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but is not limited to, any removal action for which consultation, as required by 10 U.S.C. § 2705, is practical, or any removal action which has extended beyond one-hundred and twenty (120) days from the initiation of the on-site removal activities.

11.6 The Parties shall first seek to resolve any dispute as to whether the Air Force will take a removal action requested by any Party under Subsection 11.3(f) through the dispute resolution process contained in Section 12 (Dispute Resolution), but that process shall be modified for disputes on this specific subject matter in accordance with Subsection 12.12. EPA and the State reserve any and all rights each may have with regard to whether the Air Force will take a removal action requested by any Party pursuant to Subsection 11.3(f) once the dispute resolution process specified in this subsection is exhausted, and notwithstanding Subsection 31 (Covenant Not to Sue and Reservation of Rights).

12. DISPUTE RESOLUTION

12.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section shall apply. This dispute resolution procedure may be invoked by EPA, by the Air Force, or collectively by the Parties representing the State of California as a unit. All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Remedial Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Section shall be implemented to resolve a dispute.

12.2 Within thirty (30) days after: (a) the receipt of a draft final primary document pursuant to Section 7 (Consultation), or (b) any action which leads to or generates a dispute, the disputing Party shall submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position.

12.3 Prior to any Party's issuance of a written statement of a dispute, the disputing Party shall engage the other Party in informal dispute resolution among the Remedial Project Manager and/or their immediate supervisors. During this informal dispute resolution

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period the Parties shall meet as many times as are necessary to discuss and attempt resolution of the dispute.

12.4 The DRC will serve as a forum for resolution of dispute for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level Senior Executive Service (SES) or equivalent or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on the DRC is the Deputy Director for Superfund, Hazardous Waste Management Division, EPA Region 9. The Air Force's designated member is the Director of Environmental Management, Tactical Air Command. The DHS representative is the Chief of the Site Mitigation Branch, Region 4. The RWQCB representative is the Assistant Executive Officer for the Lahontan Region. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section 21 (Notification).

12.5 Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period, the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution within seven (7) days after the close of the twenty-one (21) day resolution period.

12.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA representative on the SEC is the Regional Administrator of EPA Region 9. The Air Force's representative on the SEC is the Deputy Chief of Staff for Engineering and Services, Headquarters Tactical Air Command. The DHS representative on the SEC is the DHS Regional Administrator, Region 4. The RWQCB representative on the SEC is the Executive Officer for the Lahontan Region. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, EPA's Regional Administrator shall issue a written position on the dispute. The Air Force or the State may, within fourteen (14) days of the Regional Administrator's issuance of EPA's

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position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event the Air Force or the State elects not to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, the Air Force and the State shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

12.7 Upon escalation of a dispute to the Administrator of EPA pursuant to Subsection 12.6 above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Air Force's Secretariat Representative, DHS Chief Deputy Director, and RWQCB's Executive Officer to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the Air Force and the State with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Section shall not be delegated.

12.8 The pendency of any dispute under this Section shall not affect any Party's responsibility for timely performance of the work required by this Agreement, except that the time period for completion of work affected by such dispute shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this Agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable timetable and deadline or schedule.

12.9 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Hazardous Waste Management Division Director for EPA Region 9 requests, in writing, that work related to the dispute be stopped because, in EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. The State may request the EPA Hazardous Waste Management Division Director to order work stopped for the reasons set out above. To the extent possible, the Party seeking a work stoppage shall consult with the other Parties prior to initiating a work stoppage request. After work stoppage, if a Party believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Party may

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meet with the other Parties to discuss the work stoppage. Following this meeting, and further considerations of this issue the EPA Hazardous Waste Management Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the EPA Hazardous Waste Management Division Director may immediately be subject to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

12.10 Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Section, the Air Force shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

12.11 Except as provided in Subsection 31.2, resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution of any dispute arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this Agreement.

12.12 The following modified dispute resolution procedure shall only apply to disputes arising under Subsection 11.6, concerning a decision by the Air Force to not undertake a removal action as requested under Subsection 11.3(f). This provision shall apply to such disputes in lieu of the procedures specified in Subsections 12.5, 12.6 and 12.7.

(a) For purposes of this modified dispute resolution procedure, the EPA and State representatives on the Dispute Resolution Committee (DRC) and Senior Executive Committee (SEC) shall remain the same as in Subsections 12.4 and 12.6, while the Air Force member of the DRC shall be the Director of Environmental Management, Tactical Air Command, and the Air Force member of the SEC shall be Deputy Chief of Staff for Engineering and Services, Tactical Air Command.

(b) After submission of a Subsection 11.6 matter to dispute, as described in Subsection 12.2, the DRC shall handle the dispute under the procedure described in Subsection 12.5, except that the DRC shall have ten (10) days rather than twenty one (21) days to unanimously resolve the dispute, and shall forward an

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unresolved dispute to the SEC within four (4) days rather than seven (7) days.

(c) If agreement is not reached by the DRC, the SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached in seven (7) days, the Air Force SEC member shall issue a written position on the dispute. EPA or the State may, within four (4) days of the issuance of the Air Force SEC member's position, issue a written notice elevating the dispute to the Deputy Assistant Secretary of the Air Force for Environment, Safety, and Occupational Health (currently designated SAF/MIQ), for resolution in accordance with all applicable laws and procedures. In the event EPA or the State elects not to elevate the dispute to SAF/MIQ within the designated four (4) day elevation period, EPA and the State shall be deemed to have agreed with the Air Force SEC member's written position with respect to the dispute.

(d) Upon escalation of a dispute to SAF/MIQ pursuant to Subsection 12.12(c), above, SAF/MIQ will review and seek to resolve the dispute in a manner acceptable to all Parties within seven (7) days. Upon request, and prior to issuing a recommended resolution, SAF/MIQ shall meet and confer with the EPA Administrator's Representative, the DHS Chief Deputy Director, and the RWQCB Executive Officer to discuss the issue under dispute. SAF/MIQ shall provide EPA and the State with a proposed resolution of the dispute. In the event EPA or the State does not concur with the SAF/MIQ proposed resolution of the dispute, such nonconcurrence will be transmitted in writing to SAF/MIQ within seven (7) days of receipt of his/her issuance of the proposed resolution. Failure to transmit such nonconcurrence will be presumed to signify concurrence. If EPA or the State does not concur, such agency will retain any right it possesses with regard to the issue raised in the dispute under Subsection 11.6.

12.13 For the purposes of the dispute resolution process, and other decisions of the Parties that may be taken to dispute resolution, the Parties agree as follows:

(a) DHS and RWQCB, as agencies of the State of California, will jointly designate which of the two agencies shall voice the State's position for various issues and subjects, and which of the two

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agencies shall voice the State's position for all other issues or subjects which have not been specifically designated. DHS and RWQCB shall provide EPA and the Air Force with an initial designation in writing within 30 days after the execution of this Agreement. This initial designation is subject to modification by DHS and RWQCB. DHS and RWQCB shall notify EPA and the Air Force in writing of such modification within 10 days after the modification is made.

(b) DHS and RWQCB shall represent the State with a single voice, as designated in accordance with Subsection 12.13(a) above, throughout the dispute resolution process (Section 12) and in all decisions of the Parties which may be taken to dispute resolution, including but not limited to the following:

- (1) Invocation of dispute resolution for Draft Final Primary Documents (Subsection 7.8);
- (2) Subsequent modification of final documents (Subsection 7.10);
- (3) Agreement on deadlines (Section 8);
- (4) Extension of deadlines (Section 9);
- (5) Work stoppage (Subsection 11.2);
- (6) Enforcement of the terms of this Agreement (Subsection 13.5);
- (7) Termination of the Agreement (Section 30);
- (8) State support services (Section 34);
- (9) State participation contingency (Section 35);
- (10) Effective date and public comment (Section 36).