

## CLARK COUNTY STAFF REPORT

**DEPARTMENT:** Public Works/Engineering & Construction/Project Management

**DATE:** September 1, 2015

**REQUESTED ACTION:** Authorize Chair to sign Modification 3 to the Remediation Agreement with Weston Solutions, Inc.

Consent       Hearing       County Manager

**PUBLIC WORKS GOALS:**

- Provide safe and efficient transportation systems in Clark County
- Create and maintain a vibrant system of parks, trails and green spaces
- Continue responsible stewardship of public funds
- Promote family-wage job creation and economic development to support a thriving community
- Maintain a healthy, desirable quality of life
- Increase partnerships and foster an engaged, informed community
- Cultivate a nimble, responsive work force
- Make Public Works a great place to work

**BACKGROUND**

The county is currently contracted with Weston Solutions, Inc. in conducting Phase 1 of 4 phases to remediate Munitions of Explosive Concern (MEC) at the former Camp Bonneville Military Reservation. The remediation is defined and overseen by the Department of Ecology.

Clark County has procured funding in the amount of \$4,824,245 through the Army to continue with Phase 2 of the work. Additionally, the county has agreed to a fixed price contract of the same amount with Weston Solutions, Inc. to perform this work. Approval of this modification will allow work to proceed to Phase 2.

The county's obligation to perform remediation and compensate Weston Solutions, Inc. is limited to the funding provided by the Army.

**COUNCIL POLICY IMPLICATIONS**

This project has no council policy implications.

**ADMINISTRATIVE POLICY IMPLICATIONS**

This project has no administrative policy implications.

**COMMUNITY OUTREACH**

None.

**BUDGET IMPLICATIONS**

| YES | NO |   |
|-----|----|---|
| X   |    | Action falls within existing budget capacity.   |
|     | X  | Action falls within existing budget capacity but requires a change of purpose within existing appropriation |
|     | X  | Additional budget capacity is necessary and will be requested at the next supplemental.                     |

PW 15-070

|  |  |  |
|--|--|--|
|  |  | If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager. |
|--|--|--|

**BUDGET DETAILS**

|                          |                        |
|--------------------------|------------------------|
| Local Fund Dollar Amount | \$0                    |
| Grant Fund Dollar Amount | \$4,824,245.00         |
| Account                  | 1013                   |
| Company Name             | Weston Solutions, Inc. |

**DISTRIBUTION:**

Board staff will post all staff reports to The Grid. <http://www.clark.wa.gov/thegrid/>

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\_\_\_\_\_  
Tom Grange, PE  
Engineering Division Manager  
Public Works

  
\_\_\_\_\_  
Heath H. Henderson, PE  
Public Works Director/County Engineer

APPROVED:   
\_\_\_\_\_  
CLARK COUNTY, WASHINGTON  
BOARD OF COUNTY COUNCILORS

DATE: 9/1/15  
SR# SR 177-15

APPROVED: \_\_\_\_\_  
Mark McCauley, Acting County Manager

DATE: \_\_\_\_\_

## BUDGET IMPACT ATTACHMENT

### Part I: Narrative Explanation

I. A – Explanation of what the request does that has fiscal impact and the assumptions for developing revenue and costing information.

Clark County has procured funding in the amount of \$4,824,245.00 through the Army to continue with Phase 2 of the remediation of the former Camp Bonneville Military Reservation. Additionally, the county has agreed to a fixed price contract of the same amount with Weston Solutions, Inc. to perform this work. Approval of this modification will allow work to proceed to Phase 2.

### Part II: Estimated Revenues

| Fund #/Title         | Current Biennium |                  | Next Biennium      |                    | Second Biennium    |                    |
|----------------------|------------------|------------------|--------------------|--------------------|--------------------|--------------------|
|                      | Army             | Total            | Army               | Total              | Army               | Total              |
| 1013/Camp Bonneville | \$536,027        | \$536,027        | \$2,144,108        | \$2,144,108        | \$2,144,108        | \$2,144,108        |
|                      |                  |                  |                    |                    |                    |                    |
|                      |                  |                  |                    |                    |                    |                    |
| <b>Total</b>         | <b>\$536,027</b> | <b>\$536,027</b> | <b>\$2,144,108</b> | <b>\$2,144,108</b> | <b>\$2,144,108</b> | <b>\$2,144,108</b> |

II. A – Describe the type of revenue (grant, fees, etc.)

The revenue for this fund is provided by the Environmental Services Cooperative Agreement with the Army. The county's obligation to perform remediation and compensate Weston Solutions, Inc. is limited to the funding provided by the Army.

### Part III: Estimated Expenditures

III. A – Expenditures summed up

| Fund #/Title         | FTE's | Current Biennium |                  | Next Biennium      |                    | Second Biennium    |                    |
|----------------------|-------|------------------|------------------|--------------------|--------------------|--------------------|--------------------|
|                      |       | Army             | Total            | Army               | Total              | Army               | Total              |
| 1013/Camp Bonneville |       | \$536,027        | \$536,027        | \$2,144,108        | \$2,144,108        | \$2,144,108        | \$2,144,108        |
|                      |       |                  |                  |                    |                    |                    |                    |
|                      |       |                  |                  |                    |                    |                    |                    |
| <b>Total</b>         |       | <b>\$536,027</b> | <b>\$536,027</b> | <b>\$2,144,108</b> | <b>\$2,144,108</b> | <b>\$2,144,108</b> | <b>\$2,144,108</b> |

III. B – Expenditure by object category

| Fund #/Title         | Current Biennium |                  | Next Biennium      |                    | Second Biennium    |                    |
|----------------------|------------------|------------------|--------------------|--------------------|--------------------|--------------------|
|                      | Army             | Total            | Army               | Total              | Army               | Total              |
| Salary/Benefits      |                  |                  |                    |                    |                    |                    |
| Contractual          | \$536,027        | \$536,027        | \$2,144,108        | \$2,144,108        | \$2,144,108        | \$2,144,108        |
| Supplies             |                  |                  |                    |                    |                    |                    |
| Travel               |                  |                  |                    |                    |                    |                    |
| Other controllables  |                  |                  |                    |                    |                    |                    |
| Capital Outlays      |                  |                  |                    |                    |                    |                    |
| Inter-fund Transfers |                  |                  |                    |                    |                    |                    |
| Debt Service         |                  |                  |                    |                    |                    |                    |
| <b>Total</b>         | <b>\$536,027</b> | <b>\$536,027</b> | <b>\$2,144,108</b> | <b>\$2,144,108</b> | <b>\$2,144,108</b> | <b>\$2,144,108</b> |

PW 15-53

**MODIFICATION 03 OF REMEDIATION AGREEMENT  
BETWEEN CLARK COUNTY AND WESTON SOLUTIONS, INC.**

This Agreement is entered into on the 21 day of August, 2015, between Clark County hereinafter referred to as "the County" and Weston Solutions, Inc. hereafter referred to as "Weston".

WITNESSETH:

WHEREAS, the parties entered into a Remediation Agreement on or about the 1<sup>st</sup> day of May, 2012; and

WHEREAS, the parties have agreed to modify this Agreement for the reasons that follow, NOW, THEREFORE, IN CONSIDERATION OF THE PAYMENTS, COVENANTS, AND AGREEMENTS, HEREINAFTER MENTIONED, TO BE MADE AND PERFORMED BY THE PARTIES HERETO, THE PARTIES COVENANT AND AGREE AS FOLLOWS:

**Section 1. Reasons for modification.**

1. Pursuant to Section VIII Changes, and subject to funding by the grants officer for the price that Weston has agreed upon and as stated in this Modification 3, the parties agree to the following additional work to implement another phase of the work required for the cleanup of Camp Bonneville.

**Section 2. Modifications.**

The County and Weston agree to the following modifications of the original Remediation Agreement as modified in the First Change Order executed on September 25, 2012 and the Second Modification executed on May 14, 2014. For all work described below, the parties recognize and agree that the County is paying for timely cleanup in units of work; that fact that

Weston takes a longer or shorter time to achieve QA/QC and Ecology approval, or has made inaccurate assumptions is not a basis for adjusting the contract price. Absent an Army approved change of condition, funding will be adequate as the County is obligated to pay a preapproved amount per unit of successfully completed work multiplied by the total number of grids is equal to the total agreed compensation. In fact, the Army has required that work in multiple sections(See Exhibit “B” which adopted and incorporated herein) be completed regardless of whether the cleanup cost exceeds the amount paid. The parties understand and agree with these limitations.

Accepting the above limitations and for the limited purposes of this modification, the parties agree that:

1. Section III Scope of Work is modified as follows:

“Weston will perform additional surface and subsurface analog clearance for munitions and explosives of concern (MEC) at Camp Bonneville in accordance with the “Scope of Work – Task Descriptions” detailed in Exhibit A of this Modification. 03.”

2. Section IV Schedule is modified as follows:

“The Modification 3 Scope of Work will be performed in conjunction with the Central Valley Floor and Associated Wetlands (CVFAW) clearance, or will begin immediately after completion of the CVFAW clearance; therefore an additional mobilization/demobilization is not authorized for payment in the scope of this Modification 3. Weston will perform the tasks necessary to obtain the notice of completion and approval of AAR for the Modification 3 Scope of Work by no later than December 31, 2017. Weston and the County will negotiate an extension to the schedule for completion of the work should any delays be caused either by the County and/or a

force majeure event at no fault of the parties, as defined in the Environmental Services Cooperative Agreement at Section C.5.12. Any negotiated schedule extension(s) and equitable adjustment shall be incorporated into the Agreement by written modification.”

3. Section VI Performance Bond is modified as follows:

“Performance bonding has been provided to the County for the contract value through Modification 2 of \$15,629,885.61. Prior to start of field work, a performance bond in the amount of \$4,824,245.00 associated with the Modification 3 scope of work will be submitted to the County.

4. Section VII Compensation is modified as follows:

“Subject to approval of the grants officer, the fixed price amounts for performing the surface and subsurface clearance tasks are listed in Exhibit A, and it is agreed by the parties to total \$4,824,245.00. The unit pricing for step-outs (increase) from the acreages listed in Exhibit A, if directed by the County in writing, shall be \$29,885.00 per acre. Progress payments will be allowed as the work is performed subject to acceptance by the County less a 5% retainage. Accumulated retention shall be released to Weston within 30 days after acceptance by the County for the work described in Exhibit A. The County’s quality control process and acceptance of completed grids for payment of surface clearance (Exhibit A, Tasks 5.a., 5.b, and 5.c) will be in accordance with Section VII.A.3 of the original agreement; however QA/QC failure criteria will be limited to the clearance depth of 3 inches and limited to items detectable by a Schonstedt GA-52Cx instrument at 3 inches depth. QA/QC failure criteria for subsurface clearance (Exhibit A, Task 5.d) remain the same as agreed to for the ongoing work in the CVFAW area and will be

limited to a depth of 14 inches and will be in accordance with Field Variance Form CVFAWWP-005-Rev. 1 dated February 12, 2013.”

**Section 3. Entire Contract.**

The parties agree that the Remediation Agreement as modified by the first Change Order, the second Modification, and modified by this Modification 03 are a complete expression of the terms hereto and any oral representations or understanding not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute a material breach of the Agreement and cause for termination.

The parties agree that except as modified by the first Change Order, the second Modification, and this modification 03, all terms and conditions of the original Remediation Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this 1st day of ~~July~~, 2015.  
Sept.

BOARD OF COUNTY COMMISSIONERS  
FOR CLARK COUNTY, WASHINGTON

  
\_\_\_\_\_  
Chair

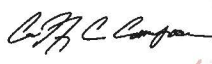
Attest: \_\_\_\_\_

  
\_\_\_\_\_  
Clerk to the Board

APPROVED AS TO FORM ONLY  
Anthony Golik, Prosecuting Attorney

By   
Deputy Prosecuting Attorney

WESTON SOLUTIONS, INC.

By   
Its Sr. Vice President  
(Title)

Digitally signed by Geoffrey C. Compeau, Ph.D.  
DN: cn=Geoffrey C. Compeau, Ph.D., o=Weston Solutions, ou, email=Geoff.Compeau@Westonsolutions.com, c=US  
Date: 2015.08.21 13:28:05 -07'00'



**EXHIBIT A**

**Scope of Work – Task Description**

**RAU3 Phase 2**

## **Camp Bonneville RAU3 Phase 2 Scope of Work – Task Descriptions and Key Assumptions**

This Scope of Work provides the details to perform additional surface and subsurface analog clearance for munitions and explosives of concern (MEC) in accordance with the Final Remedial Action (RAU) 3 Phase 2 work, remediation agreement between Clark County and Weston Solutions, Inc. (Weston), and RFP 614 as applicable. Total clearance area is approximately 124.3 acres. Specific work areas, clearance depths and methods addressed under this Scope of Work include:

- Former Demolition Areas 1 and 2 (DA1 & DA2); surface clearance (0 to 3 inches); Schonstedt ferromagnetic metal detector
  - DA1: 103.8 acres (1200 ft radius from DA1)
  - DA2: 5.7 acres (500 ft x 500 ft centered on DA2)
- Former Training Ranges: Hand Grenade, Rifle Grenade, and 3.5-inch rocket ranges; surface clearance (0 to 3 inches), Schonstedt ferromagnetic metal detector
  - Hand grenade range: 2.5 acres
  - Rifle grenade range: 2.5 acres
  - 3.5 inch rocket range: 5.2 acres
- Former Firing Positions: Artillery Position 1, 2, 3, 4 and 7 and Mortar Positions 1, 2, 4, 5, and 6; subsurface clearance (0 to 14 inches); MineLab all-metals detector (small head)
  - Assumed to be 100 ft x 200 ft each (4.6 acres total)

### **Task 1, Permits, Work Plans, and all other Federal, State, Local and Tribal Government Requirements (including bond)**

This task includes home office and field personnel effort to prepare a separate work plan, or amendment to the Central Valley Floor and Wetlands (CVFAW) workplan, to address the Final RAU3 Phase 2 work, utilizing existing relevant Standard Operating Procedures where applicable. A new Explosives Safety Submission (ESS) or revision to the existing ESS will also be prepared to address the RAU3 Phase 2 work. Although no new permit requirements are anticipated, established CVFAW environmental protection and archeological resource protection requirements will be applied to the RAU3 Phase 2 work.

**Task 1a Price: \$ 44,159**

**Task 1b Price: \$120,437 (bond)**

### **Task 2, Location Surveying, Mapping and GIS Plan**

This task includes home office, field personnel and subcontractor costs for surveying and mapping. Horizontal precision is assumed to be to the nearest one foot. One UXO

technician II will provide UXO escort and anomaly avoidance support for the surveyor. The work will be performed consistent with CVFAW Workplan, SOP-2.

**Task 2 Price: \$55,142**

### **Task 3, Site Facilities, Access and Contractor Office and Shop Buildings**

This task includes field office support to complete the RAU3 Phase 2 work described above and includes personnel, equipment, temporary facilities and materials. This task also includes effort and materials to surface grade and place up to 600 tons of 3"-minus rock in selected locations along an unimproved logging trail to provide adequate all-season vehicle access to DA1.

**Task 3 Price: \$39,357**

### **Task 4, Vegetation Removal (124.3 acres total)**

Each surface and subsurface MEC clearance location will require cutting of vegetation and removal of deadfall litter prior to MEC clearance. Due to the heavy growth in most areas, a preliminary UXO sweep will not be performed, however a preliminary visual inspection of the work area will be performed for terrain or debris hazards and wildlife or environmental concerns. It is assumed that trees six inches in diameter and larger will not be cut. To avoid contact with potential MEC items, vegetation will be cut to approximately six inches in height and the cutting crew will be provided with a UXO escort consistent with CVFAW Workplan, SOP-3. It is assumed that deadfall may be placed in nearby, but at roadside areas and not hauled off. In the event that steep or otherwise dangerous terrain precludes the safe removal of vegetation those areas will be excluded upon and the County concurrence.

DA2, the ranges and firing points all represent vegetation and terrain conditions similar to the upland portions of the CVFAW. DA1 includes steep terrain and wetlands along the North Fork of Lacamas Creek. Access and relocation of deadfall within this area will be challenging and manual methods will be required for cutting of vegetation within 50 feet of the creek. It is assumed that 100% of DA2, the ranges and firing points, and 60% of DA1 (approximately 82.8 acres total) are accessible by normal methods for vegetation removal. DA1 includes an estimated 18% of steep terrain requiring additional access considerations and 22% are wetlands requiring manual vegetation removal (approximately 41.5 acres total). Duration for the vegetation removal task is based on 2 acres per day for normal terrain/conditions, and 1 acre per day for the creek slopes and wetland areas, for a total of 83 work days.

**Task 4 Price: \$597,952**

**Task 5a: DA1 Surface Clearance (103.8 acres)**

DA1 encompasses the equivalent of approximately 452 subgrids (100 ft x 100 ft). Surface clearance will be performed in each subgrid using ropes to delineate 5 ft-wide lines and Schonstedt detectors to locate and evaluate ferromagnetic anomalies to a depth of 3 inches. In addition to any MEC/MD, other detected items in the 0-3 inch range will be removed. A daily photo of recovered items will be provided rather than a photographic log of each specific item. An "Infiltration Course" is present within DA1; however fixed objects (e.g. observation towers, fortifications, etc.) will not be removed. Weston has assumed that roads/trails have been surface cleared by others. Individual anomalies that do not produce an item within the upper 3 inches will not be recorded, however qualitative information regarding anomaly density within the subgrid will be noted for the after action report. A clearance rate of 1 subgrid (100 ft x 100 ft) per day per 4-person team per 10-hour day (4 day work week) is assumed based on the relatively high anomaly density and difficult terrain. Using the existing on-site staffing of 6 four-person teams as a basis, the duration to surface clear DA1 will be 76 work days.

**Task 5a Price: \$2,707,940**

**Task 5b: DA2 Surface Clearance (5.7 acres)**

DA2 is assumed to be a 500'x500' area (25 subgrids). Clearance methods and instruments will be performed in a manner identical to DA1. Due to a large amount of debris visible at the surface and high density of detected subsurface clutter, a surface clearance rate of 0.4 subgrids per 4-person-team per 10-hour day is assumed. As with DA1, no fixed items if encountered will be removed. With an equivalent of 6 teams the duration will be 11 work days.

**Task 5b Price: \$388,321**

**Task 5c: Firing Range Surface Clearance (10.2 acres)**

The firing ranges consist of the 3.5-inch Rocket Range (5.2 acres), Rifle Grenade (2.5 acres), and Hand Grenade Range (2.5 acres). Clearance methods and instruments will be performed in a manner identical to DA1. The surface clearance rate for these areas is assumed to be 0.5 subgrids per 4-person team and based on 6 teams results in a duration of 15 work days.

**Task 5c Price: \$529,290**

**Task 5d: Firing Point Subsurface Clearance (4.6 acres)**

The firing points consist of ten artillery and mortar positions outside the CVFAW, specifically Artillery Positions 1, 2, 3, 4 and 7 and Mortar Positions 1, 2, 4, 5 and 6. It is assumed that each firing point is approximately 100 ft x 200 ft. With an assumed subsurface (to 14 inches) clearance rate of 0.50 subgrids per 4-person-team per 10-hour day and with 6 teams, the duration will be 7 work days. Subsurface clearance procedures/methods currently used for the CVFAW are applicable to this task, including use of the MineLab all-metal detector (small head). Locations of anomalies greater than 14 inches will be recorded. It is assumed that the County will assist with communication and coordination with fence-line residents that fall within the explosive safety arc during investigation of Artillery Positions 1, 2, 3 and 4.

**Task 5d Price: \$247,354**

#### **Task 5e: MEC and MD Disposal**

An on-site magazine is available for storage of donor explosives. It is assumed that one MEC disposal event per month will be required during the clearance work. It is assumed that the equivalent of one 4-person UXO team is required for 4 hours to implement the detonation procedure for 6 events total. Approximately 2,000 pounds of MD are assumed to be collected and after inspection will be securely stored on site and transported to an off-site smelter at the end of the work.

**Task 5e Price: \$21,638**

#### **Task 6: Site Restoration**

Although a significant amount of vegetation cutting is required, it is assumed that the cut areas will naturally re-vegetate. Some surface disturbance is expected during investigation of the surface/near-surface anomalies, however, it is assumed that no reseeding will be required and site restoration activities, if any, would be minimal.

**Task 6 Price: \$23,262**

#### **Task 7: Project QC**

Quality control measures will be similar in scope to the CVFAW. A full-time UXOQCS will be on site monitoring all site activities. Failure criteria for the firing point subsurface clearance will be identical to the CVFAW. Failure criteria for the DA1, DA2, and firing range surface clearance areas will be consistent with the CVFAW failure criteria but limited to ferromagnetic items within the upper 3 inches detectable using a Schonstedt detector. Costs for QC monitoring activities are incorporated in Task 5 elements.

**Task 8: Disclosure**

No cost impacts associated with this item.

**Task 9: After Action Report**

This task includes home office and field personnel effort to prepare the After Action Report (AAR).

**Task 9 Price: \$49,393**

**Per Acre Rate for Step-Outs**

Per acre pricing for step-outs is based on DA1 pro-rated costs for Tasks 2, 3, 4 (DA 1 upland veg clearance rate), 5a, 5e, and 6 (plans and AAR not included in pro-rated cost). Step-out costs for other areas (DA2, Firing Ranges, and Firing Points) are assumed to be similar to the level of effort for DA1 step-outs.

**Step-outs: \$29,885 per acre**

**Schedule**

A total of approximately 6.3 months is required to complete the RAU3 Phase 2 work using a staff of six 4-person UXO teams which is based on the current on site staffing. In order to provide better utilization of the UXO teams during the winter months when a significant portion of the CVFAW soils are saturated or flooded, it is anticipated that a portion of the current staff would be assigned to work the RAU3 Phase 2 areas to allow the remaining teams to focus on the drained areas within the CVFAW. However, it is likely that both the CVFAW and RAU3 Phase 2 areas can be completed by the end of the calendar year in 2016.

**Other Assumptions**

No additional mobilization costs have been included in the cost proposal with the assumption that the existing staffing would be deployed in concurrence with the CVFAW work as described above.

**Total Modification 3 Price: \$4,824,245**

## **Exhibit "B"**

- 1) Section C – Revise the following paragraph 4.3.6.1. The Parties have developed the scope of services for Munitions Response of the ACES as provided in the TSRS, as follows:
  - a. Within the boundary of the CVFAW (see Attachment E.1), the Recipient is responsible for conducting subsurface MEC clearance to a depth of 14 inches below ground surface (bgs) and obtaining Task Completion for the CVFAW, for which it has been provided funding under this Agreement, even if the costs exceed the amount funded by the Army.
  - b. If the WDOE requires surface Step-Out Clearance beyond the boundary of the CVFAW, Army will provide to the Recipient additional funding, and the Recipient shall perform the work as outlined in this Agreement.
    - This additional funding amount for surface Step-Out Clearance shall be the total of the number of step-out grids required by the WDOE multiplied by the agreed upon unit cost per step-out grid.
  - c. Within the areas described as Phase 2 (see Attachment E.1) the recipient is responsible for conducting the following MEC clearance actions and obtaining Task Completion of Phase 2, for which it has been provided funding under this Agreement, even if the costs exceed the amount funded by the Army.:
    - Surface clearance (0-3 inches bgs) of the Former Demolition Areas 1 and 2.
    - Surface clearance (0-3 inches bgs) of the Former Training Ranges: Hand Grenade, Rifle Grenade, and 3.5-inch rocket range.
    - Subsurface clearance ( 0-14 inches bgs) of the Former Firing Positions: Artillery Position 1, 2, 3, 4 and 7 and Mortar Positions 1, 2,4, 5, and 6.
  - d. If the WDOE requires surface Step-Out Clearance beyond the boundary of the areas outlined in Phase 2, Army will provide to the Recipient additional funding, and the Recipient shall perform the work as outlined in this Agreement. • This additional funding amount for surface Step-Out Clearance shall be the total of the number of step-out grids required by the WDOE multiplied by the agreed upon unit cost per step-out grid.
  - e. The Recipient will be reimbursed for its performance of surface Step-Out Clearance, calculated as described above, through the Additional Cleanup Funding Line Item described in Section B.5.2. If these costs exceed the Additional Required Cleanup Funding, the Parties agree to amend this Agreement for the purpose of providing the

Recipient the additional funding pursuant to C.4.3.6.1 necessary to achieve Task Completion.

- f. With respect sections 4.3.6.1 (a-f), pursuant to section C 5.9, each party will promptly notify the other party of any legal impediment, change of circumstances, pending litigation or any other event that may adversely affect such party's ability to carry out any of its obligations under this Agreement.