

**INTERAGENCY AGREEMENT**

between

**UNITED STATES DEPARTMENT OF AGRICULTURE**

**FOREST SERVICE – REGION 10**

and

**UNITED STATES DEPARTMENT OF TRANSPORTATION**

**FEDERAL HIGHWAY ADMINISTRATION**

**WESTERN FEDERAL LANDS HIGHWAY DIVISION**

**IN THE MATTER OF:**

**FS 3030 ROAD SITE**

**Tongass National Forest, Alaska**

**Proceeding under Section 104 of the  
Comprehensive Environmental Response, Compensation,  
and Liability Act, as amended,  
42 U.S.C. §§ 9604**

## TABLE OF CONTENTS

I.	JURISDICTION AND GENERAL PROVISIONS .....	1
II.	DEFINITIONS .....	2
III.	FACTS.....	4
IV.	CONCLUSIONS OF LAW AND DETERMINATIONS.....	5
V.	DESIGNATION OF CONTRACTOR, PROJECT MANAGER, AND ON-SCENE COORDINATOR .....	6
VI.	WORK TO BE PERFORMED .....	8
VII.	SITE ACCESS.....	11
VIII.	ACCESS TO INFORMATION .....	11
IX.	RECORD RETENTION .....	12
X.	COMPLIANCE WITH OTHER LAWS.....	12
XI.	EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES .....	13
XII.	AUTHORITY OF ON-SCENE COORDINATOR .....	14
XIII.	PAYMENT OF COSTS.....	14
XIV.	DISPUTE RESOLUTION .....	14
XV.	FORCE MAJEURE .....	16
XVI.	CLAIMS .....	16
XVII.	CONTRIBUTION.....	17
XVIII.	MODIFICATIONS.....	17

XIX.	ADDITIONAL INVESTIGATION, ANALYSIS, AND RESPONSE .....	18
XX.	NOTICE OF COMPLETION OF WORK .....	19
XXI	INTEGRATION/APPENDICES .....	19
XXII	OTHER CLAUSES.....	20
XXIII.	EFFECTIVE DATE/AUTHORITY.....	21

Appendix 1 – Action Memorandum

Appendix 2 – Work Plan

## **I. JURISDICTION AND GENERAL PROVISIONS**

1.1. This Agreement is entered into voluntarily by the United States Department of Agriculture, Forest Service (Forest Service) and the United States Department of Transportation, Federal Highway Administration, Western Federal Lands Highway Division (FHWA). This Agreement provides for the performance of a Time Critical Removal Action as set forth in the Removal Action Memorandum signed by the Forest Service on September 7, 2008, and any further actions deemed necessary by the respective agencies to this Agreement, and needed in connection with the FS 3030 Road (the "Site") located within the Tongass National Forest in the State of Alaska.

1.2. This Agreement is executed to create a collaborate and effective working relationship between the Forest Service and FHWA in carrying out the authority vested in the President of the United States by Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9604, as amended ("CERCLA"). This authority was delegated to the Secretary of the Department of Agriculture (the "Secretary of Agriculture") and the Secretary of the Department of Transportation (the "Secretary of Transportation") by Executive Order 12580, 52 Fed. Reg. 2923-36 (January 23, 1987), 3 C.F.R. Compilation, p. 193. The Secretary of Agriculture's authority was further delegated to the Chief of the Forest Service (the "Chief") by 7 C.F.R. § 2.60(a)(39). The Chief's authority was re-delegated to Regional Foresters, pursuant to the Forest Service Manual 2164.04c, 2.1, effective November 10, 1994.

## **II. DEFINITIONS**

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

“Action Memorandum” will mean the Forest Service Action Memorandum relating to the Site signed on September 7, 2008, by the Regional Forester, Forest Service Region 10, or his/her delegate, together with all attachments thereto, and concurred in by FHWA. The Action Memorandum is attached as Appendix 1.

“Agencies” will mean the Forest Service and FHWA.

“Agreement” will mean this Interagency Agreement and all appendices attached hereto (listed in Section XXI). In the event of conflict between this Agreement and any appendix, this Agreement will control.

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

“Day” will mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period will run until the close of business of the next working day.

“Effective Date” will be the effective date of this Agreement as provided in Section XXIII.

“FHWA” will mean the Federal Highway Administration and the Western Federal Lands Highway Division of the Federal Highway Administration.

“Forest Service” will mean the United States Department of Agriculture, Forest Service.

“National Contingency Plan” or “NCP” will mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Paragraph” will mean a portion of this Agreement identified by an Arabic numeral.

“RCRA” will mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

“Section” will mean a portion of this Agreement identified by a Roman numeral.

“Site” will mean the FS 3030 Road located within the Tongass National Forest, Alaska and depicted generally on the map attached as figure 1 to the Work Plan (Appendix 2). The Site also includes the areal extent of contamination from the FS 3030 Road and all suitable areas in very close proximity to the contamination necessary for response action implementation.

“State” will mean the State of Alaska.

“USDA” will mean the United States Department of Agriculture, including the Forest Service and the Office of the General Counsel.

Waste Material will mean 1) any hazardous substance under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any solid waste under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any hazardous substance under AS 46.08.900(6) and 46.09.900(4).

“Work” will mean all activities the agencies perform under this Agreement.

“ Work Plan” will mean the work plan for implementation of the Time Critical Removal Action, as set forth in Appendix 2 to this Agreement, and any modifications made thereto in accordance with this Agreement.

### **III. FACTS**

3.1. FHWA is an agency within the United States Department of Transportation.

3.2. The Site includes the FS 3030 Road depicted generally on the map attached as figure 1 of the Work Plan (Appendix 2). The Site also includes the areal extent of contamination from the FS 3030 Road and all suitable areas in very close proximity to the contamination necessary for response action implementation. The Site is located on National Forest System land.

3.3. The FS 3030 Road was reconstructed using Forest Highway funds. The administration of the Alaska Forest Highway program, including project selection, project design, and the decision to proceed with project construction are the joint decisions of the

Forest Service, the FHWA, and the Alaska Department of Transportation and Public Facilities. FHWA performed the design and construction work for FS 3030 Road, subject to concurrence by the Forest Service and the Alaska Department of Transportation.

3.4. Pyretic Rock from road fill material used in the construction of the FS 3030 Road is producing acid rock drainage (ARD).

3.5. The FS 3030 Road crosses several streams.

3.6 During the 2007 construction season, FHWA identified excessive corrosion to galvanized steel culverts used as temporary stream crossings.

3.7. Water quality monitoring was initiated on June 13, 2007. The water quality monitoring identified low pH and elevated levels of copper and iron which did not meet Alaska Water Quality Standards.

#### **IV. CONCLUSIONS OF LAW AND DETERMINATIONS**

4.1. Based on the Findings of Fact set forth above, the Forest Service and FHWA make the following Conclusions of Law:

4.1.1. The Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4.1.2. The contamination found at the Site, as identified in the Findings of Fact above, includes hazardous substances as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

4.1.3. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

**V. DESIGNATION OF CONTRACTOR, PROJECT MANAGER,  
AND ON-SCENE COORDINATOR**

5.1. FHWA has retained a contractor to provide advice concerning the Site and has notified the Forest Service of the name and qualifications of such contractor. FHWA will work cooperatively with the Forest Service in obtaining other contractor(s) or subcontractor(s) to perform its responsibilities with respect to the Work. FHWA will contract for such contractors and assume responsibility for the administration of such contracts. The solicitation package and any material modifications to the solicitation or the contract will be provided to the Forest Service for review and comments prior to issuance. The Agencies will work cooperatively to resolve any issues relating to such contracts.

5.2. FHWA has designated Michael S. Traffalis as its project manager for this Site. Except as otherwise provided in this Agreement, the Forest Service will direct all communications contemplated by this Agreement to Mr. Traffalis.

5.3. The Forest Service has designated Ken Vaughan, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Agreement, FHWA will direct all communications contemplated by this Agreement to the OSC.

5.4. The Forest Service and FHWA will have the right to change their respective designated OSC or Project Manager. The Agencies will notify each other of any change 10 days before such a change is made, if possible. The initial notification may be made orally, but will be promptly followed by a written notice.

5.5. The Agencies will provide deliverables in an electronic format that can be modified. Deliverables and other written communications submitted under this Agreement will be sent to the following persons:

For the Forest Service:

Ken Vaughan  
USDA Forest Service  
Engineering and Aviation Management  
PO Box 21628  
708 W. 9<sup>th</sup> St.  
Juneau, AK 99802-1628  
Office: 907-586-8789  
Cell: 907-723-3508  
Fax: 907-586-7555  
e-mail: [kvaughan@fs.fed.us](mailto:kvaughan@fs.fed.us)

James Alexander  
USDA Office of the General Counsel  
1220 SW Third Avenue, Room 1734  
Portland, OR 97204-2823  
Phone: 503-326-7264  
FAX: 503-326-3807  
e-mail: [james.alexander@usda.gov](mailto:james.alexander@usda.gov)

For FHWA:

Michael S. Traffalis  
Federal Highway Administration  
610 East Fifth St.  
Vancouver, WA 98661  
Phone: 360-619-7787  
FAX: 360-619-7846  
e-mail: [Michael.Traffalis@dot.gov](mailto:Michael.Traffalis@dot.gov)

Timothy J. Binder  
Division Counsel  
Federal Highway Administration  
610 East Fifth St.  
Vancouver, WA 98661  
Phone: 360-619-7976  
FAX: 360-619-7575  
e-mail: [Timothy.Binder@dot.gov](mailto:Timothy.Binder@dot.gov)

5.6. In addition to providing deliverables electronically, as set forth above, the agencies will provide a hard copy of each deliverable to the receiving agency and State representatives and will, upon request, provide up to four additional hard copies of a deliverable to the OSC or FHWA.

## **VI. WORK TO BE PERFORMED**

6.1 FHWA will perform, at a minimum, all actions necessary to implement the Action Memorandum and Work Plan.

6.2 Deliverables. The documents required to be shared between the Agencies, pursuant to this Agreement will be known as “deliverables”. For the purposes of this Agreement, the deliverables include any revisions to the Work Plan (including a Sampling and Analysis Plan, Quality Assurance Project Plan (“QAPP”), and a Health and Safety

Plan) (Appendix 2) and a Removal Action Completion Report. The Agencies will submit the deliverables required by this Agreement to each other in accordance with the schedules provided in this Agreement and the Work Plan. All deliverables will be submitted initially in draft and are subject to review, comment, modification, and approval by the Forest Service. The Agencies will work together cooperatively to address issues raised by either agency.

6.3. Work Plan and Implementation. FHWA has prepared and the Forest Service has approved the Work Plan (Appendix 2). If the Forest Service and FHWA determine that revisions are needed to the Work Plan, FHWA will prepare a draft revised Work Plan. The draft revised Work Plan will provide a description of, and an expeditious schedule for, the actions contemplated under this Agreement. Any revisions to the QAPP portion of the Work Plan will be prepared in accordance with “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” (EPA/240/B-01/003, March 2001), and “EPA Guidance for Quality Assurance Project Plans (QA/G-5)” (EPA/600/R-98/018, February 1998).

6.3.1. The Forest Service will review and provide comments on any draft revised Work Plan. The Agencies will work together to resolve any issues that arise from this review. Once the Forest Service has approved the revised Work Plan, FHWA will implement the Work Plan, as revised.

6.4. Health and Safety Plan. As part of the Work Plan, FHWA has prepared and the Forest Service has approved FHWA’s plan to ensure the protection of the public

health and safety during performance of on-Site work as contemplated in this Agreement.

Any revisions to this plan will be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, any revision to this plan will comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. The Forest Service will review any draft revised plan and provide any comments to FHWA. The agencies will work together to resolve any issues that arise from this review. Once the Forest Service has approved the revised plan, FHWA will implement the revised plan.

#### 6.5. Quality Assurance and Sampling.

6.5.1. All sampling and analyses performed will comply with EPA guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. FHWA and the Forest Service will ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. The agencies will follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. The agencies will use only laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans" (QA/R-2) (EPA/240/B-01/002, March

2001), or equivalent documentation as determined by the agencies. The agencies may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (“NELAP”) as meeting the Quality System requirements.

6.5.2. Upon request by the Forest Service, FHWA will allow the Forest Service or its authorized representatives to take split and/or duplicate samples. FHWA will notify the Forest Service not less than 15 days in advance of any sample collection activity, unless shorter notice is agreed to by the Agencies. The Forest Service will have the right to take any additional samples that the Forest Service deems necessary. Upon request, the Forest Service will allow FHWA to take split or duplicate samples of any samples it takes.

## **VII. SITE ACCESS**

7.1. Both Agencies will allow each other to have access to any portion of the Site that is under the control of either agency at all reasonable times for the purpose of conducting any activity related to this Agreement.

## **VIII. ACCESS TO INFORMATION**

8.1. FHWA will provide to the Forest Service and the Forest Service will provide to FHWA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the matters covered by this Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing,

correspondence, or other documents or information related to the Work. The agencies will cooperate with each other in sharing information known within the Agencies.

#### **IX. RECORD RETENTION**

9.1. Unless otherwise agreed to in writing by the agencies, FHWA will retain for 10 years after completion of Work all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site. FHWA will instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work for a period of 10 years after completion of the Work.

9.2. At the conclusion of this document retention period, FHWA will notify the Forest Service at least 90 days prior to the destruction of any such records or documents, and, upon request by the Forest Service, FHWA will deliver any such records or documents to the Forest Service.

#### **X. COMPLIANCE WITH OTHER LAWS**

10.1. FHWA and the Forest Service will perform all actions required pursuant to this Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j).

## **XI. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

11.1. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, FHWA and the Forest Service will immediately take all appropriate action. The Agencies will take these actions in accordance with all applicable provisions of this Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. The Agencies will immediately notify each other of the incident or Site conditions.

11.2. In addition, in the event of any release of a hazardous substance from the Site, FHWA or the Forest Service will immediately notify the National Response Center at (800) 424-8802 and the other agency. FHWA or the Forest Service will prepare a written report within 7 days after each release, and copy the other agency, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

## **XII. AUTHORITY OF ON-SCENE COORDINATOR**

12.1. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

## **XIII. PAYMENT OF COSTS**

13.1. The Forest Service and FHWA will each pay for their own administrative costs as it relates to the matters included within this Agreement, except that FHWA will reimburse the Forest Service for the costs of the consultant contract the Forest Service has executed, to the extent the Agencies mutually agree. FHWA also will pay for the costs of its own consultant as well as for all costs of performing its portion of the Work as set forth in this Agreement. The Forest Service and FHWA will enter into a Reimbursable Agreement detailing the payment of the costs for the Forest Service consultant

## **XIV. DISPUTE RESOLUTION**

14.1. The Agencies will attempt to resolve any disagreements concerning this Agreement expeditiously and informally.

14.2. All reasonable efforts will be made to resolve issues at the lowest possible level. If the Agencies are not able to resolve an issue at the level of the OSC and the FHWA project manager, either agency may request in writing higher level involvement to resolve the dispute. The agencies designate the Director of Engineering and Aviation Management for Region 10 of the Forest Service (Sam Carlson or his successor) and the

Director of Project Delivery of the Western Federal Lands Highway Division of FHWA (Robert B. Lale or his successor) as the higher-level decision-makers for the respective agencies.

14.3. If the respective Directors are not able to resolve the issue within 10 calendar days after receipt of a written request for higher level involvement (or such longer time as the agencies mutually agree), upon written request of either agency, the issue will be referred to the Regional Forester for Region 10 of the Forest Service (Denny Bschor or his successor) and the Division Engineer of the Western Federal Lands Highway Division of FHWA (Clara H. Conner or her successor) for resolution.

14.4. The agency making the written request for higher level involvement at any level will also provide with the request a short memorandum identifying the issue, the attempts the Agencies have made to resolve the issue, the respective positions of the Agencies, and the reason(s) why the issue is important to the agency. The non-requesting agency may also provide a short memorandum addressing these matters.

14.5 If the Agencies are unable to resolve the issue after elevation to the Regional Forester and the Division Engineer level, the Agencies reserve the right to use whatever authorities they have, including Work takeover by the Forest Service.

## **XV. FORCE MAJEURE**

15.1. The Agencies agree to perform all requirements of this Agreement within the time limits established under this Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Agreement, a *force majeure* is defined as any event arising from causes beyond the control of the agencies, or of any entity controlled by the agencies, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Agreement despite the agency's best efforts to fulfill the obligation. *Force majeure* includes financial inability to complete the Work due to lack of funding provided by Congress or the Administration.

15.2. If any event occurs or has occurred that may delay the performance of any obligation under this Agreement, whether or not caused by a *force majeure* event, the Agencies will promptly notify each other of the event. The Agencies will work cooperatively to resolve any issues that may arise because of the delay.

## **XVI. CLAIMS**

16.1. By executing this Agreement, the Forest Service assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of FHWA. Likewise, FHWA assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of the Forest Service. The Agencies will not be deemed a party to any contract entered into by the other agency or its officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Agreement.

16.2. Nothing in this Agreement constitutes a satisfaction of or release from any claim or cause of action against any person not a party to this Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

### **XVII CONTRIBUTION**

17.1. Nothing in this Agreement precludes the United States from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Agreement. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

### **XVIII. MODIFICATIONS**

18.1. Any requirements of this Agreement may be modified in writing by mutual agreement of the Agencies.

18.2. If either agency seeks to deviate from any approved Work Plan, or schedule, the agency will submit to the other agency a written proposal outlining the proposed modification and its basis. The Agencies will seek to reach a mutual agreement concerning the proposed modification. FHWA, as the performing agency for

the Work Plan, will not proceed with any requested modification until receiving written approval from the Forest Service OSC.

18.3. No informal advice, guidance, suggestion, or comment by the OSC or other Forest Service representative or by the Project Manager or other FHWA representative regarding reports, plans, specifications, schedules, or any other writing submitted by the agencies will relieve the Agencies of their respective obligation to obtain any formal agreement required by this Agreement, or to comply with all requirements of this Agreement, unless it is formally modified.

### **XIX ADDITIONAL INVESTIGATION, ANALYSIS, AND RESPONSE**

19.1. If either agency determines that additional Work on the Site is required to respond to the release or threatened release of hazardous substances at the Site and that Work is not covered by Section VI above, the agency will notify the other agency of that determination. Such additional Work may include, but is not limited to, a further time critical removal action, a removal site inspection (SI), a removal engineering evaluation/cost analysis (EE/CA), a remedial investigation (RI), a feasibility study (FS), and any removal or remedial action decisions based on an EE/CA or FS. Within 15 days of receipt of notice, the Agencies will reach agreement on whether the additional work is required and, if so, who will undertake the requested additional Work. Whichever agency agrees to undertake the additional Work will submit to the other agency, within 30 days of the agreement, a Work Plan for the additional Work. The plan will conform to the applicable requirements of Section VI (Work to Be Performed) of this Agreement. The

other agency will provide comments to the Work Plan within 15 days of receipt of the Work Plan. The Agencies will seek to reach a mutual resolution on all issues involving the Work Plan. Upon agreement by both Agencies, the undertaking agency will implement the plan for additional Work in accordance with the provisions and schedule contained therein.

## **XX. NOTICE OF COMPLETION OF WORK**

20.1. When the Forest Service determines that all Work undertaken by FHWA has been fully performed in accordance with this Agreement and the Time-critical Removal Action Memorandum, with the exception of any continuing obligations required by this Agreement, including Section IX (Record Retention), the Forest Service will provide written notice to FHWA.

## **XXI. INTEGRATION/APPENDICES**

21.1. This Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the agencies with respect to the issues addressed in this Agreement. The agencies acknowledge that there are no representations, agreements or understandings relating to the FS 3030 Road CERCLA site other than those expressly contained in this Agreement. The following appendices are attached to and incorporated into this Agreement:

Appendix 1 – Action Memorandum

Appendix 2 – Work Plan

## **XXII. OTHER CLAUSES**

22.1. FREEDOM OF INFORMATION ACT (FOIA). Any information furnished to either agency under this Agreement is subject to the Freedom of Information Act (5 U.S.C. 552).

22.2. PARTICIPATION IN SIMILAR ACTIVITIES. This Agreement in no way restricts the Agencies from participating in similar activities with other private or public agencies, organizations, and individuals.

22.3. COMMENCEMENT/EXPIRATION/TERMINATION. This Agreement takes effect upon the signature of the Agencies and shall remain in effect until completion of all response actions deemed necessary by the agencies, unless terminated earlier by 60-day written notice to the other agency.

22.4. NON-FUND OBLIGATING DOCUMENT. Nothing in this Agreement shall require either agency to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the agencies will require execution of separate agreements and must be contingent on the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This Agreement does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

**XXIII. EFFECTIVE DATE/AUTHORITY**

23.1. The Effective Date of this Agreement is the date the last signature is affixed to this Agreement.

For the Federal Highway Administration:

BY: Clara H. Conner  
Name: Clara H. Conner  
Title: Division Engineer

Dated: 9/25/2008

For the United States Department of Agriculture, Forest Service

BY: Sam H. Carlson  
Name: Sam H. Carlson  
(Director of Engineering & Aviation Management)  
Regional Forester (or designee)  
Forest Service Region 10

Dated: 9/22/08