

**THE HAZARDOUS MATERIALS AND WASTE MANAGEMENT DIVISION  
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

**STATE OF COLORADO**

---

**FIRST AMENDMENT TO CONSENT AGREEMENT**

**Number 01-08-07-02**

---

**IN THE MATTER OF THE LOWRY ECONOMIC REDEVELOPMENT AUTHORITY  
AND LOWRY ASSUMPTION, LLC**

---

This First Amendment to Consent Agreement Number 01-08-07-02 ("First Amendment") is issued and entered into by the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division (the "Department") pursuant to the Department's authority under section 25-15-308(2), C.R.S. of the Colorado Hazardous Waste Act ("the Act"), sections 25-15-301 to 327, C.R.S., and the Colorado Hazardous Waste Regulations ("the Regulations"), 6 CCR 1007-3, with the Lowry Economic Redevelopment Authority ("LERA") and Lowry Assumption, LLC, a Colorado Limited Liability Company ("LAC").

Under the Cooperative Agreement for Environmental Services ("Cooperative Agreement") between the Air Force and LERA, dated August 13, 2002, LERA agreed to perform certain environmental remediation responsibilities of the Air Force and to receive certain property to be transferred from the Air Force at the former Lowry Air Force Base. Under the Remediation Agreement between LERA and LAC, dated August 7, 2002, LAC agreed to perform LERA's remediation obligations under the Cooperative Agreement. The Consent Agreement between the Department, LERA, and LAC, dated August 13, 2002, provides the regulatory framework for effecting the remediation obligations of LERA and LAC under the oversight of the Department. This process for performing the Air Force's remediation obligations is known as privatization. Matters within the scope of the August 13, 2002 Cooperative Agreement are designated as Privatization I.

During the implementation of Privatization I requirements, the Air Force requested that LERA perform additional environmental services and receive additional properties with respect to the former Lowry Air Force Base. This request broadened the geographic scope of the environmental services to be performed to the historic boundaries of the former Lowry Air Force Base; increased the scope of environmental services to be performed by LERA to include all Known and Unknown conditions, as those terms are defined under the Cooperative Agreement as amended, and to eliminate many of the non-covered conditions that were previously retained by the Air Force; provided for reimbursement by LERA and LAC of the Department's costs associated with the Consent Agreement; and added additional parcels of land to be transferred

from the Air Force to LERA. Matters beyond the scope of Privatization I and within the scope of additional services requested by the Air Force are referred to as Privatization II. To affect Privatization II, amendments were made to the Cooperative Agreement and Remediation Agreement. The purpose of this Amendment to Consent Agreement Number 01-08-07-02 is to add Privatization II to the scope of the Consent Agreement.

The Air Force has provided funding to the LERA and LAC for the Department's oversight work pursuant to the Cooperative Agreement and the Remediation Agreement between LERA and LAC, dated August 13, 2002, as amended. Within the funding given by the Air Force to LAC, specific amounts will be identified as "pass through" federal funding to be forwarded to the Department for its monitoring/oversight work on the former Lowry Air Force Base, and LAC has agreed to pass on these federal funds on to the Department for its work as defined herein. The Department has determined that it has the authority to receive these federal pass-through dollars.

Therefore, pursuant to Paragraph 98 of Consent Agreement Number 01-08-07-02, the Consent Agreement is amended as set forth below. All other terms and conditions of the Consent Agreement remain the same.

A. Paragraph 2 is deleted and replaced with the following:

2. The Department, LERA, and LAC may be referred to collectively as the "Parties." The LERA joins this Consent Agreement for the limited purposes as set forth in paragraph 101 hereof. This Consent Agreement applies to the former Lowry Air Force Base ("LAFB") located in the cities of Denver, Colorado and Aurora, Colorado. Privatization I included five (5) FOSET ("Finding of Suitability for Early Transfer" or "FOSET") parcels, as identified in paragraph 23, and all related contaminated off-site groundwater plumes originating on LAFB, including but not limited to, the "northern off-site groundwater plume and related on-site groundwater plumes, including but not limited to, the groundwater plume underlying the Belle Bonfils property." Two discrete operable units ("OUs") were also included in this Consent Agreement, the Groundwater Plumes ("OU5") and the Landfill Zone ("OU2"), which together contain approximately 514 acres. OU5 includes the "northern off-site groundwater plume" that has migrated off of LAFB. All work performed, and all work remaining to be performed, prior to any amendment of this Consent Agreement is still subject to, and shall be performed in accordance with, the terms and conditions of this Consent Agreement as amended.

B. The following paragraph 2a is added:

2a. LAFB Privatization II expands the definition of LAFB to its historic boundaries as set forth in Exhibit D and Figure 1, and increases the scope of work to be performed to include all contaminated media and/or debris more

First Amendment to Consent Agreement #01-08-07-02

specifically identified in paragraphs 18 through 18i. In addition, the five FOSET parcels referenced above have been expanded to a total of seven (7) parcels, as identified in paragraph 23a, all of which are anticipated to be included in the FOSET accomplished under Privatization II.

The LERA joins this First Amendment for the limited purposes set forth in paragraph 101 of this Consent Agreement.

C. Paragraph 5 is deleted and replaced with the following:

5. For purposes of this Consent Agreement, the Air Force agrees to stay its response action under CERCLA and, as provided in the Enforceable Agreement, defer to the completion of the work pursuant to this Consent Agreement and the Cooperative Agreement dated August 13, 2002. **Neither the Consent Agreement nor the Enforceable Agreement limit or modify the obligations of the Air Force under Compliance Order 03-05-09-01 and Compliance Order 04-03-24-01.**

#### STATEMENT OF PURPOSE

D. Paragraph 6 is deleted and replaced with the following:

6. The purposes of this Consent Agreement are to establish the regulatory framework for achieving the ultimate remediation of LAFB, as defined above in paragraph 2.a., as follows:
  - a. To establish a procedural framework and schedule for the development, implementation and monitoring of appropriate corrective actions at LAFB and to ensure that such actions are conducted in accordance with the Act and Regulations, and other applicable federal and state environmental laws;
  - b. To establish enforceable milestones regarding the completion and submittal of deliverables required under this Consent Agreement;
  - c. To ensure that all response and corrective actions taken are protective of human health and the environment, and priority shall be given to the northern off-site groundwater plume;
  - d. To ensure that the parties work together in a cooperative spirit that facilitates a cost-effective and timely clean-up of LAFB, that promotes an orderly and effective investigation and clean-up of contamination at LAFB, and that avoids litigation

First Amendment to Consent Agreement #01-06-07-02

between the parties;

- e. To seek ways to accelerate corrective actions and eliminate unnecessary tasks and reviews by requiring that the parties work together within each party's statutory role, while fully involving other stakeholders as required by law and good practice. As used in this Consent Agreement, the term "Stakeholders" includes all interested community members, the LAFB Restoration Advisory Board ("RAB"), other similar community groups, and government agencies;
- f. To ensure early and meaningful public involvement from the stakeholders in the implementation of this Consent Agreement, in the development and review of work plans, and in the initiation, development, and selection of corrective actions to be undertaken at LAFB, including timely review of applicable data, reports, and work plans developed for LAFB; and
- g. To establish a mechanism for the "pass through" of federal monies from the Air Force for reimbursement of all State costs associated with the implementation of this Consent Agreement.

#### **BACKGROUND**

- E. The last sentence of paragraph 9 is deleted and replaced with the following:

The Air Force is currently required to conduct all remediation activities at LAFB in accordance with the Act, CERCLA, BRAC, and other applicable federal and state laws.

- F. The second sentence of paragraph 10 is deleted and replaced with the following:

The LERA is an independent quasi-municipal legal entity created pursuant to sections 29-1-204, et seq, C.R.S.

- G. The last sentence of paragraph 11 is deleted and replaced with the following:

The Air Force intended to request a CERCLA section 120(h)(3)(C) covenant deferral for approximately 514 acres of LAFB.

- H. The following paragraph 11a is added:

11a. Contemporaneously with the execution of LAFB Privatization II, the Air Force will be requesting the CERCLA section 120(h)(3)(C) covenant deferral for the seven FOSET parcels referenced in paragraph 23a. The covenant deferral request

shall be conducted in accordance with CERCLA, section 120(h)(3)(C) and Colorado's Executive Order, D 013-98.

- I. The last sentence of paragraph 12 is deleted and replaced with the following:

Nonetheless, ultimate liability for clean-up remains with the Air Force pursuant to CERCLA Section 120(h)(3)(A)(ii); the Enforceable Agreement between the Air Force and CDPHE; Compliance Order 03-05-09-01; and Compliance Order 04-03-24-01.

- J. The following paragraph 12a is added:

12a. The privatization effort will continue by completing the remediation of the matters within the scope of LAFB Privatization II.

**NATURE AND EXTENT OF CONTAMINATION ASSOCIATED WITH THIS FIRST  
AMENDMENT TO THE CONSENT AGREEMENT**

- K. The last sentence of paragraph 14 is deleted and replaced with the following:

Paragraphs 15 through 18 summarize contamination associated with OU5 and OU2.

- L. Paragraph 15 is deleted and replaced with the following:

15. Groundwater Plumes. Groundwater contamination has been identified in both the alluvial groundwater and the bedrock groundwater at the site. OU5 is comprised of seven known groundwater contaminant plumes. The Department received the Air Force's "Final OU5 Groundwater Remedial Investigation - May 2001 Report" on May 29, 2001. The seven (7) groundwater plumes with on-site sources are identified as the "Main Trichloroethylene ("TCE") plume", the "Outdoor Firing Range ("OFR") TCE plume", the "Headquarters TCE plume", the three "Fire Training Zone ("FTZ") TCE plumes" and the "Yosemite Gate 1,2-Dichloroethane ("1,2-DCA") plume". The two plumes with off-site sources are identified as the "Havana Perchloroethylene ("PCE") plume" and the "Havana 1,2-DCA/BTEX plume." See Exhibit A, attached hereto.

- M. The last sentence of paragraph 18 is deleted and replaced with the following:

OU2 has been closed in accordance with the Phase 2 Corrective Action Plan for the Operable Unit 2 Landfill Closure at Lowry. LAC has prepared and submitted a Closure Report for the Department review and approval. In conjunction with the closure activities, the Air Force has completed four quarters of groundwater monitoring of OU2 to determine if radionuclides potentially buried there are leaching into the groundwater and surface water.

- N. The following paragraphs 18a through 18i are added:

18a. Paragraphs 18b through 18h summarize the known contaminated media and/or debris issues added to the scope of this Consent Agreement by LAFB Privatization II that will be investigated and/or remediated under this First Amendment and are shown in Figure 2. As part of LAFB Privatization II, the LERA and LAC will also address, as part of the LAFB Privatization II in accordance with the requirements of the Department and the Act, any and all other contaminated media and/or debris issues identified during LAFB Privatization II, as such issues are discovered by LAC, the LERA, or any other entity, as set forth in paragraph 18i.

18b. Building 606. Building 606 located west of Uinta Way and north of 6<sup>th</sup> Avenue was the former BX gas station that distributed gasoline for personal vehicle use. As a result of its former use, soils and groundwater have been affected, primarily with petroleum contamination. There have been numerous investigations of this area. The contaminated groundwater plume associated with this building was previously excluded from the scope of OU5.

18c. Outdoor Firing Range ("OFR"). The OFR is located west of Dayton Street and south of East 6<sup>th</sup> Avenue. Operations at the OFR began in the early 1940s and continued until at least the early 1960s. In 1995, the U.S. Army Corps of Engineers inspected the site and identified expended pistol ammunition, .30-caliber rifle ammunition, and a few expended .50-caliber and 20-mm bullets on the surface throughout the OFR. An investigation of the heavy metals in soil was initiated in 1998, and the groundwater was also sampled under the OU5 and Environmental Basewide Survey Phase II programs to support the OFR investigation. In 2000, additional investigations were planned to address data gaps, but the proposed work was not implemented. In 2003, a supplemental characterization was conducted. The *Final Remedial Investigation Report for Supplemental Characterization, Outdoor Firing Range, Lowry Air Force Base, Colorado* presents the results of the supplemental characterization and describes the nature and extent of contamination at the site. The results of the supplemental characterization confirm that lead and excess metal fragments from firing operations are located in the bermed soil west and east of the

concrete backstop walls. In addition, 20-mm target practice projectiles were also identified in one portion of the OFR berm.

Investigations of the OFR are complete, and the site is in the remedial design phase. Removal action alternatives for lead and metal fragment impacted soil and munitions and explosives of concern were evaluated in the *Final Engineering Evaluation/Cost Analysis, Outdoor Firing Range, Lowry Air Force Base, Colorado*. Although no 20-mm high-explosive projectiles were identified at the OFR, the Air Force requires an Explosives Safety Submission to DOD's Explosives Safety Board for the OFR, which is currently in progress. On February 17, 2004, the Department concurred with the Draft Final Action Memorandum for the Outdoor Firing Range, which described the proposed non-time-critical action for soil containing lead, bullet fragments, and potential ordnance at the OFR. The removal action includes surface and subsurface ordnance clearance, excavation of contaminated soil, soil stabilization, and offsite landfill disposal.

18d. Fire Training Zone ("FTZ"). The FTZ is located on the eastern side of LAFB within the City and County of Denver and the City of Aurora, and is bounded by East 1st Avenue to the north and Havana Street to the east, and covers approximately 50 acres. The site is located adjacent to and within the Mira Vista Golf Course. Approximately one-third of the site is within the Westerly Creek Dam spillway, and the remaining areas are undeveloped open space. The sampling programs of this area showed that no widespread soil contamination resulted from former fire fighting training activities or from the use of the property as an Air Force golf course. In limited areas of the site, polychlorinated dibenzo-p-dioxins, polychlorinated dibenzofurans, and polynuclear aromatic hydrocarbons were identified as chemicals of concern. On December 16, 2003, the Department concurred with the Final Fire Training Zone Action Memorandum submitted by the Air Force. The purpose of the proposed action is to remove contaminated soils from the FTZ, thereby reducing the risk of exposure to acceptable levels.

18e. Building 898. Located in the northeast portion of LAFB, building 898 was a Dental Clinic, which is currently owned by the Air Force. The results of mercury sampling in this building exceeded regulatory screening levels. This building is projected to be demolished. As part of the demolition, soil samples will be collected and analyzed for mercury, and the drainage system connecting to the first manhole will be investigated to determine if there are releases of mercury that require remediation.

18f. Abandonment of two (2) deep wells. Two (2) deep wells need to be properly decommissioned in accordance with the regulatory requirements of the State of Colorado, Office of the State Engineer. Drilled in 1955, water supply well #1 is located near the intersection of 10<sup>th</sup> Street and Dayton Street. Drilled in 1956, water supply well #2 is located at the intersection of 5th Place and Willow Street. The two wells were closed and

made inoperable during the summer of 1989 but were not abandoned in accordance with current State regulatory requirements.

18g. RCRA Facility Assessment (“RFA”). The Draft Final RFA was submitted to the Department in January 2005. All Known and Unknown Conditions, as those terms are defined in the Cooperative Agreement, identified through the RFA will be addressed as part of this First Amendment. Although additional concerns may be identified, the following is a list of Known Conditions that warrant further investigation and potential remedial activities:

- i. Building 416 (1016) – This facility is within the boundary of IRP Site FT01 (Fire Training Zone) and was used for munitions maintenance and training. Building 1016 was identified as a solid waste management unit (# 0-1016-1) in the RFA due to the presence of a septic tank and leach field. The septic tank was reportedly pickled in 1963. The RFA recommended no further action for both the septic tank and leach field. In addition, an 8-foot by 25-foot UST “formerly used for fire training” was removed by Tarco, Inc., and documented in a letter dated November 2, 1989. Tarco indicated that the UST was “well rusted.” It could not be determined whether any additional investigation relating to a release from this UST had been conducted.
- ii. Building 546 – Building 546 was constructed in 1941 in part of the hospital area complex in the northwestern portion of LAFB. It was used as a dental clinic and was demolished in 1964. Therefore, mercury in any remaining subsurface pipe or soils could be a potential environmental concern. This former building location has not been evaluated or investigated. It overlies a zone of chlorinated solvent groundwater contamination.
- iii. Building 568 - Building 568 was also constructed in 1941 in part of the hospital area complex in the northwestern portion of LAFB and was removed between 1970 and 1975. Originally used for Nurse’s Quarters, the 1955 building schedule identifies that it was used for a specialized medical clinic. Other information identified the building as the Air Force Eye and Dental Clinic. This area was not previously investigated or characterized. Again, mercury in any remaining subsurface pipe or soils could be a potential environmental concern.
- iv. Building 753 – Building 753 was constructed in 1943 and used as a dental clinic by both the Air Force and the Colorado Community College System (“CCCS”). The building is located in the northeastern portion of LAFB. Mercury survey field activities were performed in September and November 1997, and June, August, and September 1998. Results of this investigation indicated that mercury vapor concentrations in air in the breathing zone were below the exposure limits of OSHA, NIOSH, and ACGIH, but exceed the risk-based maximum concentration

First Amendment to Consent Agreement #01-08-07-02

allowable for protection of children in a daycare setting. The Base Realignment and Closure Cleanup Team did not believe that sufficient evidence of releases to floor coverings existed to warrant remediation based upon its current use. There are currently no use restrictions on this property.

- v. Building 1496A – This building was located adjacent to Building 1499 in the center of LAFB and was associated with training activities. Based on the small size of the building, it was likely used for storage. The building number changed to 1493 in 1965, and it was subsequently used for Administration and Technical Training Support. This facility had multiple gasoline pump pits and a 5,000-gallon gasoline UST. No information is available regarding removal of this tank. The Department performed a radiological survey for LERA based on past uses of this facility for training activities and concluded that no further action was required for radiological concerns. Additional investigation is recommended for this facility to try to locate the UST. The historic use of the facility for gasoline distribution could have resulted in contamination in the fueling area and UST locations. No documentation of removal and closure of the UST were found during the RFA records search.
- vi. Building 1499 – Building 1499, currently the Big Bear ice arena, is located in the center of LAFB and was used for training activities associated with the guided missile school and formerly housed the Nuclear Weapons Training School, beginning in the late 1950s. Training activities involved the use of training aids made of depleted uranium. The building later contained classrooms and was used for administration purposes. Additional investigation includes identifying more specific information on activities that occurred in Building 1499 and the potential disposal of solvents, such as TCE, to the groundwater and soils in the vicinity of the building.
- vii. The Air Force designated area PAA\_2 – A waste area was identified on a site location map dated April 9, 1952. This waste area is located west of Dayton Avenue and north of the Outdoor Firing Range. The 1952 aerial photograph shows what appears to be debris at the end of a small roadway south of a structure that later became Building 1002. The debris area and the road are not present in the 1948 or 1955 aerial photographs. This area appears to be an undocumented dumping or staging area that was in use for a maximum of seven years (between 1948 and 1955). There is no record that an investigation of the area has been conducted. Environmental concerns associated with this area will depend on the material potentially disposed, but could include petroleum products, solvents, asbestos, etc. Further investigation is recommended in this area to assess whether a release has occurred from the former dumping or staging activities.

viii. Building 777 – Building 777 was formerly used as a correctional facility workshop and more recently as an Area Dental Laboratory. The facility is currently part of the Logan School for Creative Learning and is located just south of East 11th Avenue and west of Yosemite Street. Environmental concerns may exist regarding beryllium dust associated with the finishing of dental bridges during this facility's use as one of the four Air Force-wide area dental laboratories.

ix. Potential PCB Contamination – Through the RFA, fifteen (15) existing facilities reportedly stored or used PCB-containing transformers during LAFB's operational history. These facilities include Buildings 349, 353A, 354, 359, 361, 383, 401, 811, 850, 901, 903, 905, 959, 999, and 1499. The buildings with 300 and 400 series numbers are located south of East 6<sup>th</sup> Avenue and west of Uinta Street. The buildings with 800 and 900 series numbers are located in the northeastern portion of LAFB and are part of the CCCS.

x. Additional Groundwater Investigation and/or Remediation – The RFA identified several other facilities that require additional investigation and/or remediation associated with potential contaminants in the groundwater as a result of historic Air Force activities. These investigations and/or remedial actions must be completed pursuant to the SGCP and Phase I and Phase II Corrective Action Plans associated with OU5.

18h. Asbestos Contaminated Soils within the Northwest Neighborhood ("NWN") – Asbestos material has been discovered during construction in several areas in the NWN, including the Air Force's 22 acres. The material found includes, but is not limited to, small pieces of building debris. Historical research indicates that the material might be related to buildings that the Air Force had demolished in this area between 1959 and 1979. The Department identified 22 acres within the NWN owned by the Air Force in which the Air Force failed to comply with the Compliance Advisories issued by the Department in April 2003 for investigation and potential remediation of asbestos in soils. This area is located north of East 8<sup>th</sup> Avenue, west of Uinta Way, south of East 11<sup>th</sup> Avenue, and east of Spruce Court and Ulster Way. The sampling and remediation in soils must be completed to satisfy the Compliance Advisories.

18i. LAC will also address any and all other contaminated media and/or debris identified on LAFB (See Exhibit D and Figure 1) during Privatization II including, but not limited to, groundwater contamination and asbestos in soil, as such issues are discovered by LAC, the LERA, or any other entity(ies). The only excluded matters are those that are Air Force Obligations as defined in the Cooperative Agreement as amended.

## DETERMINATIONS OF THE DEPARTMENT

O. Paragraph 19 is deleted and replaced with the following:

19. On or about October 20, 1980, the Air Force submitted a Part A permit application, pursuant to RCRA, to the United States Environmental Protection Agency and was granted interim status for the storage of hazardous waste. There have been releases of hazardous wastes or hazardous constituents as defined in the Act and Regulations, into the environment at LAFB that may be harmful to human health and the environment contrary to the requirements of 6 CCR 1007-3, section 265.5. Certain hazardous wastes and hazardous constituents have been detected and remain in groundwater, surface water, sediments, and soil at LAFB.

P. The following paragraphs 19a and 19b are added:

19a. During the performance of the work under the initial Consent Agreement, previously unknown contaminated media and/or debris were encountered. Subsequently, the Department issued Compliance Order No. 03-05-09-01, dated May 9, 2003, to the Air Force. The Compliance Order found that the Air Force had violated the Act and the Colorado Hazardous Waste Regulations and ordered the Air Force to complete an RFA of the former LAFB.

19b. On April 24, 2003 and April 30, 2003, the Department issued two Compliance Advisories to the Air Force and others related to asbestos contamination in the NWN of LAFB, as detailed in paragraph 18(h) above, requiring investigation and remediation of the asbestos contamination in the NWN.

## CORRECTIVE ACTION REQUIREMENTS

Q. The second sentence of paragraph 23 is deleted and replaced with the following:

Once approved by the Department, the Transition Plan will be a project management tool used by the LAC, LERA, and the Department to ensure efficient and effective transition from the BRAC/CERCLA process previously followed by the Air Force to a streamlined RCRA process defined by this Consent Agreement.

R. The following paragraph 23a is added:

23a. Within sixty (60) days of the effective date of this First Amendment, LAC shall submit, for Department review and approval, a draft Transition Plan Part II (1st tier **milestone** for purposes of Stipulated Penalties as set forth in paragraphs 74 through 78 below) for all matters within the scope of Privatization II, unless such matter is included

First Amendment to Consent Agreement #01-08-07-02

in Privatization I and is addressed under paragraph 23 above. Once approved by the Department, the Transition Plan Part II will be a project management tool used by the LAC, LERA, and the Department to ensure efficient and effective transition from the BRAC/CERCLA process previously followed by the Air Force to a streamlined RCRA process defined by this First Amendment. The draft Transition Plan Part II shall include, but not be limited to:

- i. a detailed summary of LAFB's environmental administrative record for all environmental issues associated with paragraphs 18 through 18i;
- ii. a detailed summary of the known nature and extent of each instance of contaminated media and/or debris, current status of investigations and/or remedial activities, including any related exposure pathways;
- iii. a detailed description, which includes LERA's proposed reuse priorities, and a map that clearly identifies the individual parcels on LAFB (identified in lines a – f below), that will require FOSET and deferral request approvals from the Governor of Colorado (as per paragraph 11 and 11a above). These FOSET parcels are identified below and shown in Figure 1:

- a. Parcel No. 1 is located in the Northwest Neighborhood, west of Uinta Way, east of Spruce Court and Ulster Way, and south of East 11<sup>th</sup> Avenue and is comprised of 25.189 acres (includes both soils and groundwater issues).
- b. Parcel No.2 is the Landfill Zone or Operable Unit 2, contains approximately 69.76 acres, located north of Alameda Avenue on the southern portion of LAFB (includes soil issues).
- c. Parcel No. 3 is town center property impacted by the Headquarters Groundwater Plume, east of Quebec Street, north of East 1<sup>st</sup> Avenue, and south of East 5<sup>th</sup> Avenue and is comprised of 27.171 acres.
- d. Parcel No. 4 is made up of two areas, 4(A) and 4(B), which are comprised of 103.566 acres. FOSET 4(A) is impacted by the Main TCE groundwater plume and is made up of the southern portion of the Kelly Road Dam overall area, and FOSET 4(B) is property also impacted by the Main TCE plume that begins near the OFR, west of the intersection of Dayton Street and East 1<sup>st</sup> Avenue and flows north/northwest. It also includes the OFR soil contamination.
- e. Parcel No. 5 includes the soil contamination at the FTZ, as well as the contaminated groundwater at FTZ TCE1, TCE2, TCE3, and the BTEX and PCE Havana Street offsite plumes. All of these are located southwest of East 1<sup>st</sup> Avenue and Havana Street and are comprised of 45.18 acres.
- f. Parcel No. 6 is the location of the former Building 606, also known as the Tapestry site, located north of 6<sup>th</sup> Place, west of Uinta Way, south

First Amendment to Consent Agreement #01-08-07-02

- of East 8<sup>th</sup> Avenue, and east of Ulster Way and is comprised of 0.417 acres (groundwater issues).
- g. Parcel No. 7 is Building 898 located in the northeastern corner of LAFB north of East 7<sup>th</sup> Avenue on Beeler Street and is comprised of 0.062 acres (soil issues).
- iv. a detailed description, which includes LERA's proposed reuse priorities, and a map that clearly identifies the location of each instance of contaminated media and/or debris on LAFB;
  - v. potential treatability studies/pilot tests that may be proposed to assist in the evaluation of potential remedies on LAFB;
  - vi. proposed schedules for:
    - a. submittal of a draft Characterization Plan ("CP") to systematically characterize the nature and extent, both horizontal and vertical, of any contamination at or relating to each instance of contaminated media and/or debris, if determined necessary by the Department;
    - b. submittal of work plans associated with any and all proposed treatability studies/pilot tests, interim remedial actions ("IRAs"), or corrective action plans ("CAPs") associated with any remedy evaluation; and
    - c. submittal of any other related work products, deliverables, etc., including but not limited to a Site Health and Safety Program.
  - vii. identification of all applicable state and federal standards associated with remediation of any contaminated media and/or debris at LAFB.
  - viii. Identification of interim institutional controls to be placed on FOSET parcels associated with paragraphs 18 through 18i;
  - ix. Soils Management Program, which shall include, but not be limited to:
    - a. identification of the roles and responsibilities of the parties;
    - b. identification of potential contaminants of concerns associated with the historic activities at LAFB;
    - c. procedures for construction oversight and reporting of suspect media and/or debris;
    - d. general materials management protocols, including soils sampling and characterization, methodology and frequency, excavation and removal requirements, and disposal procedures for soils that contains hazardous or solid waste;
    - e. general protocols for handling particular contaminants of concern, previously unknown contaminated media and/or debris, including asbestos in soils;
    - f. annual training sessions;
    - g. general protocols for determining further investigation and/or remediation; and
    - h. requirements that need to be fulfilled in order to achieve closure.

- x. Initial closure cost estimate, which will be periodically updated in accordance with paragraph 61 of this agreement.

The Department reserves the right to require LAC to modify the Transition Plan or Transition Plan Part II within thirty (30) days of the discovery of such matter, based upon site-specific information and/or for all matters arising under paragraph 18i.

- S. Paragraphs 24 through 34 are deleted and replaced with the following:

24. The Department will notify the LERA and LAC in writing of its approval, approval with modifications, or disapproval of the draft Transition Plan or Transition Plan Part II. In the case of approval with modifications, the LAC is only required to resubmit those sections of those submittals that were not approved, unless otherwise requested by the Department. As used in this Consent Agreement, the term "approved plan" means the approved portions of the submitted plan as modified. In addition, a meeting(s) will be held to review the draft Transition Plan or Transition Plan Part II with LAFB stakeholders, before Department approval, to evaluate the outline and contents of the plan, to discuss concerns and comments on the approach and to obtain input from the stakeholders. If, after review of the draft Transition Plan or Transition Plan Part II, the Department determines that the plan is disapproved, the LAC shall submit, within forty-five (45) days of receipt of this determination, a revised Transition Plan or Transition Plan Part II to reflect any necessary changes based upon the Department's comments. (2<sup>nd</sup> tier milestone for purposes of Stipulated Penalties as set forth in Paragraphs 74 through 78 below).

25. Within thirty (30) days of receipt of the Department's approval or approval with modifications of the draft Transition Plan or Transition Plan Part II, the LAC shall begin to implement this draft Transition Plan or Transition Plan Part II in accordance with the procedures and schedules contained in the approved plan (2<sup>nd</sup> tier milestone).

26. For all proposed activities described in paragraph 23 and 23a above or other activities agreed to as part of this Consent Agreement, including but not limited to further characterization of ground water contamination or contaminated media and/or debris through the SGCP or CPs or remedy evaluation through treatability studies and/or pilot tests, the LAC shall submit the work plans pursuant to the schedules contained in the approved draft Transition Plan or Transition Plan Part II, for Department review and approval (prior to implementation), that detail the scope of the proposed activities (2<sup>nd</sup> tier milestone). All work plans shall be discussed with the Department prior to preparation to ensure that the Department is in conceptual agreement with the intent and content of the plan when it is submitted.

27. The Department shall notify the LERA and LAC in writing of its approval, approval with modifications, or disapproval of all work plans including, but not limited to, SGCPs, CPs, treatability studies, and/or pilot tests. In the case of approval with modifications, the LAC is only required to resubmit those sections of those submittals that were not approved, unless otherwise requested by the Department.

28. If, after review of the work plans above, including but not limited to SGCPs, CPs, treatability studies and/or pilot tests, the Department disapproves any work plan, the LAC shall submit, within forty-five (45) days of receipt of this determination, a revised work plan (**2<sup>nd</sup> tier milestone**).

29. Within fifteen (15) days of the Department's approval of SGCPs, CPs, treatability study, and/or pilot test work plans, the LAC shall begin to implement the plan in accordance with the procedures and schedules contained in the approved plan (**2<sup>nd</sup> tier milestone**).

30. Within thirty (30) days of completing the implementation of the work plans, including but not limited to the SGCPs, CPs, treatability studies, and/or pilot tests, the LAC shall submit a written report, for Department review, detailing the implementation of the work plans (**2<sup>nd</sup> tier milestone**).

31. Based on its review of each SGCP or CP report, the Department shall determine whether the full horizontal and vertical extent of the contamination has been adequately characterized at the FOSET parcel(s) and/or the northern off-site groundwater plume or for issues that arise under paragraphs 18 through 18i of this Consent Agreement. The Department will notify the LERA and LAC in writing of its determination of whether the nature and extent of the contamination in the FOSET parcel(s) and the northern off-site groundwater plume or for issues that arise under paragraphs 18 through 18i of this Consent Agreement have been adequately characterized, and whether remediation of contamination at, or relating to, that parcel and/or northern off-site groundwater plume or for issues that arise under paragraphs 18 through 18i of this Consent Agreement is necessary.

32. Based on its review of the treatability study/pilot test reports, the Department shall determine whether the treatability study and/or pilot test was effective and should be considered when evaluating remedial alternatives at the FOSET parcel(s) or for issues that arise under paragraphs 18 through 18i of this Consent Agreement. The Department shall notify the LERA and LAC in writing of its determination.

33. If, after review of the SGCP or CP report, the Department determines that the nature and extent of contamination has not been adequately characterized within the FOSET parcel(s) and/or the northern off-site groundwater plume, , the LAC shall submit,

within forty-five (45) days of receipt of this determination, a revised CP work plan to complete any additional characterization, as necessary (**2<sup>nd</sup> tier milestone**).

34. Within forty-five (45) days of receipt of the Department's determination that the contamination has been adequately characterized and that remediation is necessary at a FOSET parcel(s) and/or the northern off-site groundwater plume or issues that arise under paragraphs 18 through 18i of this Consent Agreement, the LAC shall submit, for Department review and approval, a draft Phase 1 CAP (**1<sup>st</sup> tier milestone**), if determined to be necessary by the Department. The Phase 1 CAP shall propose remediation objectives and goals and evaluate a range of potential alternatives for the remediation/closure/post-closure care of the FOSET parcel(s) and/or the northern off-site groundwater plumes or issues that arise under paragraphs 18 through 18i of this Consent Agreement. The draft Phase 1 CAP shall evaluate the alternatives for the appropriate extent of remedial action to prevent, mitigate, and remediate the contamination at, or relating to the FOSET parcel and/or the northern off-site groundwater plume or issues that arise under paragraphs 18 through 18i of this Consent Agreement. This plan shall propose a suitable corrective measure for final closure of the FOSET parcel and/or the northern off-site groundwater plume or issues that arise under paragraphs 18 through 18i of this Consent Agreement, which may include a process for monitoring and enforcing any necessary environmental covenants/institutional controls. The draft Phase 1 CAP shall include detail as to how the proposed corrective measure for the remediation of contamination at the FOSET parcels and/or the northern off-site groundwater plume or issues that arise under paragraphs 18 through 18i of this Consent Agreement is an appropriate corrective measure for final closure and how it is capable of achieving remediation objectives and goals and maintaining the standards set forth by the Department and the LAC in the Transition Plan or Transition Plan Part 2. A meeting(s) shall be held to review the draft Phase 1 CAP with LAFB stakeholders to evaluate the outline and contents of the plan, to discuss concerns and comments on the approach and to obtain input from the stakeholders.

T. Paragraphs 36, 37, and 38 are deleted and replaced with the following:

36. If, after review of the Phase I CAP for the FOSET parcel(s) and/or the northern off-site groundwater plume or issues that arise under paragraphs 18 through 18i of this Consent Agreement, the Department determines that the information required pursuant to paragraph 34 above is insufficient, the LAC shall submit, within forty-five (45) days of receipt of this determination, a revised Phase I CAP to address any identified deficiencies (**2<sup>nd</sup> tier milestone**).

37. Within forty-five (45) days of receipt of the Department's approval or approval with modifications for the draft Phase 1 CAP for the individual FOSET parcel(s) and/or the northern off-site groundwater plume or issues that arise under paragraphs 18 through 18i of this Consent Agreement, the LAC shall submit a draft Phase 2 CAP for the FOSET

parcel and/or the northern off-site groundwater plume or issues that arise under paragraphs 18 through 18i of this Consent Agreement (1<sup>st</sup> tier milestone). A meeting(s) shall be held to review the draft Phase 2 CAP with LAFB stakeholders to evaluate the outline and contents of the plan, to discuss concerns and comments on the approach and to obtain input.

38. The Phase 2 CAP shall include, but not be limited to, the following, if applicable as determined by the Department:

- a. finalized remediation objectives and goals, a detailed outline of the planned corrective measure and performance-monitoring program and a written narrative demonstrating how State standards and remediation objectives, or appropriate risk reduction, would be achieved;
- b. draft language for any institutional controls/environmental covenants proposed;
- c. an implementation schedule, including enforceable milestones, for the proposed corrective measure (1<sup>st</sup> tier milestones);
- d. system design diagrams showing how the system will be constructed in the field;
- e. an operation and maintenance plan;
- f. a quality assurance/quality control plan;
- g. sampling program used to verify the effectiveness of the treatment of the contaminated media;
- h. a plan for the review and reevaluation of the corrective actions at the FOSET parcel(s) and/or the northern off-site groundwater plume or issues that arise under paragraphs 18 through 18i of this Consent Agreement, after the completion of construction and startup and/or the recording of institutional controls/environmental covenants and at least every five [5] years thereafter;
- i. long-term monitoring plan to identify locations and frequency for long-term groundwater monitoring (2<sup>nd</sup> tier milestones);
- j. a contingency plan for dealing with unexpected types of environmental impacts will be provided (if intrusive activities are planned); and,
- k. any other information that will lead the Department to accept that the proposed remedy will be protective of human health (including possible indoor air exposures) and the environment and best suited to meet the final remediation objectives and the goals of the LERA, LAC, the Department, local governments and LAFB stakeholders.

U. Paragraph 41 is deleted and replaced with the following:

41. If, after review of the Phase 2 CAP for the FOSET parcel(s) and/or the northern off-site groundwater plume or issues that arise under paragraphs 18 through 18i of this

First Amendment to Consent Agreement #01-08-07-02

Consent Agreement, the Department determines that the information required pursuant to paragraph 37 above is insufficient to ensure a protective, cost effective remedy that meets remediation objectives and the goals as set forth in this Consent Agreement and the Act, the LAC shall submit, within forty-five (45) days of receipt of this determination, a revised Phase 2 CAP to address any identified deficiencies (**2<sup>nd</sup> tier milestone**).

- V. The first sentence of paragraph 44 is deleted and replaced with the following:

At any time during the development or implementation of any of the activities described in the paragraphs above, the LAC may request Department approval of an interim corrective measure, pending selection of a long-term corrective measure, if the LAC finds that an interim corrective measure is appropriate, will be consistent with the final remediation objectives and goals and will expedite remediation of contaminated ground water or for issues that arise under paragraph 18 through 18i of this Consent Agreement considering site specific factors.

- W. In paragraphs 46, 47, 48, 51, and 75, the word "Agreement" is replaced with "Consent Agreement" wherever "Agreement" appears but is not preceded by the word "Consent".

- X. Paragraph 50 is deleted and replaced with the following:

50. Within ninety (90) days of satisfactory conclusion of the respective requirements of this Consent Agreement for each FOSET parcel(s) and/or the northern off-site groundwater plume or issues that arise under paragraphs 18 through 18i of this Consent Agreement, the LAC shall submit Completion Reports to the Department (**1<sup>st</sup> tier milestone**). Completion Reports shall be submitted for each respective FOSET parcel(s) and/or the northern off-site groundwater plume or issues that arise under paragraphs 18 through 18i of this Consent Agreement so that the Department may make final closure determinations. The Department shall make its best efforts to either accept or reject the LAC's Completion Report within thirty (30) days of Department receipt. If the Department approves the LAC's Completion Report, it shall send an approval letter to the LAC. If the Department disapproves the LAC's Completion Report, it shall include in its notice of disapproval, and a statement of the basis for its disapproval. The LAC shall, within fifteen (15) days of receipt of the Department's disapproval, either 1) submit a notice of acceptance of the determination or 2) submit a notice of dispute to the determination. If the LAC fails to submit either of the above notices within the specified time it will be deemed to have accepted the Department's determination.

- Y. Paragraph 52 is deleted and replaced with the following:

52. The parties agree to follow the guidelines set forth in Chapters 3 and 4 of the Final Report of the Federal Facilities Environmental Restoration Dialogue Committee ("FFERDC"), April 1996, as they relate to stakeholder participation. The parties are

First Amendment to Consent Agreement #01-08-07-02

committed to seeking active public involvement during all phases of the site characterization, corrective actions, long-term monitoring, and site close-out at LAFB. Towards that end, the parties agree to support to the Restoration Advisory Board ("RAB") and other similar community groups (e.g., Lowry Community Masters Association/Lowry Neighbors, East Montclair Neighborhood Association, and the Lowry Foundation), to enable them to provide advice to the LERA, LAC, and the Department with respect to key remediation decisions. The parties agree to maintain the LAFB community relations plan; they also agree to encourage diverse RAB membership, and to seek ways to facilitate open dialogue at RAB meetings.

- Z. The first sentence of paragraph 54 is deleted and replaced with the following:

The LAC shall provide the RAB with funding for technical assistance in accordance with the existing Technical Assistance for Public Participation ("TAPP") program.

- AA. In paragraph 55, the word "LERA" is replaced by "LAC".

#### **FINANCIAL RESPONSIBILITY**

- BB. Paragraphs 60, 61, and 62 are deleted and replaced with the following:

60. LAC, in accordance with the Cooperative Agreement and Remediation Agreement, shall provide Environmental Insurance Policies. The Department has been provided and has reviewed the Environmental Insurance Policies provided by LAC. The funding of the Corrective Action Measures is anticipated over multiple years in accordance with Section 502 of the Cooperative Agreement, and the limits of such policies and financial assurance are dependant upon such funding. The requirement to comply with financial assurance coverage is not dependant upon such findings and must be established and maintained as long as this Consent Agreement is in effect.

61. LAC shall comply with the requirements of Section 266.13, regarding the cost estimate for all activities required by this Consent Agreement, including work plans, reports, and plan submissions. For activities included within the scope of Paragraph 23a, the first cost estimate shall be included in the Transition Plan. Requirements shall continue for the duration of this Consent Agreement and shall include third-party costs, annual inflation adjustment, and a change in the cost estimate when there has been a change in the required activities, which result in an increase in the cost of such activities. Within thirty (30) days of the effective date of an approved CAP or interim corrective measures in accordance with this Consent Agreement, a current dollar corrective action cost estimate will be submitted for review and approval. Each modified or revised CAP or interim corrective measure submitted for approval must include a financial assurance

section in which amended or revised corrective action costs are included. A copy of the monthly or quarterly Project Cost and Status Reports for Summary and Invoice Summary Table of all applicable financial assurance policies will be submitted to the Department, in addition to all written reasons why the Insurance Company has not approved payment for these financial assurance policies. In addition, LAC will submit an annual report to the Department within sixty (60) days of submission of its annual reporting to the Air Force under the Cooperative Agreement.

62. LAC shall provide and maintain financial assurance for all activities required pursuant to this Consent Agreement as set forth in Section 266.14. The wording of the financial assurance mechanism shall be modified appropriately to reflect the fact that the mechanism is being used for all corrective action activities required pursuant to this Consent Agreement, not just closure and/or post-closure. Corrective action disbursements associated with OU2 and OU5 will be authorized by the insured and not the Department. LAC will establish a Closure and/or Post Closure Trust Fund in accordance with Section 266.14(a), as the mechanism for financial assurance for corrective action measure applicable to matters within the scope of Paragraphs 18a through 18i. As of the date of execution of this Agreement the estimated payments into the trust fund, including the Department technical and oversight costs set forth in paragraphs 97, are as follows: (i) on or about December 15, 2005-- \$4,250,000; (ii) on or about January 15, 2006 -- \$3,850,000 and (iii) on or about December 15, 2006 -- \$2,202,093. These amounts may be modified pursuant to the provisions of this Agreement and are contingent upon receipt of funds by LAC pursuant to the Remediation and Cooperative Agreements. The payments into the trust fund shall always be maintained in an amount sufficient to pay all actual costs. With approval of the Department, the establishment of the Trust does not preclude LAC from establishing other appropriate financial assurance mechanisms in accordance with Section 266.14. The wording of LAC's financial assurance must be approved by the Department. LAC is allowed to have a multiple years pay-in period to fully fund the financial assurance mechanism. The 5-year pay-in schedule for the Air Force to fund the Clean-up Cost Cap and Closure Cost Insurance Policy, the Pollution Legal Liability Policy, and the Post-Closure Policy associated with OU2 and OU5 shall be in accordance with Section 502.A. of the Cooperative Agreement. Post-closure coverage for OU2 must be fully funded at the beginning of the post-closure period or within 5 years, whichever is shorter. In addition, there is a 4-year pay-in schedule for the Air Force to fund the additional Environmental Services associated with paragraphs 18a through 18i.

### NOTICES

CC. Paragraph 84 is deleted and replaced with the following:

First Amendment to Consent Agreement #01-08-07-02

84. Whenever any person gives or serves any Notice under this Consent Agreement (the term "Notice" as used herein includes any demand or other communication with respect to this Consent Agreement), each such Notice shall be in writing and shall be deemed effective 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or 2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To LERA:                   Lowry Economic Redevelopment Authority  
555 Uinta Way  
Denver, Colorado 80220  
Attention: Tom Markham  
with a copy to: International Risk Group

To LAC:                    Lowry Assumption, LLC  
7991 Shaffer Parkway, Suite 100  
Littleton, CO 80127  
Attention: Wayne Dorband

To the Air Force:       Air Force Real Property Agency  
1700 N. Moore Street, Suite 2300  
Arlington, VA 22209-2802  
Attention: Director

To the Department:    Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South, HMWMD-B2-FF  
Denver, Colorado 80246-1530  
Attention: Sheila Gaston

Any party may change its address or the individual to whose attention a Notice is to be sent hereunder by giving written notice to the other party in compliance with the provisions of this Section.

#### **SITE ACCESS AND SAMPLING**

DD. The last sentence of paragraph 86 is deleted and replaced with the following:

Nothing in this paragraph limits or impairs the Department's statutory authorities to enter and inspect LAFB.

#### **REIMBURSEMENT OF COSTS**

First Amendment to Consent Agreement #01-08-07-02

EE. Paragraph 97 is deleted and replaced with the following:

97. LAC shall pay, with the "pass through" of federal funds from the Air Force under the Cooperative Agreement and the Remediation Agreement, all of the Department's technical and legal oversight costs associated with this Consent Agreement and the work performed thereunder. Oversight costs include all labor, materials, and equipment costs incurred by the Department whether through state employees' performance of, or under contracts for the performance of, the work determined by the Department to be necessary. Such oversight costs include, but are not limited to:

- a. Department salaries and fringe benefits, equipment, supplies, travel, operating (including but not limited to cell phone or similar charges), and Department indirect costs related to: 1) Department staff management and/or administration of this project/Consent Agreement; 2) Department preparation and attendance at all meetings relating to this Consent Agreement, the Environmental Services Cooperative Agreement, the Enforceable Agreement, other funding agreements, any Findings of Suitability for Early Transfer, and any related documents; 3) document review and drafting; 4) community outreach; 5) toxicology reviews; and 6) training in accordance with Department policy; and
- b. Attorney General support, laboratory analysis, OSHA training, and medical monitoring.

However, costs directly attributable to formal enforcement of this Consent Agreement are excluded.

FF. The following paragraphs 97a, 97b, 97c, 97d, and 97e are added:

97a. LAC and LERA have examined the information and documentation available from the Department's time and costs accounting system. LAC and LERA concur that the Department's time and costs accounting system in conjunction with the Cost Reimbursement Statement and Monthly Progress Report as identified in paragraphs 97a and 97c below, provides an adequate basis for tracking the tasks and costs payable hereunder. The Department shall use its best efforts to submit to LAC within fifteen (15) business days after the closing of the Department's monthly accounting period a monthly "Cost Reimbursement Statement", attached hereto as Exhibit E, and incorporated by reference. The Cost Reimbursement Statements shall be submitted to:

John R. Jackson  
Chief Financial Officer  
Lowry Assumption LLC.

First Amendment to Consent Agreement #01-08-07-02

7991 Shaffer Parkway, Suite 100  
Littleton, CO 80127

97b. Notwithstanding any estimates, LAC shall pay the Department's technical and legal oversight costs as set forth in the monthly Cost Reimbursement Statement within thirty (30) calendar days of the date of submittal of the monthly Cost Reimbursement Statement. LAC's payment shall identify this Consent Agreement and be submitted to:

Colorado Department of Public Health and Environment  
Department Controller  
4300 Cherry Creek Drive South, Fifth Floor  
Denver, CO 80246-1530

Failure to pay the Department's technical and legal oversight costs shall be a 2<sup>nd</sup> tier milestone for purposes of Stipulated Penalties as set forth in paragraphs 74 through 78, except that LAC's ability to invoke Dispute Resolution shall be as set forth in paragraph 97d and shall not be as provided in paragraph 78.

97c. Based on LAC's submittal of its draft Monthly Progress Report, as referenced in paragraph 49, the Department will annotate its oversight activities for the month. The annotated Monthly Progress Reports will be finalized within fifteen (15) business days after the closing of the Department's monthly accounting period.

97d. The Parties agree that the Department must and will exercise its discretion in determining what oversight and number of hours are necessary to fulfill its duties under this Consent Agreement. If LAC disputes any of the amount in a Cost Reimbursement Statement, LAC shall notify the Department in accordance with paragraph 84 within fifteen (15) business days of the date of submittal of the monthly Cost Reimbursement Statement. LAC shall pay all disputed amounts to the Department within fifteen (15) business days of the date of submittal of the monthly Cost Reimbursement Statement, subject to and pending resolution of a dispute. Provision of notice and payment within the prescribed time period is a condition precedent to LAC's dispute of any amount in a Cost Reimbursement Statement. If such notice is not given or payment is not made within the prescribed time period, LAC and LERA will have waived any objections to the subject monthly Cost Reimbursement Statement. Dispute resolution shall be in accordance with paragraphs 93, 94 and 95. If resolution cannot be reached within twenty (20) days by the designated representatives of the LAC and the Director, Office of Environmental Programs of the Colorado Department of Public Health and Environment, the Parties agree to pursue an alternative administrative dispute resolution mechanism (e.g., mediation, non-binding arbitration), which is mutually acceptable to both parties prior to litigation. If the total aggregate dollar amount of all disputes subject to dispute resolution exceeds \$20,000, and any dispute is elevated to an alternative administrative dispute resolution mechanism in accordance with the preceding sentence, then within

First Amendment to Consent Agreement #01-05-07-02

fifteen (15) days of the giving of notice to pursue an alternative dispute resolution mechanism, LAC shall cease all remedy investigation and construction activity until the dispute is resolved. In stopping work, LAC shall properly secure the work site(s) and take all reasonable prudent measures to protect human health and the environment prior to leaving the site(s). Operation and maintenance activities, and monitoring requirements will continue uninterrupted during any dispute.

97e. The Parties agree to meet as necessary, but not less than quarterly to discuss the actual and anticipated amount of the Department's technical and legal oversight costs. The Department shall use its best efforts to prepare and submit to LAC by March 20 of each year a good faith estimate of the technical and legal oversight costs that it anticipates for the next fiscal year beginning July 1 based on the projected schedule submitted by LAC. The Department will continue to use costing procedures for estimates that it has used historically for its oversight at LAFB. Any deviation of actual costs from any estimate shall not be subject to dispute. The Department agrees to use the inflation rate recognized by the Office of State Planning and Budget for the Greater Denver Metropolitan Area for non-personnel items, and the Salary Survey results published by the Colorado Department of Personnel in preparing the yearly estimate. LAC shall be provided opportunity to submit comments with respect to the yearly estimate of costs.

#### **MODIFICATIONS**

GG. The following paragraph 98a is added:

98a. The term "Consent Agreement" includes the initial Consent Agreement dated August 13, 2002 and all amendments thereto. All other documents referenced in the Consent Agreement include all amendments to such documents.

#### **COMPLETION OF REQUIRED ACTIONS**

HH. Paragraphs 100 and 101 are deleted and replaced with the following:

100. After the Department's approval of the last Completion Report pursuant to the requirements under paragraph 50, with respect to all operable units, or portions thereof, or respective areas or long-term obligations (e.g., administrative management and enforcement of land use restrictions and institutional controls, and operation and maintenance of the remedy, including monitoring) that are required after construction of the remedy, the LAC shall submit a Notice of Completion to the Department upon satisfactory completion of all requirements of this Consent Agreement. The Department shall either accept or reject the LAC's Notice of Completion in writing within thirty (30) days of receipt. If the Department accepts the LAC's Notice of Completion, the Department shall send a letter to the LERA, LAC, and the Air Force stating that the actions are complete. If the Department rejects the LAC's Notice of Completion, it shall

First Amendment to Consent Agreement #01-08-07-02

include in its notice to the LERA, LAC, and the Air Force, a statement identifying the requirements that the Department considers incomplete or not satisfactorily performed and a schedule for completion. The LAC shall, within fifteen (15) days of receipt of the Department's rejection, either 1) submit a notice of acceptance of the determination or 2) submit a notice of dispute to the determination. If the LAC fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Department's determination. The Department shall issue a Closeout Letter to the LAC after approval and acceptance of the LAC's final Notice of Completion detailing LAC's satisfactory completion of all requirements of the Consent Agreement.

101. The LERA acknowledges that it has entered into the Cooperative Agreement with the Air Force, and that the Environmental Services to be funded and performed pursuant to the Cooperative Agreement will be governed by the provisions of this Consent Agreement, as provided in the Cooperative Agreement. Furthermore, the LERA will (i) transfer funds received under the Cooperative Agreement to the LAC to fund the performance of said Environmental Services, pursuant to the terms of the Cooperative Agreement and the Lowry Remediation Agreement between the LERA and LAC, (ii) participate in the preparation of informational materials and the public involvement processes as set forth in Paragraphs 52, 53, and 54 hereof, and (iii) provide support to the RAB in accordance with paragraph 55. LERA will be the transferee of all property transferred from the USAF. The LERA shall not transfer any of the parcels identified in Exhibit F and Figure 3, or any part thereof, until (1) the Completion Report for the last identified remedial action for any such parcel, excluding any ongoing or future remedial actions associated with OU5, has been approved in writing by the Department in accordance with paragraph 50 hereof and all identified institutional controls have been implemented, if required or (2) if such measures have not been fully completed, written approval is obtained from the Department. The LERA shall have no further obligation or liabilities whatsoever under this Consent Agreement.

### TERMINATION

II. Paragraphs 102 is deleted and replaced with the following:

102. The parties may terminate this Consent Agreement upon one of the following:

- (a) The Department's issuance of a Closeout Letter after approval and acceptance of LAC's final Notice of Completion detailing LAC's satisfactory completion of all requirements of the Consent Agreement;
- (b) Notice to the Department that the Air Force has failed to fund the Environmental Services pursuant to the Cooperative Agreement, Section 502 ("Pre-Termination Notice") or the proceeds payable under the Insurance Policies have been

First Amendment to Consent Agreement #01-08-07-02

exhausted. LAC and/or LERA shall, at the written request of the Department, meet and confer with the Department regarding the failure to fund within thirty (30) days of issuance of the Pre-Termination notice. If the Department agrees with LAC and/or LERA that the Air Force has failed to fund in accordance with the terms of the Cooperative Agreement, the Department and LAC and/or LERA will mutually agree to terminate this Consent Agreement. If the Department disagrees with LAC and/or LERA's Pre-Termination Notice, the dispute resolution procedures described in paragraphs 92 through 95 of this Consent Agreement may be invoked. A temporary suspension of funding under the Cooperative Agreement shall not trigger the right to request to terminate this Consent Agreement pursuant to this paragraph, so long as the funding is restored within thirty (30) days, (or as otherwise agreed upon by the parties), and such suspension has not substantially compromised LAC and/or LERA's ability to perform its obligations under this Consent Agreement; or

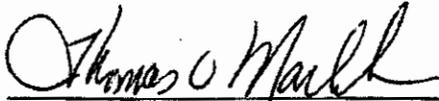
(c) Mutual agreement of the parties.

If the provisions of Paragraph 102 are exercised, LAC will secure the ongoing Corrective Action Measures project site and take all reasonably prudent measures to protect human health and the environment.

**AUTHORIZATION TO SIGN**

The undersigned warrant that they are authorized to bind legally their respective principals to this First Amendment to the Consent Agreement. This First Amendment to the Consent Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same First Amendment to the Consent Agreement.

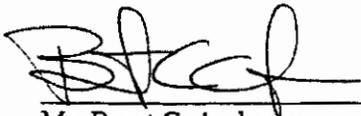
FOR THE LERA:



Mr. Thomas O. Markham  
Executive Director

9-25-05  
Date

FOR THE LAC:



Mr. Brent C. Anderson  
President

9/23/05  
Date

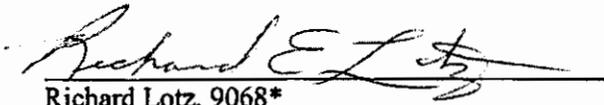
FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:



Gary Baughman  
Director Hazardous Materials Waste Management Division

9/29/05  
Date

Approved as to form:



Richard Lotz, 9068\*  
Assistant Attorney General  
Natural Resources and Environment Section  
Attorney for the Department

9/30/05  
Date

1525 Sherman Street, 5th Floor  
Denver, Colorado 80203  
Telephone: (303) 866-5065

\*Counsel of Record