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MCAS EL TORO
SSIC # 5090.3

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ORANGE COUNTY WATER DISTRICT

September 20, 1991

Ronald G. Ress
Counsel to the Commander
Department of the Navy
Office of the General Counsel
Marine Corps Air Bases, Western Area
MCAS El Toro (AQ2)
Santa Ana, CA 92709

Reference: Agreement for Study and Remediation of El Toro Marine Corps
Station Superfund Site

Dear Mr. Ress:

Attached is a first rough draft of the proposed agreement between the Orange County Water District and the Navy for the Irvine Desalter and other projects that OCWD is operating to mitigate the contamination under the Marine Corps Air Station at El Toro. Please feel free to make any changes and return your comments to me at your earliest convenience.

Very truly yours,

Clark F. Ide
General Counsel

CFI/rda

cc: William R. Mills Jr., General Manager
Nick Richardson

**AGREEMENT FOR STUDY AND REMEDIATION
OF EL TORO MARINE AIR CORPS STATION SUPERFUND SITE**

THIS AGREEMENT is made and date for reference purposes only as of the _____ day of _____, 1991, by and between:

UNITED STATES DEPARTMENT OF NAVY
(MARINE CORPS AIR STATION, EL TORO),
hereinafter referred to as "Navy"

AND

ORANGE COUNTY WATER DISTRICT,
hereinafter referred to as "OCWD."

RECITALS

A. The United States Department of Navy owns and operates the Marine Corps Air Station, El Toro (MCAS). The United States Environmental Protection Agency has determined that the groundwater under MCAS is contaminated. The site has been designated a Superfund site under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The Navy is presently cooperating with all federal and state agencies to devise a plan to mitigate and clean up the site.

B. OCWD has the statutory authority and duty to manage, regulate, replenish, and protect the quality of the groundwater supplies within its boundaries for the beneficial use of the approximately 2,000,000 residents and water users who rely upon those groundwater resources to satisfy all or a portion of their beneficial water needs.

C. OCWD has been aware for some time of the contaminated water under and adjacent to MCAS. OCWD has been concerned that this contaminated water will migrate and contaminate additional

groundwater resources which OCWD manages for the benefit of the residents of Orange County. Because of this possible contamination, OCWD has, prior to the time of this Agreement, constructed projects to monitor the areas around MCAS to determine the extent of contaminants in groundwater resources designated by the State of California for drinking water purposes. The facilities constructed by OCWD prior to the time of this Agreement that were made necessary because of the contaminated water suspected to have emanated from MCAS are shown on Exhibit "A" attached hereto and incorporated herein by this reference. These projects were made necessary because of the history of prior use of similar chemicals on MCAS.

D. In addition to groundwater contamination from MCAS, groundwater in the Irvine area contains concentrations of total dissolved solids (TDS), trichloroethylene (TCE), nitrates and selenium in excess of drinking water standards. OCWD plans to plan, design, construct, and cause the utilization of an advanced water treatment process to remove TDS, TCE, nitrates and selenium from groundwater in the Irvine area (hereinafter, the "Irvine Desalter"). A portion of the Irvine Desalter is made necessary because of the groundwater pollution under the Navy's MCAS. The Navy and OCWD mutually recognize that the planning, design, construction and operation of an effective treatment technology for removing TDS, TCE, nitrates and selenium from groundwater is an important and integral part of a program to insure reliable

groundwater supplies within the groundwater basin underlying the Orange County coastal plain, for use of groundwater producers within OCWD.

E. The Irvine Desalter proposed by OCWD can be of assistance to the Navy in mitigating the contamination under MCAS. The Navy desires to assist OCWD, to the extent of its fair share of the capital costs and O&M costs, in the planning, design, construction and operation of the Irvine Desalter.

F. The Navy also desires to reimburse OCWD for the facilities, shown on Exhibit "A," to the extent that the facilities were made necessary by the groundwater contamination under MCAS.

NOW, THEREFORE, the parties hereto agree as follows:

Section 1: Reimbursement of Cost After Construction of Irvine Desalter

The Navy shall reimburse OCWD for a fair share of the planning, design and construction costs of the Irvine Desalter after it is completed. The fair share of the Navy shall be determined by negotiation between the parties based upon the portion of the total Irvine Desalter that was necessary to protect the groundwater supplies from the contamination under the MCAS. The parties estimate, at the present time, that the Navy's percentage of the total cost is Thirty-Six Percent (36%). It is presently estimated that the total Irvine Desalter will cost Twenty-Five Million Dollars (\$25,000,000), and that the Navy's share of the cost will be Nine Million Dollars (\$9,000,000). However, the exact amount of the Navy's contribution cannot be

determined until after the Irvine Desalter is completed. In the event that the parties cannot agree upon the Navy's fair share, after the Irvine Desalter is completed, the dispute shall be resolved in accordance with Section 4, below, pertaining to mediation or court determination.

Section 2: Fair Share of O&M Cost

After the completion of the Irvine Desalter, OCWD and the Navy, each June 30, shall determine the Navy's fair share of the operation and maintenance cost for the Irvine Desalter for the preceding year. In the event that the parties are unable to agree upon the fair share, the dispute shall be resolved in accordance with Section 4, below, pertaining to mediation or court resolution of the dispute. It is estimated that the Navy's share of the O&M cost will be 23%. However, the exact percentage will have to be determined at the end of each year of operation.

Section 3: Reimbursement for Past OCWD Projects

The parties recognize that all or a portion of the projects described in Exhibit "A," and previously constructed by OCWD, were made necessary by the contamination suspected to have originated from MCAS. Immediately after execution of this Agreement, the parties shall negotiate to determine the Navy's fair share of the planning, design, capital, operation and maintenance costs up to the time of the execution of this Agreement. Thereafter, in each August, the parties shall meet to determine the Navy's fair share of the planning, design, operation and maintenance costs for the previous year ending June 30. In the event that the parties cannot

agree on the Navy's fair share of such costs, the parties shall resolve the dispute by mediation or court determination as provided in Section 4, below. Section 4: Resolution of Disputes by

Mediation or Court Action

The parties shall attempt to resolve any disputes arising under this Agreement by non-binding mediation. Both parties shall, in good faith, attempt to jointly appoint a single mediator to help mediate the dispute. In the event that the parties cannot agree on a single mediator, each party shall appoint one mediator. The two mediators so appointed shall then appoint a third mediator. The parties shall attempt to resolve the dispute by mediation for at least thirty (30) days after the mediator or mediators are appointed. After the expiration of 30 days, either party may declare an impasse and proceed to bring an action in an appropriate court to resolve the dispute.

Section 5: No Liability for Changing Water Levels or Flows

Both parties recognize that the Irvine Desalter will affect water levels and flow rates in and around the Superfund site. The Navy agrees that it will not seek damages from OCWD because of such affects.

Section 6: Hold Harmless Clause

Neither the Navy nor OCWD nor any officer or employee thereof shall be responsible for any loss, damage or injury of any kind or character to any person or property, arising out of anything done or admitted to be done by the other under or in connection with any work or obligation performed under this Agreement. It is also

agreed that, pursuant to Government Code Section 895.4, the Navy and OCWD shall fully indemnify and hold each other harmless from any liability, imposed for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by the other under or in connection with any work or obligation performed under this Agreement.

Section 7: Cooperation of All Agencies

Both parties shall at all times work in cooperation with all federal, state and local agencies involved in the cleanup of the MCAS superfund site. Both parties shall share all information developed by either party with each other and with all such agencies.

Section 8: Cooperation on Future Projects

As information is generated by both parties from projects that they are pursuing to protect the groundwater, the parties may determine that additional projects, such as extraction wells located on the Navy's property, may help to protect the groundwater. Both parties agree that they will cooperate to implement such projects at the earliest possible time so as to protect the groundwater.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

UNITED STATES DEPARTMENT OF NAVY

By _____

By _____

APPROVED AS TO FORM:

RONALD G. RESS
COUNSEL TO THE COMMANDER
MARINE CORPS AIR BASES,
WESTERN AREA

ORANGE COUNTY WATER DISTRICT

By _____

By _____

APPROVED AS TO FORM:

CLARK F. IDE
GENERAL COUNSEL
