pursuant to that Section. The provisions of Section XV (Dispute Resolution) and Section XVI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If the Lead Agency RPM's disapproval or modification is not otherwise revoked, substantially modified, or superseded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section XV, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVI.

48. In the event that the Lead Agency takes over some of the tasks, but not the preparation of the Draft RI Report or the Draft FS Report, Respondent shall incorporate and integrate information supplied by the Lead Agency into the final reports.

49. All plans, reports, and other deliverables described in this Settlement Agreement shall, upon notice of approval or modification by the Lead Agency RPM, be incorporated into and enforceable under this Settlement Agreement. In the event the Lead Agency RPM provides notice of approval or modification of a plan, report, or other deliverable submitted to the Lead Agency under this Settlement Agreement, the approved or modified portion shall be deemed incorporated into and enforceable under this Settlement Agreement.

50. Neither failure of the Lead Agency RPM to expressly provide notice of approval or disapproval of Respondent's submission within a specified time period, nor the absence of comments, shall be construed as approval by the Lead Agency. Whether or not the Lead Agency RPM gives notice of express approval for Respondent's deliverables, Respondent is responsible for preparing deliverables acceptable to the Lead Agency.

XI. QUALITY ASSURANCE, SAMPLING, AND ACCESS TO INFORMATION

51. Quality Assurance. Respondent shall assure that Work performed, samples taken, and analyses conducted conform to the requirements of the SOW, the QAPP, and guidances identified therein. Respondent will assure that field personnel used by Respondent are properly trained in the use of field equipment and in chain of custody procedures. Respondent shall only use laboratories which have a documented quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01-002, March 2001) or equivalent documentation as determined by the Lead Agency. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) to meet the quality system requirements.

52. Sampling

a. All results of sampling, tests, modeling, or other data (including raw data) generated by Respondent, or on Respondent's behalf, during the period that this Settlement Agreement is effective, shall be submitted to Navy and EPA in the next monthly progress report as described in Paragraph 41 (Progress Reports) of this Settlement Agreement. The Lead Agency will make available to Respondent validated data generated by the Lead Agency unless it is exempt from disclosure by any federal or state law or regulation.

b. Respondent shall verbally notify both Federal Agency RPMs at least 10 days prior to conducting significant field events as described in the SOW, Field Sampling Plan, CERCLA Response Plan, RA, and RD/RA. At the Lead Agency RPM's request, Respondent shall allow split or duplicate samples to be taken by the Lead Agency or the DOH (and their authorized representatives) of any samples collected in implementing this Settlement Agreement. All split samples of Respondent shall be analyzed by the methods identified in the QAPP.

53. Access to Information.

a. Respondent shall provide to the Lead Agency, upon request, copies of all documents and information within its possession or control or that of its contractors or agents

relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, movement of samples not otherwise accounted for, correspondence, or other documents or information relating to the Work. Respondent shall also make available to the Lead Agency, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

b. Respondent may assert business confidentiality claims covering part of all of the documents submitted to the Lead Agency under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Documents or information determined to be confidential by the Lead Agency will be afforded the protection specified in Section 104(e)(7) of CERCLA. If no claim of confidentiality accompanies documents or information when it is submitted or if Respondent has been notified that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Respondent. Respondent shall segregate and clearly identify all documents or information submitted under this Settlement Agreement for which Respondent asserts business confidentiality claims.

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

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

54. In entering into this Settlement Agreement, Respondent waives any objection to any data gathered, generated, or evaluated by the United States, the State, or Respondent in the performance or oversight of the Work that has been verified according to the quality assurance/quality control ("QA/QC") procedures required by the Settlement Agreement or any approved CERCLA Response Workplans. If Respondent objects to any other data relating to the CERCLA Response RI/FS Workplans, Respondent shall submit to the Lead Agency a report that specifically identifies and explains its objections, describes the acceptable use of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to the Lead Agency within 15 days of the monthly progress report containing the data.

XII. SITE ACCESS AND INSTITUTIONAL CONTROLS

55. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by Respondent, Respondent shall, commencing on the Effective Date, provide the United States and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

56. The Navy and DLNR shall provide access to Respondent for portions of the Site located on their properties. Respondent shall repair any facility or resource damage it causes in using the access provided by the Navy and the State. All parties with access to this Site under this Paragraph shall comply with all health and safety plans.

57. Where any action under this Settlement Agreement is to be performed in areas owned, possessed or managed by someone other than Respondent, including the DLNR or the Navy, Respondent shall use its best efforts to obtain all necessary access agreements within 6 weeks after the Effective Date, or as otherwise specified by the Lead Agency RPM. Respondent shall immediately notify the Lead Agency RPM, if after using its best efforts, it is unable to obtain such agreements with respect to access to any land owned by the DLNR or Navy. If the DLNR or the Navy is unable to provide access within 6 weeks of the Effective Date, Respondent, the Lead Agency, and the State, as appropriate, will confer within 7 days after notification of the Lead Agency RPM to discuss the resolution of obstacles to providing access. With respect to access to any land owned by entities who are not parties to this Settlement Agreement, Respondent shall describe in writing its efforts to obtain access. If Respondent cannot obtain access agreements from any non-party entities, the United States, where appropriate, may either (i) obtain access for Respondent or assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as the Lead Agency deems appropriate; (ii) perform those tasks or activities with the Lead Agency's contractors; or (iii) terminate the Settlement Agreement. Respondent shall reimburse the Lead Agency for all costs and attorneys' fees incurred by the United States in obtaining such access, in accordance with the procedures in Sections XVIII (Payment of Response Costs to Navy) and XIX (Payment of Response Costs to EPA). If the Lead Agency performs those tasks or activities with the Lead Agency's contractors and does not terminate the Settlement Agreement, Respondent shall perform all other tasks or activities not requiring access to that property, and shall reimburse the Lead Agency for all costs incurred in performing such tasks or activities. Respondent shall integrate the results of any such tasks or activities undertaken by the Lead Agency into its plans, reports, and other deliverables.

58. Notwithstanding any provision of this Settlement Agreement, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. COMPLIANCE WITH OTHER LAWS

59. Respondent shall comply with all applicable local, state, and federal laws and regulations when performing the Work. No local, state, or federal permit shall be required for any portion of any action conducted entirely on-site, including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work is to be conducted off-site and requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIV. RETENTION OF RECORDS

60. During the pendency of this Settlement Agreement and for a minimum of 10 years after commencement of construction of any remedial action, Respondent shall preserve and retain all non-identical copies of documents, records, and other information (including documents, records, or other information in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after commencement of construction of any remedial action, Respondent shall also instruct its contractors and agents to preserve all documents, records, and other information of whatever kind, nature, or description relating to the performance of the Work.

61. At the conclusion of this document retention period, Respondent shall notify the Lead Agency at least 90 days prior to the destruction of any such documents, records, or other information, and, upon request by the Navy or EPA, Respondent shall deliver any such documents, records, or other information to the Lead Agency. Respondent may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide the Lead Agency with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports, or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

62. Respondent certifies to the best of its knowledge and belief, after thorough inquiry, that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the Lead Agency and that it has fully complied with any and all the Lead Agency's requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XV. DISPUTE RESOLUTION

63. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

64. If Respondent objects to any action taken by the Lead Agency pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify the Lead Agency in writing of this objection within 30 days of such action, unless the objection has been resolved informally. The Lead Agency and Respondent shall have 30 days from the Lead Agency's receipt of Respondent's written objection to resolve the dispute by agreement (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of the Lead Agency. Such extension may be granted verbally but must be confirmed in writing.

65. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Lead Agency and Respondent be incorporated into and become an enforceable part of this Settlement Agreement. If the Lead Agency and Respondent are unable to reach an agreement within the Negotiation period, the EPA Region 9 Superfund Division Director will resolve the issue and will issue a written decision. The decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Subject to Paragraph 69, Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of this dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with the decision, whichever occurs, and regardless of whether Respondent agrees with the decision.

XVI. STIPULATED PENALTIES

66. Respondent shall be liable to the Lead Agency for stipulated penalties in the amount set forth in Paragraph 67 (Stipulated Penalty Amounts—Work and Reports) for failure to comply with any of the requirements of this Settlement Agreement specified below unless excused under Section XVII (Force Majeure). "Compliance" by Respondent shall include completion of the Work under this Settlement Agreement or any activities contemplated under any plan approved under this Settlement Agreement identified below, in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans or other documents approved by the Lead Agency pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

67. Stipulated Penalty Amounts – Work and Reports. The following stipulated penalties shall accrue per violation per day for any noncompliance with this Settlement Agreement or Appendix A:

a. Stipulated Penalty Amounts - Work.

The following stipulated penalties shall accrue per day for any noncompliance identified in Paragraph 67.a.(1):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500.00	1 st through 14 th day
\$ 1,000.00	15 th through 30 th day
\$ 3,000.00	31 st day and beyond

(1) Compliance Milestones – the stipulated penalties set forth Paragraph 67.a shall accrue as a result of any of the following activities:

- i. Failure to timely submit a draft Summary of Existing Data Report, draft RI/FS Workplan, draft RI Report, and draft FS Report as required under this Settlement Agreement;
- ii. Failure to timely submit any modifications requested by the Lead Agency or its representative to the Summary of Existing Data Report,

RI/FS Workplan, draft RI Report, and draft FS Report as required under this Settlement Agreement.

iii. Failure to timely submit payment for Past Response Costs as required under Section XVIII.

iv. Failure to timely submit payment for Future Response Costs as required under Sections XVIII and XIX; and

v. Failure to comply with the schedule set forth in any EPA-approved workplan.

b. Stipulated Penalty Amounts - Reports.

The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate or other written documents pursuant to the attached SOW, other than those specifically referenced in Paragraph 67.a.(1):.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 300.00	1 st through 14 th day
\$ 750.00	15 th through 30 th day
\$ 2,000.00	31 st day and beyond

68. In the event that the Lead Agency assumes performance of all or a portion of the Work pursuant to Paragraph 89 (Work Takeover) of Section XXI (Reservation of Rights by the Federal Agencies), Respondent shall be liable for a stipulated penalty in the amount of \$500,000.00.

69. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section X (Lead Agency Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after the Lead Agency's receipt of such submission until the day that the Lead Agency notifies Respondent of any deficiency; and (2) with respect to a decision by the Lead Agency as specified in Paragraph 65 of Section XV (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the Lead Agency issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Section XV. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement Agreement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in this Section (Stipulated Penalties). Respondent shall not be liable for payment of stipulated penalties to the extent that it prevails on a disputed issue.

70. Following Lead Agency's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, the Lead Agency may provide verbal notification, but

will follow up within 7 days by providing Respondent with written notification of the same and a description of the noncompliance. The Lead Agency may send Respondent a written demand for the payment of the penalties. However, penalties shall accrue from the date of noncompliance as provided in the preceding Paragraph regardless of whether the Lead Agency was aware of the noncompliance at the time or whether the Lead Agency has yet notified Respondent of a violation.

71. All penalties accruing under this Section shall be due and payable to the Lead Agency within 90 days of Respondent's receipt from the Lead Agency of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures in accordance with Section XV (Dispute Resolution). All payments to the Lead Agency under this Section shall be paid by certified, cashier's, or government check made payable to "EPA Hazardous Substances Superfund" shall be mailed to:

U.S. Environmental Protection Agency,
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

and shall indicate that the payment is for stipulated penalties, shall reference this Site, EPA Region 9, Site ID (091S), EPA Docket Number 2013-3, and state the name, and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s) shall be sent to the EPA Region 9 and the Navy as provided in Paragraphs 30 and 32. Payment of penalties also may be made by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Respondent by EPA Region IX.

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

73. Penalties shall continue to accrue as provided in Paragraph 69 during any dispute resolution period, but need not be paid until 90 days after the dispute is resolved by agreement or by receipt of the Lead Agency's decision.

74. If Respondent fails to pay stipulated penalties when due, the Lead Agency may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 70.

75. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XXI (Reservation of Rights by EPA), Paragraph 89 (Work Takeover). Notwithstanding any other provision of this Section, the Lead Agency may, in its

unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XVII. FORCE MAJEURE; DELAY OF PERFORMANCE

76. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, *force majeure* is defined as any event arising from causes beyond the control of Respondent or any entity controlled by Respondent, including but not limited to contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best effort to fulfill the obligation. *Force majeure* does not include financial inability to perform the Work or increased cost of performance.

77. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify the Lead Agency RPM orally within 5 days of when Respondent first knew that the event might cause a delay. Within 10 days thereafter, Respondent shall provide to the Lead Agency RPM in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in Respondent's opinion, such event may constitute or contribute to an endangerment to public health, welfare, or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim for *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

78. If the Lead Agency agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by the Lead Agency for such time as is necessary to complete those obligations. An extension of time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If the Lead Agency does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, the Lead Agency RPM will notify Respondent in writing of its decision. If the Lead Agency agrees that the delay is attributable to a *force majeure* event, the Lead Agency RPM will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. PAYMENT OF RESPONSE COSTS TO NAVY

79. Payment of Past Response Costs to Navy. Within 90 days after the Effective Date, Respondent shall pay to the Navy Sixty Three Thousand Sixty Two Dollars and No/100 Cents (\$63,062.00) for Past Response Costs. Respondent shall make all payments required by this Paragraph by certified cashier's, or government check made payable to Naval Facilities Engineering Command, Attn: ENC, Brian Harrison, 1322 Patterson Avenue, S.E., Suite 1000, Washington Navy Yard, D.C. 20374-5065, shall indicate that the payment is for Past Response Costs, shall reference this Site, and shall state the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and accompanying transmittal letter(s) shall be sent to the Parties as provided in Paragraphs 30 and 32.

80. Payments of Future Response Costs to Navy. Subject to appropriation of funds therefor by the City Council of Respondent, Respondent shall pay Navy all Future Response Costs not inconsistent with the NCP. On a periodic basis, Navy will send Respondent a bill requiring payment that includes a cost summary, which will include direct and indirect costs incurred by the Navy and its contractors that become necessary to enforce this Settlement Agreement. Respondent shall make all payments within 90 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 82 of this Settlement Agreement. Respondent shall make all payments required by this Paragraph by certified, cashier's, or government check made payable to Naval Facilities Engineering Command, Attn: ENC, Brian Harrison, 1322 Patterson Avenue, S.E., Suite 1000, Washington Navy Yard, D.C. 20374-5065, shall indicate that the payment is for Future Response Costs, shall reference this Site, and shall state the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and accompanying transmittal letter(s) shall be sent to the Parties as provided in Paragraphs 30 and 32.

81. If Respondent does not pay Past Response Costs within 90 days of the Effective Date, or does not pay Future Response Costs within 90 days of Respondent's receipt of a bill, Respondent shall pay interest on the unpaid balance of Past Response Costs and Future Response Costs. The interest on unpaid Past Response Costs shall begin on the Effective Date and shall continue to accrue until the date of payment. The interest on unpaid Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If Navy receives a partial payment, interest shall accrue on any unpaid balance. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVI (Stipulated Penalties). Respondent shall make all payments required by this Paragraph in the manner described in Paragraph 79 (Payment of Past Response Costs to Navy).

82. Respondent may contest payment of any Future Response Costs under Paragraph 80 (Payment of Future Response Costs to Navy) if it determines that Navy has made an accounting error or if it believes Navy incurred excess costs as a direct result of a Navy action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the Navy's Project Coordinator. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of any objection, Respondent shall within the 90 (ninety) day period pay all uncontested Future Response Costs to Navy in the manner described in Paragraph 80. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Hawaii and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the Navy Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information concerning the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution) with the Navy's counterpart to EPA's Superfund Division Director. If Navy prevails in the dispute, within 90 days of the resolution of the dispute, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to Navy in the manner described in Paragraph 80. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV

(Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse Navy for its Future Response Costs.

XIX. PAYMENT OF RESPONSE COSTS TO EPA

83. Payment of Future Response Costs to EPA. Within 90 days of the Effective Date, Respondent shall pay to EPA \$25,000 in prepayment of anticipated annual EPA Future Response Costs. The total amount paid shall be deposited by EPA in the EPA Hazardous Substance Superfund. These funds shall be retained and used by EPA to conduct or finance future response actions.

Subject to appropriation of funds therefor by the City Council of Respondent, Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a cost summary, which will include direct and indirect costs incurred by the EPA and its contractors, as well as any Department of Justice costs that become necessary to enforce this Settlement Agreement. Respondent shall make all payments within 90 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 85 of this Settlement Agreement.

Respondent shall make all payments required by this Paragraph by certified, cashier's, or government check made payable to

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Wire Transfers should be directed to:

Federal Reserve Bank of New York
ABA=021030004
Account=68010727
SWIFT address=FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
Phone: 314-418-4087

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving U.S. currency
PNC Bank
808 17th Street, NW
Washington, D.C. 20074
Contact – Jesse White 301-887-6548
ABA=051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

The check, or a letter accompanying the payment, shall reference the name and address of the party making payment, the Site name, EPA Region (Region 9), and Site ID Number (091S), and the EPA CERCLA Docket Number 2013-3 for this action. Copies of check(s) paid pursuant to this Section, and accompanying transmittal letter(s) shall be sent to the Parties as provided in Paragraph 30.

84. If Respondent does not pay Past Response Costs within 90 days of the Effective Date, or does not pay Future Response Costs within 90 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance of Past Response Costs and Future Response Costs. The Interest on unpaid Past Response Costs shall begin on the Effective Date and shall continue to accrue until the date of payment. The Interest on unpaid Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVI (Stipulated Penalties).

85. Respondent may contest payment of any Future Response Costs under Paragraph 83 if it determines that EPA has made an accounting error or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to EPA's Project Coordinator. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of any objection, Respondent shall within the 30 (thirty) day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 83 (Payment of Future Response Costs to EPA). Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Hawaii and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the Lead Agency RPM a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information concerning the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment

of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If EPA prevails in the dispute, within 90 days of the resolution of the dispute, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 83. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XX. COVENANT NOT TO SUE BY THE FEDERAL AGENCIES

86. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, the Federal Agencies covenant not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Past Response Costs, and Future Response Costs. This covenant not to sue shall take effect upon the receipt of the Past Response Costs due under Sections XVIII and XIX of this Settlement Agreement and any Interest and Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XVIII, XIX, and XVI. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Sections XVIII and XIX. This covenant not to sue extends only to Respondent and does not extend to any other person.

XXI. RESERVATION OF RIGHTS BY THE FEDERAL AGENCIES

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

88. The covenant not to sue set forth in Section XX (Covenant Not to Sue by the Federal Agencies) above does not pertain to any matters other than those specifically identified therein. The United States reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definition of Past Response Costs or Future Response Costs, including response costs addressed in any subsequent, separate Agreement or Order with Respondent;
- c. liability for performance of response action other than the Work;
- d. criminal liability;

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

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

g. liability for costs incurred or to be incurred by the ATSDR related to the Site;
and

h. liability in tort or contract for damages or injury to personal or real property, other than natural resources, under the jurisdiction, custody or control of the Navy or the State.

89. Work Takeover. In the event that the Lead Agency determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in their performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, the Federal Agencies may assume the performance of all or any portion of the Work as the Lead Agency determines necessary. Respondent may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute the Lead Agency's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the Federal Agencies in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XVIII (Payment of Future Response Costs to Navy) and Section XIX (Payment of Future Response Costs to EPA). Notwithstanding any other provision of this Settlement Agreement, the Lead Agency retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANT NOT TO SUE BY RESPONDENT

90. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the Federal Agencies, the United States, the DOH or their contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Settlement Agreement, including, but not limited to:

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

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

c. any claim against the Federal Agencies, the United States, or the DOH pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or payment of Past Response Costs or Future Response Costs.

91. Except as expressly provided in Section XXII, Paragraph 93 (MSW Waiver), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 88 (b), (c), and (e)-(h), but

only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

93. Respondent agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for all matters relating to the Site against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of MSW at the Site, if the volume of MSW disposed, treated, or transported by such person to the Site did not exceed 0.2 percent of the total volume of waste at the Site.

94. The MSW waiver in Paragraph 93 above shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if the EPA determines that: (a) the MSW contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site; (b) the person has failed to comply with any information request or administrative subpoenas issued by the United States pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927; or (c) the person impeded, or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site.

XXIII. OTHER CLAIMS

95. By issuance of this Settlement Agreement, the United States and the Federal Agencies assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent.

96. Except as expressly provided in Section XXII (Covenant Not Sue by Respondent), Paragraph 93 (MSW Waiver), and Section XX (Covenant Not to Sue by the Federal Agencies), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

97. No action or decision by the Lead Agency pursuant to this Settlement Agreement shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIV. CONTRIBUTION

98. The Parties agree that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work, Past Response Costs, and Future

Response Costs. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has resolved its liability to the United States for the Work, Past Response Costs and Future Response Costs. Except as provided in Section XXII (Covenant Not to Sue by Respondent) and Paragraph 93 of this Settlement Agreement (MSW Waiver), nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any person not a party to this Settlement Agreement for indemnification, contribution, or cost recovery. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

XXV. INDEMNIFICATION

99. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

100. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

101. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site.

XXVI. INSURANCE

102. At least 7 days prior to commencing any On-Site Work under this Settlement Agreement, Respondent's Supervising Contractor shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability ("CGL") insurance with limits of \$2,000,000.00, combined single limit, and automobile liability insurance with limits of \$2,000,000.00, combined single limit, both naming each of the Federal Agencies as an insured.

103. Respondent shall also require that its Supervising Contractor secure, and maintain for the duration of this Settlement Agreement, professional errors and omissions insurance in the amount of \$1,000,000.00 per occurrence.

104. Within the same period, Respondent shall provide the Federal Agencies with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to the Federal Agencies that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVII. INTEGRATION/APPENDICES

105. This Settlement Agreement, its appendices, the MOU, and any dispute resolution or other Navy and EPA written decisions, deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports) etc. that will be developed pursuant to this Settlement Agreement and become incorporated into and enforceable under this Settlement Agreement constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. Any inconsistencies among the documents will be resolved in favor of the Settlement Agreement. The parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

"Appendix A" is the SOW.

"Appendix B" is the map of the Site.

XXVIII. PUBLIC COMMENT

106. Final acceptance by the Federal Agencies of this Settlement Agreement shall be subject to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), which requires the Federal Agencies to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely, on the cost recovery component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. The Federal Agencies may withhold consent from, or seek to modify all or part of this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper or inadequate.

XXIX. ADMINISTRATIVE RECORD

107. The Lead Agency will determine the contents of the administrative record file for selection of the remedial action. Respondent shall submit to the Lead Agency's Project Coordinator documents developed during the course of the CERCLA Response Action upon which selection of the response action may be based. Upon request of the Lead Agency,

Respondent shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Upon request of the Lead Agency, Respondent shall additionally submit any previous studies conducted under state, local, or other federal authorities relating to selection of the response action, and all communications between Respondent and state, local, or other federal authorities relating to selection of the response action, and all communications between Respondent and state, local, or other federal authorities concerning selection of the response action. At the Lead Agency's discretion, Respondent shall furnish a community information repository at or near the Site, to house one copy of the administrative record.

XXX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

108. Effective Date. The Effective Date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 106 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

109. This Settlement Agreement may be amended by mutual agreement of the Federal Agencies and Respondent. Amendments shall be in writing and shall be effective when signed by the Federal Agencies and Respondent. The Federal Agency RPMs do not have the authority to sign amendments to the Settlement Agreement.

110. No informal advice, guidance, suggestion, or comment by the Lead Agency RPM, Federal Agencies' Project Coordinators, or Federal Agencies' representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

111. Counterparts. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

XXXI. NOTICE OF COMPLETION OF WORK

112. When the Lead Agency determines that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including but not limited to any and all work associated with payment of any Future Response Costs, and record retention, the Lead Agency will provide written notice to Respondent. If the Lead Agency determines that any such Work has not been completed in accordance with this Settlement Agreement, the Lead Agency will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work if appropriate to correct such deficiencies. Failure by Respondent to implement the approved modified Work shall be a violation of this Settlement Agreement, subject, however, to the procedures set forth in Section XV (Dispute Resolution).

**FOR RESPONDENT CITY AND COUNTY OF HONOLULU,
A political subdivision of the State of Hawaii:**

 Date: 6/19/13

**FOR HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES,
An agency of the State of Hawaii:**

_____ Date: _____

**FOR STATE OF HAWAII DEPARTMENT OF HEALTH
An agency of the State of Hawaii:**

_____ Date: _____

It is so **ORDERED AND AGREED** this ____ day of _____, 2013.

BY: _____

**Regional Administrator
Region IX
U.S. Environmental Protection Agency**

It is so **ORDERED AND AGREED** this ____ day of _____, 2013.

BY: _____
Deputy Assistant Secretary of the Navy (Environment)

APPENDIX A

STATEMENT OF WORK

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT

FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

WAIPAHU ASH LANDFILL

WAIPAHU, OAHU, HAWAII

PURPOSE

The primary purposes of this Statement of Work ("SOW") are: (1) to implement the Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") for Remedial Investigation/Feasibility Study for the cleanup of the Waipahu Ash Landfill ("RI/FS"), EPA Region 9 Docket No. 2013-3; and (2) expedite the characterization, assessment of risks, feasibility study, and selection of a cleanup alternative for hazardous substances which could pose an unacceptable risk to human health and the environment at or from the Site.

BACKGROUND

The Waipahu Ash Landfill (WALF or the "Site") is located on the Waipio Peninsula on Oahu, and was originally a landfill for the Waipahu Incinerator, which closed in 1991. The WALF area was formerly occupied by the Ulumoku Fishpond, and is adjacent to the West Loch of Pearl Harbor on the western and southern perimeters. The WALF encompasses about 54 acres at the end of Waipahu Depot Street. The WALF was closed through a phased approach, beginning with RCRA Subtitle D activities, including excavation and relocation of ash refuse, grading and erosion control, installation of a liner and soil cover, and, installation of a passive gas well system and ground water monitoring wells. Construction for this initial phase of the work was completed in September 2011.

SUMMARY OF WORK

The second phase of the work, described in this SOW, will be conducted under CERCLA and include characterizing residual contamination at or from the site, determining any corresponding human health and ecological risks, and evaluating potential cleanup alternatives. At a minimum, field activities will

include defining the extent of ash material remaining in the soil and sediment; and, as determined warranted by EPA, installing and sampling additional groundwater monitoring wells to evaluate any impact from the landfill.

The Respondent shall investigate, characterize and assess the risks, and evaluate cleanup alternatives regarding release(s) of hazardous substances at or from the Site in accordance with the Settlement Agreement and this SOW. The Work to be completed under this SOW shall include preparation, delivery, and implementation of the following. In each case, revised versions of a given document shall be submitted within 30 days of receiving comments, unless otherwise agreed by the "Lead Agency," as identified in the Settlement Agreement. The schedule is based on calendar days unless otherwise agreed by the Lead Agency.

Task 1	Project Scoping Meeting	14 days after effective date of Settlement Agreement
Task 2	Summary of Existing Data Report (SEDR)	60 days after scoping meeting
Task 3	Remedial Investigation /Feasibility Study Workplan ("RI/FS Workplan") <ul style="list-style-type: none"> • Sub Task 3.1 Sampling and Analysis Plan, including (Quality Assurance/Quality Control Plan) • Sub Task 3.2 Health and Safety Plan, including Occupational Hazard Assessment 	60 days after approval of SEDR
Task 4	Remedial Investigation Report ("RI Report") <ul style="list-style-type: none"> • Sub Task 4.1 - Nature and Extent of Contamination • Sub Task 4.2 - Baseline Risk Assessment ("BRA") • Sub Task 4.3 – Identification of Preliminary Remediation Goals ("PRGs") and Remedial Action Objectives ("RAOs") 	180 days after approval of RI/FS Workplan
Task 5	Feasibility Study Report ("FS Report") <ul style="list-style-type: none"> • Sub Task 5.1 Development of Alternatives • Sub Task 5.2 Refine & Document RAOs • Sub Task 5.3 Preliminary Identification of ARARs (as defined below) • Sub Task 5.4 Develop General Response Actions • Sub Task 5.5 Detailed Analysis of Alternatives 	120 days after approval of RI Report

Task 1 Project Scoping Meeting (Due within 14 Days of the Effective Date of the Settlement Agreement):

Respondent shall attend a project scoping meeting with the Lead Agency. The purpose of the meeting shall be for Respondent to describe its proposed approach to complying with the Settlement Agreement, in particular, Section IX (Work to be Performed) and this SOW. The following topics, at a minimum, should be addressed to initiate the Project Scoping (Task 1) process: (i) developing Data Quality Objectives (“DQOs”); (ii) developing the initial Conceptual Site Model (“CSM”); (iii) evaluation of existing documentation to determine additional data needs for site characterization and subsequent remedial action decisions; (iv) whether Respondent intends to divide the Site into operable units or the RI and FS into more than one document; (v) how Respondent will prioritize tasks; (vi) Respondent’s preliminary schedule for accomplishing the RI and FS; (vii) scoping a Baseline Risk Assessment (“BRA”); and (viii) contingencies for stop work or reprioritization of tasks due to unanticipated events.

Respondent will proceed with the CERCLA process as outlined in this SOW as set forth in the project schedule contained in the approved SEDR. The timing of submittal of the required CERCLA documents will be developed by Respondent and approved by the Lead Agency as part of the Project Scoping Meeting and documented in the SEDR.

All engineering and geologic work shall be conducted in accordance with all applicable state and federal laws. Also see paragraph 34 of the Settlement Agreement (Selection of Contractors, Personnel).

Task 2 Summary of Existing Data Report (SEDR) (Due within 60 Days of the Scoping Meeting):

The Respondent shall provide the Lead Agency with a Draft SEDR. The report shall summarize all investigations, removal actions, After Action Reports, Closure Reports, MEC incidents, and anticipated future uses of the property. The SEDR will provide a site overview, evaluation of existing data, identification of data gaps, preliminary assessment of risk, and parcel proposed future use. Information in the SEDR will contain recommendations for further actions for the project. The SEDR Report shall be the basis for additional data gathering or response actions during the RI and FS.

The SEDR should:

- Briefly describe the history and nature of waste handling;
- With input from the Navy, describe known hazardous substances, including munitions that are, or have been, suspected of being present at the Site;
- Describe pathways of concern and potential receptors;
- Briefly identify and describe current and future human population and environmental targets;
- Include the Operable Unit (“OU”) Specific Conceptual Site Models.
- Make a recommendation for next steps from list above. In the event Respondent proposes to organize the work into multiple OUs, the SEDR shall also include a

discussion of the number of OUs proposed, the boundary of each OU, and the cleanup schedule of each OU.

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

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

- Physical characteristics of the property;
- Characteristics/classification of relevant potentially impacted environmental media, including but not limited to air, soil, soil gas, sediment, surface water and ground water;
- The extent to which the source(s) can be characterized;
- The best available detection technologies and discussion on the uncertainty of detection methods and equipment
- Actual and potential exposure pathways through environmental media;
- Actual and potential exposure routes (e.g., contact, inhalation and ingestion); and
- Other factors such as sensitive populations or behavior patterns that pertain to the characterization of the Site or support the analysis of potential remedial action alternatives

Sub Task 3.1 Sampling & Analysis Plan (RI/FS Guidance, Chap 2.3.2)

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

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

Quality Assessment Program is to be used by Respondents Quality Assessors to assure that an audit trail of data is collected, documented and maintained, and to retain and preserve the integrity of the Quality Assessment data gathered during the process.

The FSP will define in detail the sampling and data-gathering methods that will be used on the project. At a minimum, field activities will include defining the extent of ash material remaining in the soil and sediment under the constructed cover as well as outside the constructed cover; and, as determined warranted by EPA, installing and sampling additional groundwater monitoring wells to evaluate any impact from the landfill. The quality assurance project plan (QAPP), shall describe policy, organization and functional activities, as well as data quality objectives. The QAPP shall include Quality Assurance (QA) and Quality Control (QC). QA is an integrated system of management activities involving planning, implementation, assessment, reporting, and quality improvement to ensure that a process, item, or service is of the type and quality needed to meet project requirements defined in the RI/FS Workplan. QC is the overall system of technical activities that measures the attributes and performance of a process, item, or service against defined standards to verify that they meet the stated requirements established in the RI/FS Workplan; operational techniques and activities that are used to fulfill requirements for quality.

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

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

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

Sub Task 4.2 Baseline Risk Assessment. A BRA shall be conducted as part of the Remedial Investigation. The BRA shall assess the hazards posed by contaminants of concern for receptors based on current and future land use. See Risk Assessment Guidance for Superfund. Current and proposed land use, as designated by the land owner, should be described in the BRA report.

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

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

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

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

Sub Task 5.1 Development of Alternatives. During the FS, remedial technologies, and their associated implementation, containment, treatment, or disposal requirements are identified, pre-screened, and then combined into alternatives. Information obtained during the RI is considered in developing the list of alternatives for evaluation. Some technologies, implementation, or property use restrictions may become apparent from this step or may become necessary regardless of which remedy is selected. Current and proposed land use and land use restrictions, such as Explosives Safety Quantity Distance (ESQD) arcs, as designated by the land owner, should be described in the FS Report. Evaluation of alternatives should consider, at a minimum, the following:

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

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

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

Sub Task 5.2 Refine & Document RAOs (RI/FS Guidance, Chap 4.2.1) Based on the BRA, and the results of the RI, Respondent will review and, if necessary, modify the Site-specific RAOs. The modified RAOs will be documented in a technical memorandum, prior to the completion of the FS, that will be reviewed and approved by the Lead Agency. These modified RAOs will specify the contaminants and media of interest, exposure pathways and receptors, hazards, and an acceptable contaminant level or range of levels (at particular locations for each exposure route).

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

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

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

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

**DEPARTMENT OF LAND & NATURAL RESOURCES
 TEMPORARY DEPOSIT ACCOUNTS
 ACTIVITY BETWEEN 01/01/1900 AND 01/01/1900**

cdofrar
 07/15/2013 4:16:49PM

DIVISION: 5 Division of Land Management
COST CENTER: 0540 MAUI BRANCH-LAND MGMT.
ACCT STATUS: 03 Cancelled-Suspense

Name/Description	Tenant Code	Reference	TDA Type	COLLECT	DISBURSE	ENDING BALANCE	RECD DEPOSIT AMT.	DEPOSIT AMT. OWING
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KAUHAHAHA	08rmd081	06/21/2013 WV38759	01	0.00	-80.00	0.00		0.00
		TOTAL by TDA Type		80.00	-80.00			
		TOTAL by Document No		80.00	-80.00	0.00		0.00

(Status > 02)

Account Status

	Collect	Disburse	Total
01	80.00	-80.00	0.00
Total	80.00	-80.00	0.00

Cost Center

	Collect	Disburse	Total
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Total	80.00	-80.00	0.00

Division

	Collect	Disburse	Total
01	80.00	-80.00	0.00
Total	80.00	-80.00	0.00

DLA

H01VB

PAID INVOICES JOURNAL

OP ID=cdolrar
Batch Ctrl # = 773

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g13811	06/2013	06/21/201	WV38739 RNT REF-CNCL 5/24/1	2,576.31	01	T	13	316	0257	0520	000000	00	050	7798	HI 120 PROPERTIES, INC.
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08md081	06/2013	06/21/201	WV38759 RNT REF-CNCL 5/24/1	64.00	01	T	13	932	0252	0540	000000	00	050	7802	KAUHAHAHA, MOSES K. JR
08md081	06/2013	06/21/201	WV38759 SECURITY DEP REF	80.00	01	T	13	905	9201	0540	000000	00	050	7803	KAUHAHAHA, MOSES K. JR
Total Batch #773				8,655.31											

Grand Total

8,655.31 *V*

Check Run Report

Page 1
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6/26/2013
02:42 PM

Check Number	Bank Code	Check Date	Post Month	Person Code	Person Name	Check Amount
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5966	1	06/26/2013	06/2013	gl3811	HI 120 PROPERTIES, INC.	5,354.31

8,655.31

BATCH # 0645

Unposted Invoices, Batch # 773

Page 1
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6/25/2013
04:11 PM

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7800 773	—	06/21/13	06/13	06/25/13 2-2100	1-1010 5-9207	q13811 o9000681	HI 120 PROPERTIE Performance Bond	778.00	WV38749 PERF BOND REF
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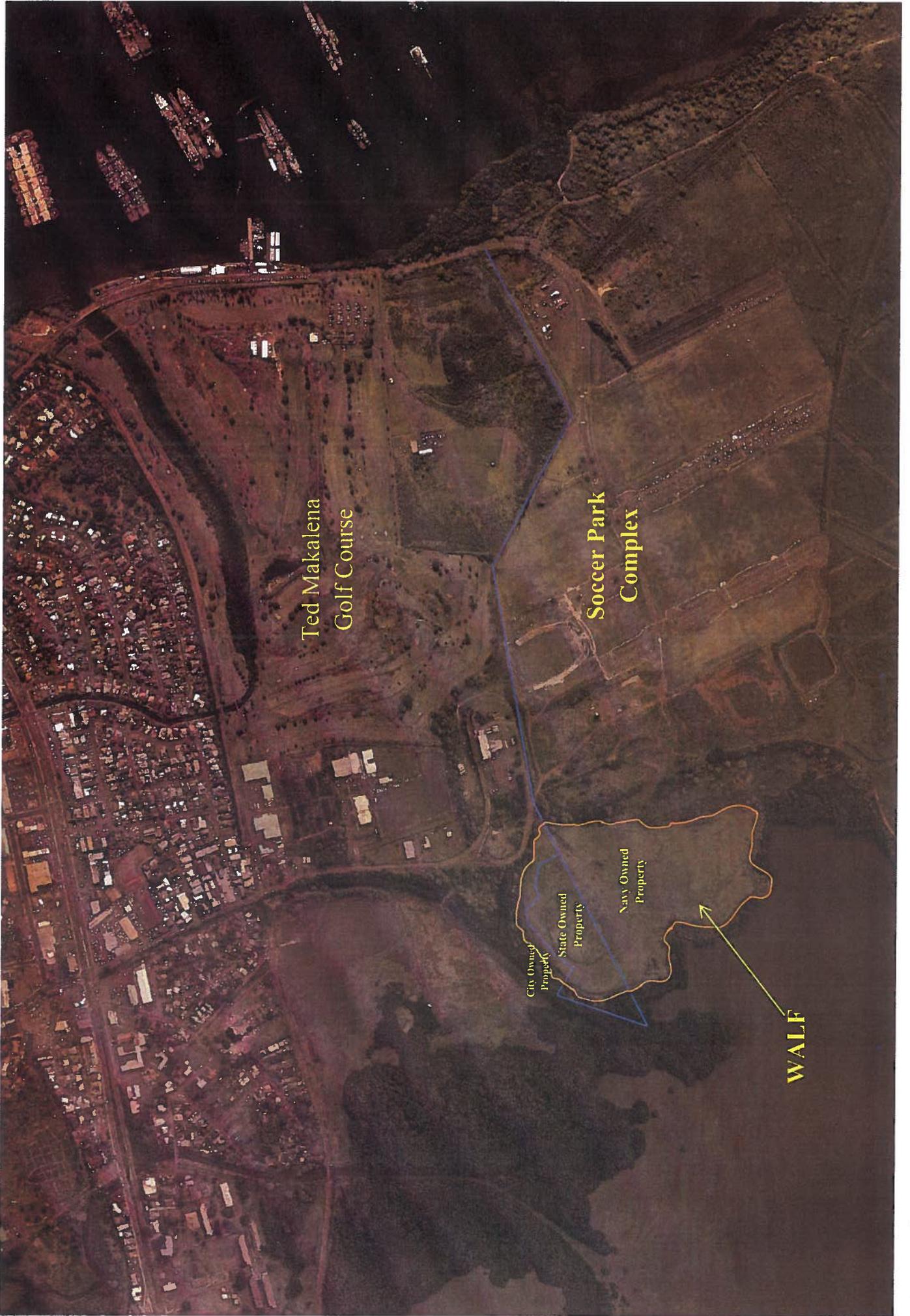
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NOTES: 0645 ADJUSTMENTS

TOTAL 8,655.31 ✓
TOTAL UNPAID 8,655.31 ✓

Account Totals

1-1010	Cash	8,655.31
4-0001	Rent	2,656.31
5-9201	Security Deposit Transfer - Out	2,080.00
5-9205	Appraisal Fee Transfer Out	3,141.00
5-9207	Performance Bond Transfer Out	778.00



Ted Makalena
Golf Course

Soccer Park
Complex

City Owned
Property

State Owned
Property

Navy Owned
Property

WALF

Appendix B - Map of WALF