

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

AND THE

UNITED STATES DEPARTMENT OF THE ARMY

AND THE

UNITED STATES DEPARTMENT OF THE INTERIOR

AND THE

UNITED STATES ARCHITECT OF THE CAPITOL

IN THE MATTER OF:

U.S. Department of the Army  
U.S. Department of the Interior  
Architect of the Capitol  
Fort George G. Meade  
Maryland

FEDERAL FACILITY AGREEMENT  
under CERCLA Section 120  
Administrative  
Docket Number: CERC-03-2009-0207FF

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Based on the information available to the Parties on the Effective Date of this FEDERAL FACILITY AGREEMENT (Agreement), and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

**I. JURISDICTION**

Each Party is entering into this Agreement pursuant to the following authorities:

1.1 The U.S. Environmental Protection Agency (EPA) Region III enters into those portions of this Agreement that relate to the Remedial Investigation/Feasibility Study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. No. 99-499 (hereinafter jointly referred to as CERCLA), and Sections 6001, 3008(h) and 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v) as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA), and Executive Order 12580.

1.2 EPA Region III enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to CERCLA Section 120(e)(2), 42 U.S.C. Section 9620(e)(2), RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), and Executive Order 12580.

1.3 The U.S. Department of the Army (Army) enters into its respective portions of this Agreement that relate to the RI/FS pursuant to CERCLA Section 120(e)(1), 42 U.S.C. Section 9620(e)(1), RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. Section 4321, and the Defense Environmental Restoration Program (DERP), 10 U.S.C. § 2701 et. seq., and 10 U.S.C. § 2687.

1.4 The Army enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to CERCLA Section 120(e)(2), 42 U.S.C. Section 9620(e)(2), RCRA Sections 6001, 3008(h), 3004(u) and (v), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), Executive Order 12580, and the DERP.

1.5 The U.S. Department of the Interior/Fish and Wildlife Service (DOI/FWS) enters into its respective portions of this Agreement that relate to the RI/FS, removal actions, interim actions, and final remedial actions pursuant to CERCLA Section 120, 42 U.S.C. § 9620 and the National Wildlife System Administration Act, 16 U.S.C. §§ 688dd-ee as amended.

1.6 The U.S. Architect of the Capitol enters into its respective portions of this Agreement that relate to the RI/FS, removal actions, interim actions, and final remedial actions pursuant to CERCLA Section 120, 42 U.S.C. Section 9620, and RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. §§ 6961, 6928(h), 6924(u) and (v).

## II. DEFINITIONS

Except as noted below or otherwise explicitly stated, the definitions provided in CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) shall control the meaning of terms used in this Agreement.

2.1 "Accelerated Operable Unit" or "AOU" shall mean a remedial action, which prevents, controls, or responds to a release or threatened release of hazardous substances, pollutants, and contaminants where prompt action is necessary, but a response under removal authorities is not appropriate or desirable. The purpose of an AOU is to allow the Parties to proceed with a remedial action for that Operable Unit prior to completion of the final Record of Decision (ROD) for the total remedial action. AOU's are particularly appropriate where the size and complexity of the total remedial action would seriously delay implementation of independent parts of the action. AOU's will only proceed after complying with applicable procedures in the NCP, and the Parties shall make every effort to expedite these procedures. It is not intended that AOU's diminish the requirements for or delay the conduct of a total remedial action.

2.2 "Agreement" shall refer to this document and shall include all Appendices to this document. All such Appendices are integral parts of this Agreement and shall be enforceable to the extent provided herein.

2.3 "Applicable Maryland/state law" shall mean all Maryland laws administered by the Maryland Department of the Environment (MDE) determined to be applicable under this

Agreement. The term shall include all state laws determined to be Applicable or Relevant and Appropriate Requirements (ARARs).

2.4 “Architect of the Capitol” or “USAOC” shall mean the Legislative Branch Office responsible to the United States Congress for the maintenance, operation, development, and preservation of the United States Capitol Complex, which includes the Capitol and other facilities and its employees, officers, successors, authorized representatives, and assigns.

2.5 “Army” shall mean the United States Department of the Army, including Fort George G. Meade, their employees, members, successors and authorized representatives, and assigns. The Army shall also include the United States Department of Defense (DoD) to the extent necessary to effectuate the terms of the Agreement, including, but not limited to, appropriations and Congressional reporting requirements.

2.6 “Applicable or Relevant and Appropriate Requirements” or “ARARs” shall mean “legally applicable” or “relevant and appropriate” requirements, standards, criteria or limitations, as those terms are used in Section 121 of CERCLA, 42 U.S.C. Section 9621, and as defined in the NCP.

2.7 “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law No. 99-499, and any amendments thereto.

2.8 “Community Relations” shall mean the program to inform and involve the public in the installation restoration, CERCLA and RCRA processes and to respond to community concerns.

2.9 “Days” shall mean calendar days, unless business days are specified. Any submittal, written statement of position, or written statement of dispute, which, under the terms of this Agreement, would be due on a Saturday, Sunday, Federal or state holiday shall be due on the following business day.

2.10 “Deadlines” shall mean the Near Term Milestones specifically established for the current fiscal year under the Site Management Plan. Deadlines are subject to stipulated penalties in accordance with Section XXI – STIPULATED PENALTIES.

2.11 “Deliverable Documents” shall mean those required documents listed as Primary and Secondary Documents under this Agreement.

2.12 “Documents” or “records” shall mean any documents, writings, correspondence, and all other tangible things on which information has been stored that relates to this Agreement or to any activities to be undertaken relating to this Agreement.

2.13 “DOI/FWS” shall mean the U.S. Department of the Interior/ Fish and Wildlife Service, its employees, members, successors, and authorized representatives, and assigns.

- 2.14 “EPA” or “U.S. EPA” or “Agency” shall mean the United States Environmental Protection Agency, its employees, agents, authorized representatives, successors and assigns.
- 2.15 “Facility” shall mean that property owned by the United States and operated by the U.S. Department of the Army, including that portion known as Ft. Meade, Maryland. The Facility also includes all lands transferred from Ft. Meade to DOI/FWS or USAOC. This definition is for the purpose of describing a geographical area and not a governmental entity.
- 2.16 “Fiscal year” shall mean the time period used by the United States Government for budget management and commences on October 1 and ends on September 30 of the following calendar year.
- 2.17 “Focused Feasibility Study” or “FFS” shall mean a comparison of alternatives, which concentrates on a particular contaminated medium or a discrete portion of the Site that does not need added investigation in order to progress forward in the remedial process.
- 2.18 “Fort George G. Meade” or “Ft. Meade” shall mean the real property in Ft. Meade, Anne Arundel County, Maryland, which is owned by the United States and operated under the jurisdiction, custody, or control of the Army.
- 2.19 “Guidance” shall mean any requirements or policy directives issued by EPA that are of general application to environmental matters and which are otherwise applicable to the Army’s, DOI/FWS’ and USAOC’s work under this Agreement.
- 2.20 “Interim Remedial Action” shall mean all discrete Remedial Actions, including, but not limited to, Accelerated Operable Units (AOUs), implemented prior to a final Remedial Action that are taken to prevent or minimize the release of hazardous substances, pollutants, or contaminants.
- 2.21 “Land Use Controls” or “LUCs” shall mean any restriction or administrative action, including engineering and institutional controls, arising from the need to reduce risk to human health and the environment.
- 2.22 “MDE” shall mean the Maryland Department of the Environment and its authorized employees and authorized representatives.
- 2.23 “Milestones” shall mean the dates established by the Parties in the Site Management Plan for the initiation or completion of Primary Actions and the submission of Primary Documents and Project End Dates. Milestones shall include Near Term Milestones, Out Year Milestones, Primary Actions, and Project End Dates.
- 2.24 “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and any amendment thereto.

2.25 “Near Term Milestones” shall mean the Milestones within the current fiscal year (FY), the next fiscal year or “budget year” (FY+1), and the year for which the budget is being developed or “planning year” (FY+2).

2.26 “On-site” shall have the meaning as defined in the NCP.

2.27 “Operable Unit” or “OU” shall mean a discrete action that comprises an incremental step toward comprehensively remediating the Site. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of release, or pathway of exposure related to the Site. Operable Units may address geographical portions of the Site, specific Site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of the Site. The cleanup of the Site can be divided into a number of Operable Units, depending on the complexity of the problems associated with the Site. The term “Operable Unit” is not intended to refer to the term “operating unit” as used in RCRA. All Operable Units shall be addressed in accordance with the NCP, EPA Guidance and the requirements of CERCLA.

2.28 “Out Year Milestones” shall mean the Milestones within those years occurring after the planning year until the completion of the cleanup or phase of the cleanup (FY+3 through Project End Date).

2.29 “Parties” shall mean the Army, DOI/FWS, USAOC, and EPA.

2.30 “Primary Actions” as used in these definitions shall mean those specified major, discrete actions that the Parties identify as such in the Site Management Plan. The Parties should identify all major, discrete actions for which there are sufficient information to be confident that the date for taking such action is implementable.

2.31 “Project End Dates” shall mean the dates established by the Parties in the Site Management Plan for the completion of major portions of the cleanup or completion of the cleanup of the facility. The Parties recognize that, in many cases, a higher degree of flexibility is appropriate with Project End Dates due to uncertainties associated with establishing such dates.

2.32 “Project Manager” shall mean each person designated by the Parties to represent that Party’s interests and manage all response actions undertaken at the Site.

2.33 “RCRA” shall mean the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984, (HSWA), Public Law No. 98-616, and any amendments thereto.

2.34 “Record(s) of Decision” or “ROD(s)” shall be the public document(s) that select(s) and explain(s) which cleanup alternative(s) will be implemented at the Site, and includes the basis for the selection of such remedy(ies). The bases include, but are not limited to, information and technical analyses generated during the RI/FS and consideration of public comments and community concerns.



2.35 “Schedule” shall mean a timetable or plan that indicates the time and sequence of events.

2.36 “Site” shall include areas within the Facility, and any other areas, where a hazardous substance, hazardous waste, hazardous constituent, pollutant, or contaminant from the Facility has been deposited, stored, disposed of, or placed, or has migrated or otherwise come to be located. The Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9). This definition is not intended to include hazardous substances or wastes intentionally transported from the Facility by motor vehicle.

2.37 “Site Management Plan” or “SMP” shall mean a planning document entitled “Ft. Meade Army Base, Maryland Site Management Plan,” prepared specifically under Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN, which contains timetables, plans, or Schedules that indicate the times and sequences of events. The Site Management Plan will be used as a management tool in planning, reviewing and setting priorities for all response activities at the facility. Milestones developed under the terms of this Agreement are listed in the SMP. Deadlines listed in the SMP are subject to stipulated penalties in accordance with Section XXI – STIPULATED PENALTIES.

2.38 “Solid Waste Management Unit” or “SWMU”, as defined pursuant to RCRA, shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid and/or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

2.39 “State” shall mean the State of Maryland and all agencies, departments and authorized representatives thereof, including MDE.

2.40 “Target Dates” shall mean dates established for the completion and transmission of Secondary Documents. Target Dates are not subject to dispute resolution and they are not Milestones.

2.41 “Transmit” shall mean the following: any document or notice to be transmitted by a certain date will be considered as transmitted on time if: (1) it is provided to the carrier on a next day mail basis no later than the day before it is due to be delivered according to the requirements of this Agreement; (2) it is hand-delivered by the due date; (3) it is sent by certified mail return receipt requested no later than two days before it is due to be delivered according to the requirements of this Agreement. Any other means of transmission must arrive on or before the due date to be considered as timely delivered.

2.42 “Work” shall mean all activities the Army, DOI/FWS, and USAOC are required to perform under this Agreement, except those required by Section XXX – RECORD PRESERVATION.

### **III. PARTIES BOUND**

3.1 This Agreement shall apply to and be binding upon EPA, DOI/FWS, USAOC, and the Army. While the Agreement includes references to DOI/FWS and USAOC throughout, DOI/FWS' and USAOC's roles and responsibilities relate solely to releases and threatened releases of hazardous substances, pollutants, or contaminants on or, migrating to lands formerly managed by the Army and transferred to DOI/FWS and USAOC or lands scheduled to be transferred to DOI/FWS. DOI/FWS and USAOC have the right to review and comment on documents and dispute Work associated only with those lands.

3.2 The Army, DOI/FWS, and USAOC agree to include the notices required by Section 120(h) of CERCLA in any contract for the sale or transfer of real property affected by this Agreement. Transfer or conveyance of any interest in real property affected by this Subsection 3.2 shall not relieve the Army of its applicable obligations under this Agreement.

3.3 The Army and DOI/FWS shall notify EPA of the identity and assigned tasks of each of their contractors performing Work under this Agreement upon their selection and contract award. The Army and DOI/FWS shall provide copies of this Agreement to all contractors performing any Work called for by this Agreement. Each Party shall be responsible for ensuring that its contractors comply with the terms and conditions of this Agreement.

3.4 This Section shall not be construed as an agreement to indemnify any person.

### **IV. PURPOSE**

4.1 The general purposes of this Agreement are to:

4.1.1 Ensure that the environmental impacts associated with past and present activities at the Site are thoroughly investigated and appropriate remedial action taken as necessary to protect the public health, welfare and the environment;

4.1.2 Establish a procedural framework and Schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with CERCLA, as amended by SARA, the NCP, Superfund Guidance and policy, RCRA, RCRA Guidance and policy, and applicable Maryland law; and

4.1.3 Facilitate cooperation, exchange of information and participation of the Parties in such actions.

4.2 Specifically, the purposes of this Agreement are to:

4.2.1 Identify interim remedial action (IRA) alternatives, which are appropriate at the Site prior to the implementation of final remedial actions(s) for the Site. The IRA alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of IRAs to EPA pursuant to CERCLA and applicable Maryland law. This process is designed to promote cooperation among the Parties in identifying IRA alternatives prior to selection of final IRAs.

4.2.2 Establish requirements for the performance of a RI to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of a FS for the Site to identify, evaluate and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA and applicable Maryland law.

4.2.3 Identify the nature, objective and Schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA and applicable Maryland law;

4.2.4 Implement the selected interim remedial and final remedial action(s) in accordance with CERCLA and applicable Maryland law and meet the requirements of CERCLA Section 120(e)(2) for an interagency agreement among the Parties.

4.2.5 Ensure compliance, through this Agreement, with RCRA and other Federal and Maryland hazardous waste laws and regulations for matters covered herein.

4.2.6 Establish a procedural framework and Schedule for DOI/FWS and USAOC to participate and cooperate with the Army in its development and implementation of appropriate response actions relating to releases or threatened releases on or migrating to lands formerly managed by the Army and transferred to DOI/FWS and USAOC.

4.2.7 Coordinate response actions at the Site with the mission and support activities at Ft. Meade and lands managed by the DOI/FWS and USAOC.

4.2.8 Expedite the cleanup process to the extent consistent with protection of human health and the environment.

4.2.9 Provide for operation and maintenance of any remedial action selected and implemented pursuant to this Agreement.

## **V. SCOPE OF AGREEMENT**

5.1 This Agreement is entered into by the Parties to enable the Army, DOI/FWS, and USAOC to meet the provisions of CERCLA, 42 U.S.C. Section 9601 et seq., and RCRA Sections 3004(u) and (v) and 3008(h), as amended, 42 U.S.C. Sections 6924(u) and (v) and 6928(h).

5.2 This Agreement is intended to cover the investigation, development, selection, and implementation of response actions for releases or threatened releases of hazardous substances, contaminants, hazardous wastes, hazardous constituents, or pollutants at or from the Site. This Agreement covers all phases of remediation for these releases, bringing together into one

agreement the requirements for remediation as well as the system the Parties will use to determine and accomplish remediation, ensuring the necessary and proper level of participation by each Party. Although all such releases at the Site are not currently known, the Agreement establishes the system for dealing with those undiscovered releases. To accomplish remediation of those undiscovered releases, the Parties will establish Schedules and Deadlines as necessary and as information becomes available and, if required, amend this Agreement as needed.

5.3 This Agreement is intended to address and satisfy any of Ft. Meade's RCRA corrective action obligations, which relate to the release(s) of hazardous substances, hazardous wastes, hazardous constituents, pollutants, or contaminants at or from all areas addressed under future corrective action permits. This Agreement is not intended to limit any requirements under RCRA or any other law or regulation to obtain permits, and is not intended to affect the treatment, storage, or disposal by Ft. Meade of hazardous wastes. This Agreement is not intended to encompass response to spills of hazardous substances from ongoing operations unless those spills occur in conjunction with CERCLA removal actions or remedial actions pursuant to this Agreement.

5.4 The scope of this Agreement extends to the entire Site, as listed in the Federal Register proposing the Site for the National Priorities List (NPL) and as provided for in this Agreement. A release at the Site cannot be deleted from the NPL unless it is determined, in accordance with CERCLA, the NCP, and this Agreement, that the Army, DOI/FWS, and USAOC have implemented all appropriate response actions for such release, and that the release at the Site no longer poses a threat to human health or the environment. All response actions at the Site shall occur in discrete locations termed Military Munitions Response Program (MMRP) Sites or Operable Units (OUs) identified at the Site pursuant to this Agreement.

5.5 Any response action in progress on the Effective Date of this Agreement shall be subject to the obligations and procedures of this Agreement.

5.6 The Parties agree to expedite the initiation of response actions at the Site, including Accelerated Operable Units (AOUs) and interim response actions, and to carry out all activities under this Agreement so as to protect the public health, welfare and the environment. Upon request, the Parties agree to provide applicable Guidance or reasonable assistance in obtaining such Guidance relevant to the implementation of this Agreement.

## **VI. FINDINGS OF FACT**

6.1 For purposes of this Agreement, the following constitutes a summary of the findings upon which this Agreement is based. Nothing contained in this Agreement shall constitute an admission of any liability by the Army, DOI/FWS, or USAOC for any matters contained herein nor shall anything in this Agreement constitute an admission by the Army, DOI/FWS or USAOC with respect to any finding of fact or any legal determination noted herein.

6.2 On August 27, 2007, the EPA issued Fort George G. Meade ("FGGM") a RCRA Section 7003 Unilateral Administrative Order ("Order"). The Army exercised its right to request a conference with the EPA Administrator and on February 4, 2008, EPA determined that the Order

was "appropriate and consistent with the law" thus establishing the effective date of the Order (February 6, 2008). The Department of Defense (DoD) sought input from the Office of Management and Budget and the Department of Justice ("DOJ"). On December 1, 2008, the DOJ responded to DoD's request, and on December 9, 2008, the Army agreed to comply with the requirements of the Order. When this Agreement becomes effective in accordance with Section XXXIV-- PUBLIC COMMENT ON THIS AGREEMENT, EPA will withdraw the RCRA § 7003 Order.

6.3 FGGM has been a permanent United States Army Installation since 1917 located near Odenton, Maryland. The post once occupied approximately 13,500 acres of land in northwestern Anne Arundel County, Maryland, midway between Baltimore, Maryland and Washington, D.C. The Installation was authorized by Congress as a training cantonment for troops during World War I. The majority of transferred properties were part of a WWII era expansion of the original installation. FGGM's current mission is to provide support to critical national security missions including approximately 80 tenant organizations located on approximately 5,067 acres of remaining active installation. Tenants include the Department of Defense, all the Military Departments, and several other Federal agencies. A railroad currently owned by the Maryland State Highway Administration is located immediately north of the Installation's southern boundary. The railroad bisects the entire length of the United States Architect of the Capitol ("USAOC") property, and extends through Ft. Meade (see Section 6.8). Attachment 1 contains a figure that illustrates the current jurisdictional boundaries at FGGM. This Attachment outlines the: (1) active Army Installation, (2) property transferred to the United States Department of the Interior; Fish and Wildlife Service ("DOI/FWS"), (3) property transferred to USAOC, (4) property transferred to Anne Arundel County, Maryland, and (5) location of the railroad owned by the State of Maryland.

6.4 At all relevant times hereto, the Army has been the accountable agency and operator of Fort George G. Meade, referenced in this Agreement as the "FGGM".

6.5 Subsequent to the Hazardous and Solid Waste Act ("HSWA") amendments of 1984, FGGM applied for a RCRA Part B permit. In 1991, the post's RCRA permit expired and was re-issued in 1995. In 1999, the RCRA Part B permit was withdrawn. FGGM is currently regulated as a large-quantity RCRA generator. In 1987, FGGM began a Solid Waste Management Unit ("SWMU") investigation of all existing buildings on the Installation and a Site Investigation ("SI") of the now Closed Sanitary Landfill ("CSL") to determine the potential impacts to groundwater from the landfill. FGGM was placed on the Federal Agency Hazardous Waste Compliance Docket on February 12, 1988 pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") Section 120(c), 42 U.S.C. § 9620(c). The Army has been conducting CERCLA investigations and response actions at FGGM since the early 1980's.

6.6 The Base Realignment and Closure Act of 1988 ("BRAC") mandated the closure and/or realignment of approximately 9,000 acres of FGGM. The 1991 Military Construction Appropriations Act (Public Law 101-519, Sec. 126), and the 1992 Military Construction and Military Family Housing Act (Public Law 102-136, Sec. 127) mandated transfer and control of the closing property to the DOI/FWS. In October 1991, the Army transferred approximately

7,600 acres to the DOI/FWS for use as part of a pre-existing wildlife refuge, the Patuxent Research Refuge ("the Refuge"). In January 1993, an additional approximately 500 acres were transferred for a total of approximately 8,100 acres to DOI/FWS. In June 1994, the Office of the Deputy Assistant Secretary of the Army approved a Determination of Surplus for Tipton Army Air Field ("TAAF"). On July 2, 2001, the Army conveyed approximately 348 acres of the TAAF property to Anne Arundel County, Maryland for use as a public airport. Two parcels of land located within and adjacent to the Refuge were retained by the Army and not transferred, and are discussed below in Sections 6.6.1 and 6.6.2.

6.6.1 The Clean Fill Dump (OU-33/FGGM-81) site (see Section 6.19.3) is located along the eastern boundary of the Refuge. The Clean Fill Dump (CFD) site location is indicated as "Pending Transfer/Retention" on the Fort George G. Meade Jurisdictional Map provided as Attachment 1 to this Agreement. The CFD site was specifically excluded from the 1991 7600-acre transfer and remains with the Army until such time as the Army and the DOI/FWS have determined that the site is environmentally clean.

6.6.2 The Little Patuxent River (LPR) parcel is located adjacent to the southeast boundary of the Refuge and is approximately 6 acres in size. The LPR parcel location is indicated as "Pending Transfer/Retention" on the Fort George G. Meade Jurisdictional Map provided as Attachment 1 to this Agreement. The LPR parcel was not transferred during the 1991, 7,600-acre transfer to DOI/USFWS. Anne Arundel County has expressed interest in accepting the property since it is contiguous to other county property. An Environmental Condition of Property (ECP) is currently being prepared for this parcel.

6.7 Pursuant to the provisions of Public Law 103-110, approved October 21, 1993, the Secretary of the Army transferred approximately 93 acres of FGGM to USAOC to accommodate long-term storage and service needs of the Library of Congress and other Legislative Branch agencies. The area consists of undeveloped land, warehouse and archive facilities, roads and vehicle parking areas and underground storage tanks associated with an existing motor pool leased back to the Army on the extreme western portion of the USAOC property.

#### 6.8 Maryland State Highway Administration Railroad

A former railroad is present along the southern boundary of Ft. Meade (refer to Attachment 1). The railroad is presently owned by the Maryland State Highway Administration and is reported to be 50 feet wide (centered on the railroad tracks). The railroad enters Fort Meade at its southeastern boundary and travels along the southern boundary bisecting USAOC property and exiting the western boundary of Fort Meade. A portion of railroad bisects the entire length of the USAOC property. The Army is conducting a remedial investigation of the USAOC property. Test results of three surface soil samples collected from the railroad tracks show arsenic concentrations ranging from 33.4 milligrams per kilogram (mg/kg) to 89 mg/kg. The Parties agree that more information is needed to determine whether and, if so, to what extent the provisions of this FFA will address cleanup activities related to the railroad property. Thus, at this time, the railroad property is not included within the scope of this FFA. Should information indicate Army responsibility for contamination on the railroad property as a result of Army operations, or a release from Army property is migrating onto the railroad property, the Parties

may amend the FFA to include additional work related to the investigation, evaluation or cleanup of this property.

6.9 The Army has been conducting CERCLA investigations and response actions at all transferred parcels. Pursuant to Section 126(a) of the 1991 Military Construction Appropriations Act (Public Law 101-519), the Army retains post-transfer responsibility to address releases and threatened releases of hazardous substances, pollutants, and contaminants (as defined by 42 U.S.C. Section 9601), including potential unexploded ordnance ("UXO") and/or munitions and explosives of concern ("MEC") resulting from, or attributable to, actions undertaken by the Army or which may have occurred affecting the transferred property during the period of its control by the Army. The Army initiated investigations and response actions within areas of concern consistent with procedures outlined in CERCLA and the NCP, and policies promulgated by the Department of Defense Explosives Safety Board.

6.10 FGGM was finalized on the NPL in the Federal Register on July 28, 1998.

6.11 The CFD (OU-33/FGGM-81) operated from approximately 1972 to 1985 for the disposal of miscellaneous debris, ash and possibly hazardous waste. In a Record of Decision ("ROD") signed by the Army and EPA on September 29, 2000, a remedy that prescribes monitored natural attenuation of CFD groundwater was selected. The Army submitted a 5-year review report to EPA in May 2006. EPA agreed with the recommendation to continue the monitoring program selected in the ROD (EPA, 2008). Transfer of the CFD to DOI/FWS is pending.

6.12 Groundwater at FGGM lies within three separate and distinct aquifers: the Upper Patapsco, the Lower Patapsco, and the Patuxent aquifers. These aquifers are separated by the Middle Patapsco and Arundel Clays. A geologic cross section of FGGM that shows the aquifers and clay formations is provided in Attachment 2 to this Agreement.

6.13 The Army historically operated training ranges at FGGM and on land transferred to DOI/FWS. Studies and response actions addressing ordnance and explosive (OE) items were initiated immediately following the 1991 BRAC transfer, and continue to date. The Army conducted comprehensive UXO surveys designed to identify and dispose of OE to a depth of 6 inches below ground surface (bgs) within accessible areas of the Patuxent Research Refuge-North Tract ("PRR-NT"). Additional UXO clearance within high use areas, as designated by the DOI/FWS, was subsequently performed in accordance with the August 2001 Action Memorandum and supported by the June 2001 *Engineering Evaluation/Cost Analysis, and the Army's Explosives Safety Submission for the Patuxent Research Refuge*. Twenty-four high use areas totaling approximately 316 acres were cleared considering the anticipated use within the identified parcel/area of interest. Clearance depths ranged from 26 inches to 48 inches bgs in these areas. The Army continues to conduct annual UXO sweeps of an approximately one-mile length of the Little Patuxent River and to confirm land use controls are in place through its scheduled monitoring.

6.14 In 1996 and 1997, the Army performed an Ordnance, Ammunition, and Explosives Removal Action on the former TAAF, which resulted in UXO clearance to a depth of four feet at the TAAF, excluding the inactive landfill areas. In 1998, the Army took actions to address UXO

at the three inactive landfills. EPA and the Army signed CERCLA RODs for the TAAF parcels in December 1998 and July 1999. The July 1999 ROD required the Army to monitor the groundwater bi-annually because of chemical constituents detected in groundwater monitoring wells. The TAAF parcel was deleted from the NPL on November 12, 1999. Subsequently, the parcel was transferred to Anne Arundel County for use as a public airport.

6.15 Past military training activities have resulted in the presence of MEC at various locations at FGGM and the PRR-NT. As part of the Department of Defense Military Munitions Response Program ("MMRP"), the Army conducted a Historical Records Review ("HRR") pursuant to the Army's directive to inventory closed, transferring, and transferred military ranges and identified sites with UXO, discarded military munitions, and munitions constituents ("MCs"). Based on the HRR, six sites at the Installation were determined to be MMRP eligible: OU-41/FGGM-004-R Grenade and Bayonet Range A, FGGM-008-R Grenade and Bayonet Range B, OU-44/FGGM-007-R Inactive Landfill No. 2, OU-40/FGGM-003-R Mortar Range, OU-42/FGGM-005-R Pistol Range A, and OU-43/FGGM-006-R Pistol Range B. The April 2007 SI report recommended a remedial investigation for OU-40/FGGM-003-R Mortar Range, which is in progress, and no further action for all other sites. OU-38/FGGM-001-R-01 Clean Fill Dump and OU-39/FGGM-002-R-01 HE Impact and Disposal are MMRP sites within the PRR-NT.

6.16 The Army has identified twelve sites for RI/FS activities (IR and BRAC programs). These sites form the initial list of Operable Units requiring an RI/FS. Appendix A to this Agreement is an initial list of Operable Units for which an RI/FS must be completed in accordance with this Agreement. Appendix B is an initial list of Operable Units for which there is a Record of Decision completed. Appendix C provides a list of sites being addressed under additional regulatory programs. Appendix D provides an initial list of sites for which no further action has been determined. Appendix E provides information on sites suspected to contain UXO, DMM or MCs. Appendix F will include the SMP, once finalized, and will provide a schedule for submittal of documents for all projects with future phases. Appendix G lists OUs with known areas of contaminated groundwater. The Fort Meade Jurisdictional Map, Geologic Map for Fort Meade and Vicinity, and the Operable Units with Known Groundwater Contamination Map are provided as Attachments 1, 2, and 3 respectively.

#### 6.17 Installation Restoration Program

6.17.1 OU-1/FGGM 83 Trap and Skeet Range. In use from the mid-1970s through 1994, the site was regularly used by local residents and Army personnel for recreation, including fishing, hiking, and picnicking. From 1999 to 2000, shallow soil, sediment, surface water and groundwater were analyzed for PAHs and total lead, and were found across the site at concentrations exceeding regulatory criteria. The Comprehensive Site Assessment human health risk assessment (HHRA) identified cancer risk exceeding the upper threshold due to the PAHs in the surface soils. Additional work will include ecological-risk sampling activities.

6.17.2 OU-2/FGGM 05 Troop Housing Boiler Plant Building 8481. This site is being cleaned up pursuant to the state of Maryland's oversight and law governing petroleum cleanup requirements. Thus, OU-2/FGGM 05 will not be included within the scope of the FFA.



6.17.3 OU-3/FGGM 87 Former Nike Fire Control Site. This site (Building 1978) was constructed in 1955 and supported Nike missile activities until 1972. The site was identified in a 1994 SWMU study. During a 2004 sampling event PAH contamination was detected above residential risk-based concentration (RBC) values in surface soil; lead and arsenic were also detected at levels up to 46.9 mg/kg and 17.1 mg/kg, respectively. The soil background level for arsenic in soil is 4.84 mg/kg and the soil background level for lead in subsurface soil is 3.58 mg/kg. TCE was detected in groundwater samples at levels up to 218 µg/l; the applicable Maximum Contaminant Level (MCL) is 5 µg/l. An RI currently is being conducted at this site.

6.17.4 OU-4/FGGM-47 Former Post Laundry Facility. The former PLF (OU-4/FGGM-47) was used as a laundry facility from 1941 until it was converted to a recycling center in 1991. Dry cleaning chemicals were introduced to the former PLF in the 1960s. Initial soils investigations revealed elevated levels of tetrachloroethene (PCE), a solvent commonly used in dry cleaning, in soils, groundwater and surface water. Volatile organic compounds (“VOCs”) exceeding MCLs, including PCE, have been documented in the former PLF Site Work Plan dated May 2006. The former PLF and several nearby sites [Former Motor Pool Maintenance Facility (FGGM-86), Former Tank Maintenance Facility Shop 1 (FGGM-88), Former Tank Maintenance Facility Shop 2 (FGGM-89), Former Tank Cleaning Supply Warehouse (FGGM-90), Former Missile Repair Shop (FGGM-91), and Former Heavy Gun Cleaning Shop (FGGM-92)] have been combined into a single site referred to as Operable Unit No. 4. The Army is currently conducting a remedial investigation/feasibility study (“RI/FS”) of the operable unit. The results identified two comingled PCE/trichloroethene (“TCE”) plumes. One plume is associated with Bldg. 2286, and was shown in 2006 to be extending onto USAOC property.

6.17.4.1 OU-4/FGGM-86 Former Motor Pool Maintenance Facility. This site (Building 2286) was constructed in 1941. Vehicle painting and repair was conducted at the site, and paint, paint strippers, and solvents were used or stored there. This site was identified during a 1996 SWMU study. Soil samples taken during a 2004 sampling event revealed lead at levels up to 892 mg/kg, which exceeds EPA’s action level for lead for residential (400 mg/kg) exposure scenarios. Groundwater samples taken during the 2004 sampling event revealed PCE ranging from 5.5 micrograms per liter (µg/l) to 2,900 µg/l, exceeding its MCL of 5 µg/l. TCE also was detected at concentrations ranging from 5.6 µg/l to 342 µg/l, above its MCL of 5 µg/l. The Army is currently conducting an RI/FS of the operable unit.

6.17.4.2 OU-4/FGGM-88 Former Tank Maintenance Facility Shop. This site (Buildings 2201, 2204, 2206, and 2207) was identified during a 1994 SWMU study. During an Initial Delineation Study in 2001, lead was detected above its soil background level of 3.58 mg/kg at concentrations between 6.2 mg/kg and 160 mg/kg. Groundwater samples collected during this study revealed arsenic, barium, chromium, copper, lead, and mercury above their respective MCLs. The Army is currently conducting an RI/FS of the operable unit.

6.17.4.3 OU-4/FGGM-89 Former Tank Maintenance Facility Shop 2. This site (Building 2217) was constructed in 1918 and used as a tank maintenance facility until 1973. A former wash rack (SWMU 41) and a former oil/water separator (SWMU 40) were located in the northwest corner of the site. Total Petroleum Hydrocarbon-Diesel Range Organics (TPH-DRO) in soil exceeded the MDE residential soil cleanup standard of 230 mg/kg. Arsenic, beryllium,

and VOCs were detected in groundwater above MCLs. Total Petroleum Hydrocarbon-Gasoline Range Organics (TPH-GRO) and TPH-DRO were also detected in groundwater at concentrations that exceed MDE's residential groundwater clean-up standard of 47 µg/l. The Army is currently conducting an RI/FS of the operable unit.

6.17.4.4 OU-4/FGGM-90 Former Tank Cleaning Supply Warehouse. This site is a complex of buildings 2240, 2241, 2242, 2243, 2247, 2248 and 2249. The buildings had several uses, including laundry dry cleaning (2240), storage of degreasers and vehicle batteries (2241, 2242 and 2243), hazardous material storage (2247), and standard ordnance shops (2248 and 2249). PCE has been detected in groundwater samples above its MCL of 5 µg/l at concentrations as high as 1,400 µg/l. Bis(2-ethylhexyl)phthalate was detected above its MCL of 6 µg/l in groundwater at concentrations between 7.8 µg/l and 23.6 µg/l. The Army is currently conducting an RI/FS of the operable unit.

6.17.4.5 OU-4/FGGM-91 Former Missile Repair Shop. Located in Bldg. 2220, this site currently is used as an electronic maintenance and equipment calibration shop but was used as a missile repair shop in the 1960s. Past activities in the building have included the use of solvents and have produced solvent waste. Historical records include a report of a one gallon spill of fuel oil in 1993. The SI recommendation that further investigation be conducted was due to the history of activities at the site. Temporary groundwater monitoring wells revealed metals at levels above EPA Region III RBCs. The Army is currently conducting an RI/FS of the operable unit.

6.17.4.6 OU-4/FGGM-92 Former Heavy Gun Cleaning/Repair. This site is a maintenance facility comprised of four separate buildings (2244, 2245, 2246 and 2253) with various uses, including warehousing and vehicle and heavy equipment maintenance. During the initial delineation study of the site, soil samples revealed levels of PCE that exceeded 5.3 mg/kg, the RBC value for industrial soil, and levels of TPH-DRO that exceeded MDE's residential soil cleanup standard of 230 mg/kg. Groundwater samples collected in 2004 revealed PCE levels in exceedance of the MCL of 5 µg/l with concentrations as high as 560 µg/l. TCE also was detected in groundwater in exceedance of its MCL of 5 µg/l with concentrations as high as 340 µg/l. TPH-DRO and TPH-GRO were detected in groundwater at concentrations between 50 µg/l and 1,000 µg/l, exceeding MDE's residential groundwater clean-up standard of 47 µg/l. The Army is currently conducting an RI/FS of the operable unit.

6.17.5 OU-5/FGGM-07 DRMO Drum Site. Contamination detected at the DRMO was first documented during the early 1990's construction of a covered storage facility immediately north of Route 32. Several phases of SI and Remedial Investigations ("RIs") occurred between 1990 and 2006 that revealed contamination above maximum contaminant levels ("MCLs") and risk-based concentrations ("RBCs") in soil and groundwater. MCLs are the maximum permissible levels of contaminants in water which is delivered to any user of a public water system. Levels of tetrachloroethene ("PCE") have been detected in groundwater samples collected from the Lower Patapsco aquifer up to 128 micrograms per liter (µg/l) in May 2006 which exceeds the applicable MCL of 5 µg/l. The source of contamination appears to be formerly buried drums (264 drums) and contaminated soil (approx. 3,500 tons) that were removed in 1995 prior to the construction of the storage facility. The PCE plume extends south

for approximately 1 mile into the Refuge at concentrations above the MCL for PCE. A plume of carbon tetrachloride (“CCL<sub>4</sub>”) was also detected emanating from the DRMO moving south onto the western side of the USAOC property.

6.17.6 OU-10/FGGM-13 Pesticide Shop. This site was in operation from 1958 to 1978 in the now demolished Bldg. 6621. It was also used as a maintenance facility for lawn mowers and tractors. Pesticides stored in the building included malathion, diazinon, and baygon. The 1997 SI Report documented soil RBC exceedances for chlordane, alpha-chlordane, gamma-chlordane, 4,4'-DDD, 4,4'-DDT, heptachlor, dieldrin, 4,4'-DDE, arsenic and mercury. All of these substances are pesticides, pesticide breakdown products, or metals that have been used in pesticides. An RI/FS is currently underway for this site.

6.17.7 OU-12/FGGM-17 Closed Sanitary Landfill. The CSL (OU-12/FGGM-17) was a mixed residential/commercial, non-hazardous solid waste landfill permitted by MDE pursuant to Code of Maryland Regulations, Subtitle 4, Chapter 7, Section 26.04.07.04 until landfill operations ceased in January 1996. Groundwater samples are collected from the Upper and Lower Patapsco aquifers twice annually from on- and off-site monitoring wells in and around the CSL as part of an ongoing RCRA compliance program. The results indicate MCL exceedances of benzene and arsenic in the Upper Patapsco aquifer and PCE in the Lower Patapsco aquifer. Samples collected for the CSL RI (2002 and 2004) detected VOCs including CCl<sub>4</sub>, TCE, PCE and metals above MCLs and RBCs. PCE, TCE, and CCl<sub>4</sub> were detected off-Post in the Lower Patapsco aquifer at Monitoring Wells MW-125d and MW-126d.

6.17.8 OU-29/FGGM-74 USAOC. A Phase I site assessment was performed as part of the 1994 development study. The assessment identified VOC, pesticide, PCB, and metal contaminants on the USAOC property. The assessment also identified petroleum hydrocarbon contamination at the Transportation Motor Pool (TMP) and in the vicinity of several USTs in the warehouse area. Based on the results of the 1994 assessment, a Phase II investigation was recommended. In 1996, nine of the SWMUs identified by the SWMU Study were located within the USAOC parcel. In 2004, an RI was initiated to characterize the nature and extent of contamination and to quantify the risk to human health and ecological receptors.

6.17.8.1 Pre-WWII Laundry. According to a 1917 map of Camp Meade, a laundry is shown north of Building 27 on the northern boundary of the USAOC property. The laundry was also identified on 1923 and 1934 Special Military Maps. Air photographs from the 1950's suggest the laundry was demolished in the mid 1950's. A surface-mounted water tank currently resides on the former laundry site. This site will be addressed under OU-46/FGGM 96.

6.17.9 OU-36/FGGM-93 Manor View Dump Site. This site was discovered during the construction of privatized military housing in 2003. The site is located behind the Manor View Elementary School. The Army conducted a Preliminary Assessment/Site Inspection at the site in January 2003 and a subsequent RI began in July 2003 revealed metals and PAH contamination in exceedance of RBCs, soil, sediment, and groundwater contamination, methane gas in exceedance of the 15 percent by volume the Upper Explosive Limit and volatile organic compounds in soil gas. Twenty townhomes adjacent to the site in an area where methane was later discovered, were vacated in December 2005/January 2006. The Army currently is utilizing a soil-gas

venting system to reduce the levels of methane in the dump. An RI/FS is currently underway for this site.

6.17.10 OU-45/FGGM-95 Former Landfill Sites. This site includes 14 areas of interest where data from the 2007 *Preliminary Assessment/Site Inspection* ("PA/SI") and other studies identified site features indicative of past landfill and related operations. None of these potential landfills are currently in operation. They have been combined into a single site due to their proximity and because they all show indications of past landfill or related operations. Because each of the sites may have been affected by past disposal activities, a CERCLA Preliminary Assessment will be conducted at these sites to further characterize the extent of contamination.

6.17.11 OU-46/FGGM-96 Former Motor Pool Sites. This site includes 37 areas of interest based on data from the 2007 *PA/SI* and other studies which identified site features indicative of past motor pool, wash rack and other miscellaneous operations. None of these operations are currently active; most areas of interest are vacant and generally unimproved. Because each of the sites may have been affected by past activities, a CERCLA Preliminary Assessment will be conducted at these sites to further characterize the extent of contamination.

#### 6.18 Installation Restoration, Military Munitions Response Program Sites

6.18.1 OU-40/FGGM-003-R-01 Former Mortar Range. Munitions response site (MRS) OU-40/FGGM-003-R-01 is a mortar range covering approximately 291 acres in the southwest portion of the installation. The range was identified on a 1924 War Games Map. It was in use from 1924 until the mid 1940s. The land is currently used for the golf course, which was constructed starting in 1938. The MMRP Site Inspection (SI) Report indicates that soil samples had no detections for explosives or metals above regulatory limits. However, because the laboratory analysis from the 2004 EBS reported detections of explosives in soils, the site may be impacted by munitions constituents (MC). Additionally, possible dump sites were identified in this area with some magnetic anomalies. Based on the 2004 EBS report, discovery of a mortar round on Mapes Road, and the possible dump sites with anomalies, the SI concluded that the potential exists for Munitions and Explosives of Concern (MEC) to be present on the MRS. Based on the site history and previous investigations, the site was recommended for a MMRP RI. The Army has found 2- and 3-inch stokes mortars, 60 millimeter (mm) mortars, 81-mm mortars, Mark II hand grenades, and land mines; all were determined to be practice rounds. Small arms rounds were also found, including .20 caliber (cal), .30 cal, and .50 cal rounds. As a result of the fieldwork, an RI/FS is underway at the OU.

6.18.2 OU-44/FGGM-007-R-01 Inactive Landfill No. 2. The approximately 24 acres Inactive Landfill No. 2 is located immediately south of Tipton Airfield. The landfill was part of the general impact area from 1917 until its deactivation in 1992. The landfill is near several former ranges that were used for hand grenade training, anti-tank range and artillery impact areas. An Ordnance Safety Measure study was conducted for the landfill in 1998; however, it was determined that the site could not be cleared of suspect ordnance due to the large amount of debris and proximity to wetlands. During the 1998 Remedial Investigation of the landfill, soil, groundwater, sediment, and surface water samples were tested. Elevated levels of metals in soil

and groundwater were detected but correlate with naturally occurring levels. No explosives or related analytes were detected above industrial screening levels.

#### 6.19 Base Realignment and Closure Program

6.19.1 OU-8 and OU-17/FGGM-10 and FGGM-31 Inactive Landfill Nos. 1 and 3. The December 1998 ROD, Tipton Airfield Area OU established the site remedy for Inactive Landfill No. 3, Helicopter Hanger Area (OU-32), and the Fire Training Area (OU-18) as No Further Action with groundwater monitoring and five-year reviews (OU-8/FGGM-10). The June 1999 ROD, Tipton Airfield Parcel OU established the site remedy for Inactive Landfill No. 1 and Landfill No. 2 as No Further Action with groundwater monitoring and five-year reviews (OU-17/FGGM-31). The groundwater is sampled every 2 years and the need for continued monitoring is evaluated on a 5-year review cycle. Five year reviews were conducted in 2003 and 2008.

6.19.2 OU-15/FGGM-20 Ordnance Demolition Area. This site was transferred to DOI/FWS as a part of the 7,600-acre transfer that occurred in 1991. The Ordnance Demolition Area (“ODA”) was used as a demolition area for UXO encountered at FGGM and the DOI/FWS property. The ODA is a 2.5-acre site built in early 1960s, with operations ending in the 1980s (est). Groundwater samples are collected annually as part of the long-term groundwater monitoring plan. Soil and groundwater samples taken for the RI dated October 2001 and the Long-Term Monitoring Reports dated April 2003, September 2004, and November 2006 at the site revealed levels of cyclotrimethylenetrinitramine (“RDX”), amino-dinitrotoluene (“amino-DNT”), trinitrotoluene (“TNT”), cadmium, PCE, and TCE above levels of concern, as established by a Superfund Baseline Risk Assessment. Several of these compounds, especially RDX and TNT, are associated with explosives.

6.19.3 OU-33/FGGM-81 Clean Fill Dump. This site was operated from approximately 1972 to 1985 for the disposal of miscellaneous debris, ash and possibly hazardous waste. In a Record of Decision (“ROD”) signed by the Army and EPA on September 29, 2000, a remedy that prescribes monitored natural attenuation of CFD groundwater was selected. The Army submitted a 5-year review report to EPA in May 2006. EPA agreed with the recommendation to continue the monitoring program selected in the ROD (EPA, 2008). Transfer of the CFD to DOI/FWS is pending.

6.19.4 OU-34/FGGM-82 UXO Removal. FGGM-82 was created to support an August 2001 Action Memorandum that selected A Non-Time Critical Ordnance and Explosives (OE) Removal Action for 24 high-use areas at the PRR-NT. These 24 areas were jointly selected with FWS based on their high use such as hunting, hiking, fishing, wildlife observation, bicycling, horseback riding, and educational programs. Thus, these areas had a high priority for investigations for protection of the human and ecological environment. The selected areas totaled 316 acres. The OE removal action was conducted over a 2-year period (2002 to 2004) and two statements of clearance were issued by the United States Army Corps of Engineers (USACE)-Baltimore District.

6.19.5 OU-35/FGGM-85 UXO Tipton Army Airfield. The Tipton Army Airfield UXO land-use control site involves monitoring and maintenance of MEC land-use controls established for the Tipton Army Airfield parcel. The July 1998 safety precautions document for Tipton Airfield, Fort Meade, prescribed the installation of an earthen UXO safety cap over Inactive Landfill No. 1 (completed), annual inspections of the cap, installation and maintenance of a fence around Inactive Landfill No. 2 (installation complete), surface sweeps of Inactive Landfill No. 3, and annual sweeps of a portion of the Little Patuxent River. The July 1999 ROD requires biannual groundwater monitoring because of explosives contamination detected in groundwater monitoring wells.

6.19.6 OU-37/FGGM-94 Trap and Skeet Range. Trap and Skeet Range 17 is located around the central portion of the PRR-NT. Trap and Skeet activities ended approximately 1999. A remedial investigation/feasibility study is underway.

6.19.7 BRAC Military Munitions Response Program Sites

6.19.7.1 OU-38/FGGM-001-R-01 Clean Fill Dump. The 13-acre Clean Fill Dump (CFD) is located completely within the PRR-NT in an area of former range activity. The CFD is also discussed under OU-33/FGGM 81. OU-33/FGGM 81 refers to the soil and groundwater potentially affected by past landfill activities. OU-38/FGGM-001-R-01 relates to the MEC potentially present in the soil at this site. Because the property has not yet been transferred, the site is separate from OU-39/FGGM-002-R-01, see Section 6.19.7.2.

6.19.7.2 OU-39/FGGM-002-R-01 HE Impact and Disposal. This site covers the 8100 acre parcel transferred to the DOI/FWS. The Army conducted an UXO survey and removal on the surface and within a depth of six inches below the ground at the 8100 acre PRR-NT parcel from January 1992 to September 1993. An August 2001 Action Memorandum selected a Non-Time Critical Ordnance and Explosives (OE) Removal Action (NTCRA) for 24 high-use areas at the PRR-NT and established the general requirements for MEC land-use controls. A 5-year review is currently underway to determine whether the NTCRA implemented at the site continues to be protective.

6.20 The Army recognizes the potential impact of the IR and BRAC programs on the health, environment, and economic well being of the local community and governmental agencies affected by these programs. Recognizing the need for community involvement and multi-agency participation by interested stakeholders, FGGM and Army representatives have actively encouraged regulatory agencies' and interested parties' participation in the installation restoration process. In 1995 the Fort Meade Partnering Team, comprised of core representatives from EPA, MDE, and the Army, was established to address environmental contamination at the property through a collaborative process. The team evaluated areas of concern on both active and transferred property. To further enhance community relations, the Restoration Advisory Board ("RAB") was established in 1995 and generally meets every two months to provide a venue for RAB members and interested parties to garner information on current and proposed Army environmental remediation actions throughout current or former FGGM lands. These meetings are open to the general public to provide input for Army consideration. In accordance with CERCLA requirements, public notice is given for input and opportunity for comment on Army

actions.

6.21 A Community Relations Plan for FGGM was developed in 2005 and updated in 2009. The plan identified issues of community concern and described the community relations program to be implemented throughout the cleanup process at FGGM. Community residents, elected officials and local environmental groups were interviewed to document their concerns on restorations issues.

6.22 The FGGM Administrative Record ("AR") and Information Repositories were established April 1996. The AR has all the guidance, correspondence, and documents that were used to make remedial decisions at FGGM and the transferred properties. The AR is maintained at the FGGM Environmental Division Office and Anne Arundel County West County Area Library.

## VII. EPA DETERMINATIONS

7.1 The following constitutes a summary of the determinations relied upon by EPA to establish its jurisdiction and authority to enter into this Agreement. None of these determinations shall be considered admissions to any person, related or unrelated to this Agreement, for purposes other than determining the basis of this Agreement or establishing the jurisdiction and authority of the Parties to enter into this Agreement.

7.2 The United States Department of the Army is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

7.3 Ft. Meade is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9), and 10 U.S.C. Section 2701 *et seq.*, and is subject to the Defense Environmental Restoration Program.

7.4 The United States is the owner and operator of Ft. Meade as defined in Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. Sections 9601(20) and 9607(a)(1). The Army is the DoD component charged with fulfilling the obligations of the owner/operator under CERCLA at Ft. Meade. With respect to Ft. Meade, the Secretary of Defense has delegated to the Army the CERCLA authority vested in him by Executive Order 12580. The Army is also the "lead agency," as defined in 40 C.F.R. § 300.5, for planning and implementing response actions under CERCLA at Ft. Meade.

7.5 The United States is the current owner and DOI/FWS is the DOI entity charged with owner responsibilities under CERCLA as defined in Sections 101(20) of CERCLA, 42 U.S.C. § 9601(20), of certain parcels of the Site that were transferred from the Army to DOI. The Fish and Wildlife Service is the DOI agency charged with fulfilling certain property-related obligations for those parcels, as identified in Section IX--WORK TO BE PERFORMED.

7.6 The United States is the current owner and USAOC is the legislative branch entity charged with owner responsibilities under CERCLA, as defined in Sections 101(20) of CERCLA, 42 U.S.C. § 9601(20), of certain parcels of the Site that were transferred from the

Army to USAOC. The USAOC is charged with fulfilling certain property-related obligations for those parcels, as identified in Section IX--WORK TO BE PERFORMED.

7.7 There has been a release or a substantial threat of a release of hazardous substances, pollutants, contaminants, hazardous wastes or constituents at or from the Facility.

7.8 The actions provided for in this Agreement are not inconsistent with the NCP.

7.9 The actions provided for in this Agreement are necessary to protect the public health, welfare, and the environment.

7.10 This Agreement provides for the expeditious completion of all necessary response actions.

### **VIII. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION**

8.1 The Parties intend to integrate the Army's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will be deemed to achieve compliance with CERCLA, 42 U.S.C. Section 9601 *et seq.*; to satisfy the corrective action requirements of RCRA Sections 3004(u) and (v), 42 U.S.C. Sections 6924(u) and (v), for a RCRA permit, and RCRA Section 3008(h), 42 U.S.C. Section 6928(h), for interim status facilities; and to meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations, to the extent required by CERCLA Section 121, 42 U.S.C. Section 9621 and applicable Maryland law.

8.2 Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement will be deemed by the Parties to be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA (i.e., no further corrective action shall be required). The Parties agree that, with respect to releases of hazardous waste covered by this Agreement, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to CERCLA Section 121, 42 U.S.C. Section 9621.

8.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at Ft. Meade may require the issuance of permits under Federal and Maryland laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to Ft. Meade for ongoing hazardous waste management activities at the Site, U.S. EPA shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. With respect to those portions of this Agreement incorporated by reference into permits, the Parties intend that judicial



review of the incorporated portions shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

8.4 Nothing in this Agreement shall alter the Army's or DOI/FWS's authority with respect to removal actions conducted pursuant to CERCLA Section 104, 42 U.S.C. Section 9604.

## **IX. WORK TO BE PERFORMED**

9.1 The Parties recognize that background information exists and has been reviewed prior to developing the Work Plans required by this Agreement. The Army need not halt currently ongoing work but may be obligated to modify or supplement work previously done to meet the requirements of this Agreement. It is the intent of the Parties to this Agreement that work done and data generated prior to the Effective Date of this Agreement be retained and utilized as elements of the RI/FS to the maximum extent feasible.

### **9.2 Work to be Performed by DOI/FWS and USAOC**

9.2.1 The USAOC shall notify EPA of the identity and assigned tasks of each of their response action contractors performing Work under this Agreement upon their selection and contract award. The USAOC shall provide copies of this Agreement to all response action contractors performing any Work called for by this Agreement.

9.2.2 The Parties recognize that DOI/FWS and USAOC, as current land managers on behalf of the United States of portions of the Site, have a role in the development, selection, and implementation of response actions that may impact their respective portions including the responsibility for providing access to, monitoring and managing land in a manner that is consistent with selected land use controls on their respective portions of the Site. Accordingly, the Work to be performed by DOI/FWS and USAOC includes: DOI/FWS and USAOC shall participate, cooperate and coordinate with the Army in the development, selection and implementation of the response actions required under this FFA as they impact DOI/FWS or USAOC property within the Site. Such participation shall include, at a minimum:

- a. Timely review and comment on primary documents produced by the Army within the time frames as provided by this Agreement. If DOI/FWS and USAOC do not provide comments within the time frames, as provided in this Agreement, then DOI/FWS and USAOC will be deemed to have no comments;
- b. Early identification to Army of DOI/FWS and USAOC expectations regarding the development and implementation of any Land Use Control (LUC) component of response actions pertaining to lands managed by the DOI/FWS or USAOC;
- c. Monitoring, enforcing, preserving, or otherwise complying with any LUC component of response action pertaining to lands managed by the DOI/FWS or USAOC;

9.2.3 DOI/FWS and USAOC shall provide access to their respective Site property pursuant to Section XVI. ACCESS; and

9.2.4 DOI/FWS and USAOC shall

1. not use the land or allow activities which are inconsistent with any land use controls (LUCs) selected in any CERCLA response decision documents;
2. notify EPA and the Army 45 days in advance of any proposed land use changes that are inconsistent with land use control objectives or the selected remedy;
3. not interfere with or allow activities which may interfere with any CERCLA response actions , including LUCs, implemented on such property;
4. establish internal, written procedures regarding excavation and similar matters, to help ensure LUCs remain protective;
5. notify EPA and the Army at least 30 days in advance prior to making changes to the internal, written procedures that may affect CERCLA response actions, including LUCs;
6. include a map, identifying the boundaries of the LUCs, with those internal, written procedures;
7. notify the Army and EPA as soon as practicable, but no longer than ten days after discovery, of any activity that is inconsistent with any LUC objectives or any other action that may interfere with the effectiveness of the LUCs;
8. notify the Army and EPA at least six (6) months prior to any transfer or sale of lands affected by LUCs so that EPA and the Army can be involved in discussions to ensure that appropriate provisions are included in the transfer terms or conveyance documents to maintain effective LUCs. If it is not possible for the facility to notify EPA and the Army at least six months prior to any transfer or sale, then the facility will notify EPA and the Army as soon as possible but no later than 60 days prior to the transfer or sale of any property subject to LUCs. In addition to the land transfer notice and discussion provisions above, DOI/FWS and USAOC further agree to provide EPA and the Army with similar notice, within the same time frames, as to federal-to-federal transfer of property. The DOI/FWS and USAOC shall provide a copy of executed deed or transfer assembly to EPA and the Army; and
9. not modify or terminate LUCs, implementation actions, or modify land use without concurrence of EPA and the Army, except as otherwise provided by law. The DOI/FWS and the USAOC shall seek prior concurrence before any

anticipated action that may disrupt the effectiveness of the LUCs or any action that may alter or negate the need for LUCs.

9.2.5 DOI/FWS commits that, in the event DOI/FWS undertakes any Natural Resource Damage assessment activities related to the Site, DOI/FWS will comply with 40 C.F.R. § 300.615 of the National Contingency Plan, including but not limited to, the obligation to keep EPA and Army informed of any such damage assessment activities that may affect response operations.

9.2.6 DOI/FWS will pay for or perform any CERCLA response action, or portion thereof, required due to a release or threatened release of hazardous substances, pollutants, or contaminants caused or exacerbated by DOI/FWS, except that DOI/FWS shall be responsible only to the extent that response costs are directly attributable to such a release and DOI/FWS shall not be liable for contamination attributable to actions undertaken by the Army or to any event that may have occurred affecting the real property during the period of control by the Army.

9.2.7 USAOC will pay for or perform any CERCLA response action, or portion thereof, required due to a release or threatened release of hazardous substances, pollutants, or contaminants caused or exacerbated by USAOC. Except that USAOC shall be responsible only to the extent that response costs are directly attributable to such a release and USAOC shall not be liable for contamination attributable to actions undertaken by the Army or to any event that may have occurred affecting the real property during the period of control by the Army.

### 9.3. Work to be Performed by the Army

The Army will pay for or perform any CERCLA response action, or portion thereof, required due to a release or threatened release of hazardous substances, pollutants, or contaminants attributable to actions undertaken by the Army or to any event that may have occurred affecting the real property during the period of control by the Army.

9.3.1 The Parties recognize that the Army will plan and implement performance of response actions at the Site, except as provided in 9.2.

9.3.1.1 With respect to the Ordnance Demolition Area (ODA), the Army agrees to withdraw its Decision Document within 30 days of the effective date of this Agreement. In its place, the Army will submit a proposed plan within 30 days thereafter for the ODA for review and comment pursuant to Section X: CONSULTATION. The Army will include a schedule for this ROD in the SMP as provided in Section XI: DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN.

9.3.1.2 Consistent with Section 121(c) of CERCLA and to ensure the continued protectiveness of the remedial action at Tipton Airfield, the Army agrees to develop an Explanation of Significant Differences (ESD) that will address a) the need for sweeps of ordnance; b) appropriate disposal of ordnance if discovered; and c) land use control requirements. The Army

shall include in the SMP a schedule for development of the ESD as provided in Section XI: DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN.

9.3.1.3 With respect to LUCs, the Army agrees to evaluate all other prior response decisions to ensure adequate land use controls. In the event that selection of additional LUCs are required, the Army shall either amend the affected ROD or issue an ESD, consistent with the NCP, to incorporate the selection of additional LUCs.

### 9.3.2 Operable Units

9.3.2.1 The Army shall develop, implement and report on Remedial Investigations and Feasibility Studies (RI/FSs) for the Operable Units listed in Appendix A and new Operable Units established under Subsection 9.3.2.2. If an Operable Unit is modified under Subsection 9.3.2.3, and RI/FS work is appropriate for the modified Operable Unit, then the Army shall develop, implement and report on a RI/FS for the modified Operable Unit.

9.3.2.2 Any Party may propose that a new site within the facility be designated as an Operable Unit. The proposal must be in writing to the other Parties and must state the reasons for designating a new Operable Unit. The proposal shall be discussed by all Project Managers within forty-five (45) days of the written notice. Dispute Resolution may be invoked if the Parties are not in agreement on the proposal of a specific Operable Unit. If Dispute Resolution is not invoked by the Parties within thirty (30) days after completion of the Project Managers' discussion concerning the proposal, or if the need for an Operable Unit is established through Dispute Resolution, the proposed new site shall be an Operable Unit, as that term is defined in Section II – DEFINITIONS of this Agreement.

9.3.2.3 A Party may propose that an established Operable Unit be modified. The proposal must be in writing to the other Parties, and must state the reasons for the modification. The proposal shall be discussed by the Project Managers within forty-five (45) days of the written notice. Dispute Resolution may be invoked if the Parties are not in agreement on the proposal to modify a specific Operable Unit. If Dispute Resolution is not invoked within thirty (30) days after the Project Managers' discussion concerning the modification, or if the need for modifying an Operable Unit is established through Dispute Resolution, the Operable Unit, as defined in Section II – DEFINITIONS, shall be modified.

9.3.2.4 In the Site Management Plan, the Army shall include a Schedule and Milestone(s) for submitting RI/FS Work Plan(s) for the Operable Units in Appendix A, except for those Operable Units for which RI/FS Work Plans have already been submitted. When a new Operable Unit is established under Subsection 9.3.2, the Army shall, in the next draft amendment to the Site Management Plan, propose a Milestone for submitting of a RI/FS Work Plan for the new Operable Unit. When an Operable Unit is modified under Subsection 9.3.2.3, and RI/FS work is appropriate for the modified Operable Unit, the Army shall, in the next draft amendment to the Site Management Plan, propose a Milestone for submitting a RI/FS Work Plan for the modified Operable Unit. The RI/FS Work Plan(s) shall contain proposed Schedules and Milestone(s) for the submittal of the RI/FS Report(s). The Schedule(s) and Milestone(s) included in the Final RI/FS Work Plan(s) shall be incorporated into the Site Management Plan in accordance with

Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement. The development of the FS(s) will proceed in accordance with Subsection 9.3.2.7 of this Agreement.

9.3.2.5 For those Sites that the Parties determine represent a negligible or minimal risk and are strong candidates for no action, the Army shall submit a concise FS statement indicating negligible or minimal risks were found and no action is warranted. If the Parties determine that no action is required, a no-action Proposed Plan will be prepared. A Schedule for completing a no-action Proposed Plan will be developed in accordance with Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

9.3.2.6 RIs shall be conducted in accordance with the requirements and Schedules set forth in the approved RI/FS Work Plan(s) and Site Management Plan. RIs shall meet the purposes set forth in Section IV – PURPOSE of this Agreement. A Baseline Risk Assessment shall be a component of the RIs. Final Site clean-up level criteria will only be determined following completion of the Baseline Risk Assessment.

9.3.2.7 The Army agrees it shall develop, implement and report upon a FS for areas subject to a RI. The FS shall be conducted in accordance with the requirements and Schedules set forth in the Site Management Plan. The FS shall meet the purposes set forth in Section IV – PURPOSE of this Agreement.

#### 9.4 Procedures for Interim Remedial Actions

9.4.1 The Army shall implement those Interim Remedial Actions (IRA) necessary to prevent, minimize, or eliminate risks to human health and the environment caused by the release of hazardous substances, pollutants, or contaminants. An Interim Remedial Action is identified, proposed, and implemented prior to a final Remedial Action. An IRA shall attain ARARs to the extent required by CERCLA or the NCP and be consistent with, and contribute to, the efficient performance of a final Remedial Action(s) taken at an area or Operable Unit. An IRA must be protective of human health and the environment, and comply with CERCLA, the NCP, and state laws to the extent that they are legally applicable, or relevant and appropriate requirements in accordance with Section 121 of CERCLA, and this Agreement.

9.4.2 When the Army, EPA, or, as applicable, DOI/FWS or USAOC, determines that an Interim Remedial Action is necessary for any area(s) within the Facility, such Party shall notify, in writing, the other Parties, of the proposal. The Proposal Notification to the other Parties under this Subsection 9.4.2 shall at a minimum include the location(s) of such area(s) within the Facility and the reason(s) the Party believes an Interim Remedial Action is required. Any Party may propose an IRA for those Operable Unit(s) most suitable for an Interim Remedial Action.

9.4.3 Within thirty (30) days of notification, any Party may request a meeting of the Parties to assist in expediting the decision to proceed with an IRA. If a dispute(s) arises over whether to address such an area(s) under this Agreement that cannot be settled between the Parties within thirty (30) days from completion of the meeting, the dispute(s) shall be immediately brought to the Dispute Resolution Committee (DRC) pursuant to Section XX – DISPUTE RESOLUTION.

9.4.4 After the determination that an Interim Remedial Action is required under this Agreement, the Army shall, in the next draft amended Site Management Plan, submit to EPA and the MDE proposed Milestone(s) for the submission of Work Plan(s) for the performance of a Focused Feasibility Study (FFS) for the identified area(s). The Milestone(s) will be finalized in accordance with Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN. The Schedule and Milestone(s) included in the approved, final FFS Work Plan will immediately be incorporated in the Site Management Plan. The FFS shall include a limited number of proposed Interim Remedial Action alternatives. To the extent possible, the FFS shall provide an assessment of the degree to which these alternatives were analyzed during their development and screening. The Army shall develop, implement, and report upon each FFS in accordance with the requirements set forth in the final FFS Work Plan. The Army shall follow the steps outlined in Subsections 9.5.2 through 9.8.4 below.

## 9.5 Records of Decision and Plans for Remedial Action

9.5.1 This Subsection 9.5 shall apply to selection of remedial actions and any disputes relating thereto.

9.5.2 Within forty-five (45) days after finalization of a RI/FS or FFS, the Army shall submit a draft Proposed Plan to EPA and, as applicable, to DOI/FWS and USAOC for review and comment as described in Section X – CONSULTATION. Within fourteen (14) days after receiving EPA's acceptance of the Proposed Plan, the Army shall publish its Proposed Plan for thirty (30) days of public review and comment. During the public comment period, the Army shall make the Proposed Plan and supporting analysis and information available to the public in the Administrative Record. The Army shall hold a public information meeting during the public comment period to discuss the preferred alternative for each Remedial Action. Copies of all written and oral public comments received will be provided to the Parties. Public review and comment shall be conducted in accordance with Section 117(a) of CERCLA, 42 U.S.C. Section 9617(a), and applicable EPA Guidance.

9.5.3 Following public comment, the Army, in consultation with EPA and, as applicable, DOI/FWS and USAOC and the MDE, will determine if the Proposed Plan should be modified based on the comments received. These modifications will be made by the Army and the modified documents will be provided to EPA and, as applicable to DOI/FWS and USAOC. The Parties may recommend that additional public comment be solicited if modifications to the Proposed Plan substantially change the remedy originally proposed to the public. The determination concerning whether a Proposed Plan should be modified or whether additional public comment is necessary is subject to the dispute resolution provisions of this Agreement, Section XX – DISPUTE RESOLUTION.

9.5.4 The Army shall submit its draft ROD to EPA and the MDE and, as applicable, to DOI/FWS and USAOC within forty-five (45) days following the close of the public comment period, including any extensions, on the Proposed Plan. The draft ROD will include a Responsiveness Summary, in accordance with applicable EPA Guidance. Pursuant to CERCLA Section 120(e)(4)(A), 42 U.S.C. Section 9620(e)(4)(A), EPA and the Army, in consultation with

Maryland and, as appropriate, DOI/FWS and USAOC, shall make the final selection of the remedial action(s).

9.5.5 The selection of a remedy that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria or limitation is one basis on which Maryland may determine not to concur with a final remedial action plan. In accordance with CERCLA Section 121(f)(3)(A), 42 U.S.C. Section 9621(f)(3)(A), at least thirty (30) days prior to the publication of the Army's final remedial action plan, if the Army proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria or limitation, the Army shall provide an opportunity for Maryland to concur or not concur in the selection of such plan. If Maryland concurs or does not act within thirty (30) days of receipt of notification by the Army of pending publication of the final remedial action plan, the remedial action may proceed. If Maryland does not concur, it may act pursuant to Section 121(f)(3)(B) of CERCLA, 42 U.S.C. Section 9621(f)(3)(B).

9.5.6 If EPA and the Army and, as applicable, DOI/FWS and USAOC are unable to reach agreement on the selection of the remedy after exhausting the Dispute Resolution process set forth in Section XX – DISPUTE RESOLUTION, then the Administrator shall select the remedy in accordance with all applicable laws and procedures.

9.5.7 Notice of the final ROD shall be published by the Party preparing it and shall be made available to the public prior to commencement of the remedial action, in accordance with Section 117(b) of CERCLA, 42 U.S.C. Section 9617(b). The final ROD shall include a statement that the State of Maryland has concurred or not concurred with the selection of the remedy.

## 9.6 Remedial Design and Remedial Action

9.6.1 The Site Management Plan shall include a Target Date for submission of a preliminary/conceptual Remedial Design (RD) (30 percent design report); a Target Date for submission of the 90 percent or pre-final Remedial Design; and a Deadline for the final Remedial Design. All design documents shall be prepared in accordance with this Agreement and applicable Guidance issued by EPA including *Principles and Procedures for Specifying Monitoring and Enforcement of Land Use Controls and Other Post-ROD Actions (as amended)*.

9.6.1.1 The RD shall provide the appropriate plans and specifications describing the intended remedial construction and shall include provisions necessary to ensure that the remedial action will achieve ARARs and performance standards identified in the ROD.

9.6.1.2 The RD shall describe short and long-term implementation actions, and responsibilities for the actions, to ensure long-term viability of the remedy, which may include both Land Use Controls and an engineered portion (e.g., landfill caps, treatment systems) of the remedy. The term "implementation actions" includes all actions to implement, operate, maintain, and enforce the remedy.

9.6.2 The Remedial Action (RA) Work Plan(s) shall at a minimum contain a Schedule for the completion of the Remedial Action, a Health and Safety Plan, a Sampling and Analysis Plan, and

a Quality Assurance Project Plan, Remedial Action Specifications, Erosion Control and Sedimentation Plan, Decontamination Plan, Remedial Action Contingency Plan, and provisions for operation and maintenance, if necessary. The Schedule contained in the final RA Work Plan(s) will be immediately incorporated in the Site Management Plan.

9.6.3 After the final design document is approved, pursuant to Section X – CONSULTATION, the Army shall begin performance of the Remedial Action in accordance with the ROD, final Remedial Design and the RA Work Plan. The Remedial Action shall be completed in accordance with the ROD, approved final Remedial Design and RA Work Plan and all applicable EPA Guidance.

9.6.4 Following completion of remedial action at each Operable Unit (OU) and in accordance with the Schedule in the Site Management Plan, the Army shall prepare and submit to EPA and, as applicable, to DOI/FWS and USAOC a Remedial Action Completion Report (RACR) to show that remedial action objectives for an OU have been achieved. The RACR shall provide an explanation for any activities that were not conducted in accordance with the final Remedial Design and/or RA Work Plan(s). In addition, for long-term remedies where it is anticipated that remedial action objectives will be achieved over a long period, the Army shall submit to EPA and, as applicable, to DOI/FWS and USAOC according to the Schedule in the Site Management Plan, a RACR which shall document that physical construction is complete and the unit is operating as designed. The RACR(s) shall be prepared in accordance with this Agreement and the DoD and EPA Joint Guidance for Recommended Streamlined Site Closeout and NPL Deletion Process for DoD Facilities (2006).

## 9.7 Accelerated Operable Unit

9.7.1 Accelerated Operable Units (AOUs), as defined in Section II – DEFINITIONS, will follow a streamlined remedial process as set forth below. Any Party may propose in writing that an Operable Unit (OU) be conducted as an AOU. The Party proposing an AOU shall be responsible for drafting an AOU proposal, which shall clearly define the purpose, scope and goals of the AOU. The Army shall evaluate all proposed AOUs.

9.7.2 Within thirty (30) days of notification, any Party may request a meeting of the Parties to assist in expediting selection of an AOU. If dispute resolution is not invoked within thirty (30) days following receipt of a proposal for an AOU by the Parties, or thirty (30) days after the meeting, or if the need for an AOU is established through Section XX – DISPUTE RESOLUTION, the proposed AOU shall be incorporated into the Site Management Plan as an AOU. The Army agrees to pursue additional funding within ten (10) days of establishment of the AOU in order to initiate the AOU, if the Work is the responsibility of the Army under Section 9.3.

9.7.3 Within fifteen (15) days after the determination that an AOU is required under this Agreement, the Army shall submit to EPA and, as applicable, to DOI/FWS and USAOC proposed Deadlines for the submission of Work Plan(s) for the performance of an AOU Focused Feasibility Study (FFS) for the identified AOU(s). Each AOU FFS Work Plan shall contain a proposed Deadline for submittal of the AOU FFS and Proposed Plan, which will be incorporated



in the next Site Management Plan. The Army shall develop, implement and report upon each AOU FFS in accordance with the requirements set forth in the final AOU FFS Work Plan. The Army shall follow the steps outlined in Subsections 9.5.2 through 9.6.4.

## 9.8 Supplemental Response Action

9.8.1 The Parties recognize that subsequent to finalization of a ROD, a need may arise for one or more supplemental response actions to remedy continuing or additional releases or threats of releases of hazardous substances, pollutants, or contaminants at or from the Site. If such release or threat of release may present an immediate threat to public health or welfare or the environment, it shall be addressed pursuant to Section XVIII – REMOVAL AND EMERGENCY ACTIONS. If such release or threat of release does not present an immediate threat to public health or welfare or the environment, it shall be addressed pursuant to Subsections 9.8.2 through 9.9.2.

9.8.2 A supplemental response action shall be undertaken only when:

9.8.2.1 A determination is made that:

9.8.2.1.1 As a result of the release or threat of release of a hazardous substance, pollutant, or contaminant at or from the Site, an additional response action is necessary and appropriate to ensure the protection of human health or the environment; or,

9.8.2.1.2 There is or has been a release of hazardous waste or hazardous constituents into the environment and corrective response action is necessary to protect human health or the environment; and,

9.8.2.2 Either of the following conditions is met for any determination made pursuant to Subsection 9.8.2.1, above:

9.8.2.2.1 For supplemental response actions proposed after finalization of the ROD, but prior to EPA Certification, the determination must be based upon conditions at the Site that were unknown at the time of finalization of the ROD or based upon new information received in whole or in part by EPA following finalization of the ROD; or

9.8.2.2.2 For supplemental response actions proposed after EPA Certification, the determination must be based upon conditions at the Site that were unknown at the time of EPA Certification or based upon new information received in whole or in part by EPA following EPA Certification.

9.8.3 If, subsequent to ROD signature, any Party concludes that a supplemental response action is necessary, based on the criteria set forth in Subsection 9.8.2, such Party shall promptly notify the others of its conclusion in writing. The notification shall specify the nature of the modification needed and the new information on which it is based. The Project Managers shall confer and attempt to reach consensus on the need for such an action within thirty (30) days of receiving such notification. If the Project Managers fail to reach consensus, any Party may

notify the other Parties in writing within ten (10) days thereafter that it intends to invoke dispute resolution. If the Project Managers are still unable to reach consensus within fourteen (14) days of the issuance of notice invoking dispute resolution, the question of the need for the supplemental response action shall be resolved through dispute resolution.

9.8.4 If the Project Managers agree, or if it is determined through dispute resolution, that a supplemental response action is needed based on the criteria set forth in Subsection 9.8.2, the Army shall propose a Deadline for submittal of the Supplemental Work Plan(s) and a Schedule for performance of the Work there under to EPA in the next draft amended SMP.

9.8.5 After finalization of a Supplemental Work Plan, the Army shall conduct a Supplemental Response Action RI/FS. Following finalization of the Supplemental Response Action RI/FS, the procedures described in Subsections 9.5 and 9.6 shall be followed.

## 9.9 Construction Completion and Site Completion.

9.9.1 Construction Completion. The Army agrees that it shall provide written notice to EPA and, as applicable, to DOI/FWS and USAOC when physical construction of all remedial actions for all Operable Units is complete and will incorporate in the notice reference to the supporting RACRs.

9.9.2 Site Completion. Following completion of remedial action at the last Operable Unit and in accordance with the Schedule in the Site Management Plan, the Army shall prepare and submit to EPA and, as applicable, to DOI/FWS and USAOC a Remedial Action Completion Report (RACR) to show that remedial action objectives for all OUs have been achieved. The RACR shall provide an explanation for any activities that were not conducted in accordance with the final Remedial Design and/or RA Work Plan(s). The information provided therein shall document compliance with statutory requirements and provide a consolidated record of all remedial activities for all OUs at the Site in accordance with the DoD and EPA Joint Guidance, Recommended Streamlined Site Closeout and NPL Deletion Process for DoD Facilities. In order for a Site to be eligible for completion, the following criteria must be met:

9.9.2.1 Remedial Action Objectives specified in all RODs have been met, and all cleanup actions and other measures identified in the RODs have been successfully implemented;

9.9.2.2 The constructed remedies are operational and performing according to engineering specifications;

9.9.2.3 The Site is protective of human health and the environment;

9.9.2.4 Land use controls are in place as appropriate; and

9.9.2.5 The only remaining activities, if any, at the site are long term management activities (which may include long-term monitoring).

9.9.3 Information provided for remedial action completion shall be signed by the Army's signatory authority or designee, certifying that remedial activities have been completed in full satisfaction of the requirements of this Agreement, and shall include a request for EPA certification of remedial action completion at the Site. Within ninety (90) days of EPA's receipt of the Army's request for certification of Site completion, EPA shall, after consultation with MDE:

9.9.3.1 Certify that all response actions have been completed at the Site in accordance with CERCLA, the NCP and this Agreement, based on conditions known at the time of certification; or

9.9.3.2 Deny the Army's request for certification of Site completion, stating the basis of its denial from the standards identified in 9.9.2 and detailing the additional Work needed for completion and certification.

9.9.3.3 If EPA, after consultation with MDE and, following notification to DOI/FWS and USAOC, denies the Army's request for certification for Site completion in accordance with this Agreement, the Army may invoke dispute resolution in accordance with Section XX – DISPUTE RESOLUTION of this Agreement within twenty (20) days of receipt of the written denial of certification or determination that additional Work is necessary. If the denial of certification is upheld through the dispute resolution process, the Army will perform the requested additional Work.

9.9.3.4 If dispute resolution is not invoked, or if a denial of certification is upheld through dispute resolution, the Army shall, in the next draft amended Site Management Plan submitted after receipt of the written denial of certification or dispute resolution finding, propose a Deadline for the submittal of a draft Supplemental Work Plan. The draft Supplemental Work Plan shall contain a Schedule for completion of the additional Work required. This Schedule, once approved, will be incorporated in the Site Management Plan. After performing the additional Work, the Army may resubmit a request for certification to EPA as outlined in this Subsection 9.9.3. EPA shall then grant or deny certification pursuant to the process set forth in this Subsection 9.9.3.

## **X. CONSULTATION**

### **10.1 Review and Comment Process for Draft and Final Documents, Applicability**

10.1.1 The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either Primary or Secondary Documents. In accordance with CERCLA Section 120 and 10 U.S.C. 2705, the Army will normally be responsible for issuing Primary and Secondary Documents to EPA, and, as applicable DOI/FWS, and USAOC. As of the Effective Date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with Subsections 10.2 through 10.10 below.

10.1.2. The designation of a document as “draft” or “final” is solely for purposes of consultation with EPA, and, as applicable DOI/FWS, and USAOC in accordance with this Section. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as “final,” to the public for review and comment as appropriate and as required by law.

## 10.2 General Process for RI/FS and RD/RA Documents

10.2.1 Primary Documents include those documents that are major, discrete portions of RI/FS or RD/RA activities. Primary Documents are initially issued by the Army in draft subject to review and comment by EPA and, as applicable DOI/FWS, and USAOC. Following receipt of comments on a particular draft Primary Document, the Army will respond to the comments received and issue a draft final Primary Document subject to dispute resolution. The draft final Primary Document will become the final Primary Document upon the earlier of (i) issuance of a “no additional comment letter” by EPA (ii) thirty days after the period established for review of a draft final primary document if dispute resolution is not invoked, or (iii) modification by decision of the dispute resolution process. No additional comment letters shall state the document is ready for inclusion in the Administrative Record.

10.2.2 Secondary Documents include those reports that are discrete portions of the Primary Documents and are typically input or feeder documents. Secondary Documents are issued by the Army in draft, subject to review and comment by EPA and, as applicable DOI/FWS, and USAOC. Although the Army will respond to comments received, the draft Secondary Documents may be finalized in the context of the corresponding Primary Documents. A Secondary Document may be disputed at the time the corresponding draft final Primary Document is issued.

## 10.3 Primary Documents

10.3.1 The Army shall complete and transmit draft reports for the following Primary Documents to EPA and, as applicable, to DOI/FWS and USAOC for review and comment in accordance with the provisions of this Section, except that the Site Management Plan shall be reviewed and commented on in accordance with Sections XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN and XII – BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN:

- (1) RI/FS and FFS Work Plans including Sampling and Analysis Plan and Quality Assurance Project Plan (QAPP)
- (2) Remedial Investigation Reports (including Risk Assessments for human health and the environment)
- (3) FS and FFS Reports
- (4) Proposed Plans

- (5) Records of Decision
- (6) Final Remedial Designs
- (7) Remedial Action Work Plans
- (8) Remedial Action Completion Reports
- (9) the Site Management Plan and each annual amendment

10.3.2 Only the draft final Primary Documents identified above (and their amendments) shall be subject to dispute resolution. The Army shall complete and transmit draft Primary Documents in accordance with the Schedule and Deadlines established in Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN.

#### 10.4 Secondary Documents

10.4.1 All Secondary Documents shall be prepared in accordance with the NCP and applicable EPA Guidance. The Army shall complete and transmit drafts of the following Secondary Documents to EPA and, as applicable, DOI/FWS, and USAOC for review and comment in accordance with the provisions of this Section:

- (1) Initial Remedial Action / Data Quality Objectives
- (2) Non-Time-Critical Removal Action Plans (40 C.F.R. Section 300.415(b)(4)(ii))
- (3) Pilot/Treatability Study Work Plans
- (4) Pilot/Treatability Study Reports
- (5) Engineering Evaluation/Cost Analysis Reports
- (6) Preliminary/Conceptual Remedial Designs
- (7) Prefinal Remedial Designs
- (8) Well Closure Methods and Procedures
- (9) Removal Action Memoranda

10.4.2 Although EPA and, as applicable, DOI/FWS, and USAOC may comment on the draft reports for the Secondary Documents listed above, such documents shall not be subject to dispute resolution except as provided by Subsection 10.2 hereof. Target Dates shall be

established for the completion and transmission of draft Secondary Documents pursuant to Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN.

#### 10.5 Meetings of the Project Managers on Development of Documents

10.5.1 The Project Managers shall meet approximately every ninety (90) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the site and on the Primary and Secondary Documents. Prior to preparing any draft report specified in Subsections 10.3 and 10.4 above, the Project Managers shall meet or confer by telephone to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft report.

#### 10.6 Identification and Determination of Potential ARARs

10.6.1 For those Primary Documents or Secondary Documents that consist of or include ARAR determinations, the Project Managers shall meet prior to the issuance of a draft report, to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed.

10.6.2 The Army shall consider any written interpretations of ARARs provided by the MDE. Draft ARAR determinations shall be prepared by the Army in accordance with CERCLA Section 121(d)(2), the NCP, and pertinent Guidance issued by EPA, that is not inconsistent with CERCLA and the NCP.

10.6.3 In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances, pollutants and contaminants at a site, the particular actions proposed as a remedy and the characteristics of a site. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be reexamined throughout the RI/FS process until a ROD is issued.

#### 10.7 Review and Comment on Draft Documents

10.7.1 The Army shall complete and transmit each draft Primary Document to EPA and, as applicable, DOI/FWS, and USAOC on or before the corresponding Deadline established for the issuance of the document. The Army shall complete and transmit the draft Secondary Document in accordance with the Target Dates established for the issuance of such reports established pursuant to Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

10.7.2 Unless the Parties mutually agree to another time period, all draft documents, except the Site Management Plan, the prefinal Remedial Design and the final Remedial Design, shall be subject to a sixty (60) day period for review and comment. The Site Management Plan shall be reviewed and commented on in accordance with Section XII – BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN or as agreed to by the Parties. The Parties recognize that time periods for review and comment on the draft Remedial Design and

Remedial Action Work Plans may need to be expedited in order for the Army to satisfy the requirement of Section 120(e)(2) of CERCLA, 42 U.S.C. Section 9620(e)(2). The prefinal Remedial Design shall be subject to a forty-five (45) day period for review and comment. The final Remedial Design will be subject to a two (2) week period for review and comment by the Parties. If the final Remedial Design differs substantially from the prefinal Remedial Design, EPA may extend the two (2) week review and comment period for an additional two (2) weeks by providing written notice to the Army prior to the end of the initial two (2) week comment period. Review of any document by EPA, and, as applicable DOI/FWS, and USAOC may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, and any pertinent Guidance or policy promulgated by EPA, and with applicable Maryland law. Comments by EPA and, as applicable, by DOI/FWS and USAOC shall be provided with adequate specificity so that the Army may respond to the comment and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Army, EPA shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, EPA may extend the sixty (60) day comment period for an additional twenty (20) days by written notice to the Army prior to the end of the sixty (60) day period. On or before the close of any comment period, EPA and, as applicable, DOI/FWS and USAOC shall transmit their written comments to the Army.

10.7.3 The review period for documents shall not begin until the submission date specified in the Site Management Plan.

10.7.4 Representatives of the Army shall make themselves readily available to EPA and, as applicable, to DOI/FWS and USAOC during the comment period for purposes of informally responding to questions and comments on draft documents. Oral comments made during such discussions need not be the subject of a written response by the Army at the close of the comment period.

10.7.5 In commenting on a draft document that contains a proposed ARAR determination, EPA and, as applicable, DOI/FWS, and USAOC shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that EPA and, as applicable, DOI/FWS, and USAOC objects, they shall explain the basis for their objection in detail and shall identify any ARARs which they believe were not properly addressed in the proposed ARAR determination.

10.7.6 Following the close of the comment period for a draft document, the Army shall give full consideration to all written comments on the draft document submitted during the comment period. Within sixty (60) days of the close of the comment period on a draft Secondary Document, the Army shall transmit to EPA and, as applicable, DOI/FWS, and USAOC its written response to comments received within the comment period. Within sixty (60) days of the close of the comment period on a Draft Primary Document, the Army shall transmit to EPA and, as applicable, DOI/FWS, and USAOC a Draft Final Primary Document, which shall include the Army's response to all written comments received within the comment period. While the

resulting draft final document shall be the responsibility of the Army, it shall be the product of consensus to the maximum extent possible.

10.7.7 The Army may extend the 60-day period for either responding to comments on a draft document or for issuing the draft final Primary Document for an additional twenty (20) days by providing timely notice to EPA and, as applicable, to DOI/FWS and USAOC. In appropriate circumstances, this time period may be further extended in accordance with Section XIII – EXTENSIONS.

10.8 Availability of Dispute Resolution for draft final Primary Documents:

10.8.1 Dispute resolution shall be available to the Parties for draft final Primary Documents as set forth in Section XX – DISPUTE RESOLUTION.

10.8.2 When dispute resolution is invoked on a draft final Primary Document, Work may be stopped in accordance with the procedures set forth in Section XX – DISPUTE RESOLUTION.

10.9 Finalization of Documents. The draft final Primary Document shall serve as the final Primary Document if no Party invokes dispute resolution regarding the document or, if invoked, at the completion of the dispute resolution process should the Army's position be sustained. If the Army's determination is not sustained in the dispute resolution process, the Army shall prepare, within not more than thirty-five (35) days, a revision of the draft final document, which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section XIII – EXTENSIONS.

10.10 Subsequent Modification of Final Document

10.10.1 Following finalization of any Primary Document pursuant to Subsection 10.9 above, any Party to this Agreement may seek to modify the document, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Subsections 10.10.2 and 10.10.3 below.

10.10.2 A Party may seek to modify a document after finalization if it determines, based on new information (i.e., information that became available, or conditions that became known, after the document was finalized) that the requested modification is necessary. A Party may seek such a modification by submitting a concise written request to the Project Managers of the other Parties. The request shall specify the nature of the requested modification and how the request is based on new information.

10.10.3 In the event that a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke dispute resolution to determine if such modification shall be conducted. Modification of a document shall be required only upon a showing that:

10.10.3.1 The requested modification is based on significant new information; and



10.10.3.2 The requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment.

10.10.4 Nothing in this Subsection 10.10 shall alter EPA's ability to request the performance of additional work that was not contemplated by this Agreement. The Army's obligation to perform such work must be established by either a modification of a report or document or by amendment to this Agreement.

## **XI. DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN**

11.1 The Army has submitted an initial Site Management Plan and will submit a modified version within thirty days of the effective date of this Agreement which, once finalized, will be attached to this Agreement as Appendix F. This Agreement establishes a process for amending the Site Management Plan (SMP). The SMP and each annual amendment to the SMP shall be Primary Documents. Milestones established in a SMP or established in a final amendment to a SMP remain unchanged unless otherwise agreed to by the Parties or unless directed to be changed pursuant to the agreed dispute resolution process set out in Subsections 12.5 or 12.6. In addition, if an activity is fully funded in the current Fiscal Year, Milestones associated with the performance of Work and submittal of Primary Documents associated with such activity (even if they extend beyond the current Fiscal Year) shall be enforceable.

11.2 The SMP includes proposed actions for both CERCLA responses and actions that would otherwise be handled pursuant to RCRA corrective actions per Section VIII – STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION, and outlines all response activities and associated documentation to be undertaken at the Facility. The SMP incorporates all existing Milestones contained in approved Work Plans, and all Milestones approved in future Work Plans immediately become incorporated into the SMP.

11.3 Milestones in the SMP reflect the priorities agreed to by the Parties through a process of "risk, plus other factors" priority setting. Site activities have been prioritized by weighing and balancing a variety of factors including, but not limited to: (i) the DoD relative risk rankings for the Site (DoD Relative Risk Site Evaluation Model for IRP sites or the DoD Munitions Response Site Prioritization Protocol for MRP sites); (ii) current, planned, or potential uses of the Facility; (iii) ecological impacts; (iv) impacts on human health; (v) intrinsic and future value of affected resources; (vi) cost effectiveness of the proposed activities; (vii) environmental justice considerations; (viii) regulatory requirements; and, (ix) actual and anticipated funding levels. While Milestones should not be driven by budget targets, such targets should be considered when setting Milestones. Furthermore, in setting and modifying Milestones, the Parties agree to make good faith efforts to accommodate Federal Fiscal constraints, which include budget targets established by the Army.

11.4 The SMP and its annual amendments include:

11.4.1 A description of actions necessary to mitigate any immediate threat to human health or the environment;

11.4.2 A listing of all currently identified MMRP sites, Operable Units (including Accelerated Operable Units (AOUs)), Interim Remedial Actions, Supplemental Response Actions, and Time-Critical and Non-Time-Critical Removal Actions covered or identified pursuant to this Agreement. This listing should also clearly indicate which of the items on the list potentially impact any portions of the Site currently managed by DOI/FWS and USAOC and thus be subject to review and comment by the applicable Party pursuant to Section X - CONSULTATION;

11.4.3 Activities and Schedules for response actions covered by the SMP, including at a minimum:

11.4.3.1 Identification of any Primary Actions;

11.4.3.2 All Deadlines;

11.4.3.3 All Near Term Milestones;

11.4.3.4 All Out Year Milestones;

11.4.3.5 All Target dates;

11.4.3.6 Schedule for initiation of Remedial Designs, Interim Response Actions, Non-Time-Critical Removal Actions, AOUs, and any initiation of other planned response action(s) covered by this Agreement; and

11.4.3.7 All Project End Dates.

11.5 The Army shall submit amendments to the SMP on an annual basis as provided in Section XII – BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN. All amendments to the SMP shall meet all of the requirements set forth in this Section.

11.6 The Milestones established in accordance with this Section and Section XII – BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN remain the same unless otherwise agreed by the Parties, or unless changed in accordance with the dispute resolution procedures set out in Subsections 12.5 and 12.6. The Parties recognize that possible bases for requests for changes or extensions of the Milestones include but are not limited to: (i) the identification of significant new Site conditions at this installation; (ii) reprioritization of activities under this Agreement caused by changing priorities or new site conditions elsewhere in the Army; (iii) reprioritization of activities under this Agreement caused by budget adjustments (e.g., rescissions, inflation adjustments, and reduced Congressional appropriations); (iv) an event of Force Majeure; (v) a delay caused by another Party's failure to meet any requirement of this Agreement; (vi) a delay caused by the good faith invocation of dispute resolution or the initiation of judicial action; (vii) a delay caused, or that is likely to be caused, by the grant of an extension in regard to another timetable and Deadline or Schedule; and (viii) any other event or series of events mutually agreed to by the Parties as constituting good cause.

11.7 The Deadlines established in the SMP and its amendments shall be published by EPA and Maryland.

## **XII. BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN**

12.1 The Army, as a Federal agency, is subject to fiscal controls, hereinafter referred to as the Future Years Defense Plan (FYDP). The planning, programming, and budgeting process, hereinafter referred to as the Program Objectives Memorandum (POM) process, is used to review total requirements for DoD programs and make appropriate adjustments within the FYDP for each program while adhering to the overall FYDP control. The Parties recognize that the POM process is a multi-year process. The Parties also agree that all Parties should be involved in the full cycle of POM activities as specified in this Agreement. Further, the Parties agree that each Party should consider the factors listed in Subsection 11.3, including Federal fiscal constraints as well as each of the other factors, in their priority-setting decisions. Initial efforts to close any gap between cleanup needs and funding availability shall be focused on the identification and implementation of cost savings.

### **Facility-Specific Budget Building**

12.2 In order to promote effective involvement by the Parties in the POM process, the Parties will meet at the Project Manager level for the purpose of (1) reviewing the FYDP controls; (2) developing a list of requirements/Work to be performed at the Site for inclusion in the Army POM process; and, (3) participating in development of the Army submission to the proposed President's budget, based on POM decisions for the year currently under consideration. Unless the Parties agree to a different time frame, the Army agrees to notify the other Parties within ten (10) days of receipt, at the Project Manager level, that budget controls have been received. Unless the Parties agree to a different time frame or agree that a meeting is not necessary, the Parties will meet, at the Project Manager level, within thirty (30) days of receiving such notification to discuss the budget controls. However, this consultation must occur at least ten (10) days prior to the Army's initial budget submission to the Army Installation Management Command (IMCOM) for ER,A funding and to the Assistant Chief of Staff for Installation Management (ACSIM) for BRAC funding. In the event that the Project Managers cannot agree on funding levels required to perform all Work outlined in the SMP, the Parties agree to make reasonable efforts to informally resolve these disagreements, either at the immediate or secondary supervisor level; this would also include discussions, as necessary, with IMCOM. If agreement cannot be reached informally within a reasonable period of time, the Army shall resolve the disagreement, if possible with the concurrence of all Parties, and notify each Party. If all Parties do not concur in the resolution, the Army will forward through IMCOM or ACSIM to the Army Headquarters its budget request with the views of the Parties not in agreement and also inform Army Headquarters of the possibility of future enforcement action should the money requested not be sufficient to perform the Work subject to disagreement. In addition, if the Army's budget submission to IMCOM or ACSIM relating to the terms and conditions of this Agreement does not include sufficient funds to complete all Work in the existing SMP, such budget submission shall include supplemental reports that fully disclose the Work required by the existing SMP, but not included in the budget request due to fiscal controls (e.g., a projected budget shortfall). These supplemental reports shall accompany the cleanup budget that the Army

submits through its higher Headquarters levels until the budget shortfall has been satisfied. If the budget shortfall is not satisfied, the supplemental reports shall be included in the Army's budget submission to the DoD Comptroller. The Deputy Under Secretary of Defense (Installations and Environment) shall receive information copies of any supplemental reports submitted to the DoD Comptroller.

#### Army Budget for Clean Up Activities

12.3 The Army shall forward to the other Parties documentation of the budget requests (and any supplemental reports) for the Site, as submitted by the Army to IMCOM or ACSIM, and by IMCOM or ACSIM to the Army Headquarters, within 14 days after the submittal of such documentation to the Army Headquarters by IMCOM or ACSIM. If the Army proposes a budget request relating to the terms and conditions of this Agreement that impacts other installations, discussions with other affected EPA Regions and states regarding the proposed budget request need to take place.

#### Amended SMP

12.4 No later than June 15 of each year after the initial adoption of the SMP, the Army shall submit to the other Parties a draft amendment to the SMP. When formulating the draft amendment to the SMP, the Army shall consider funding circumstances (including OMB targets/guidance) and "risk plus other factors" outlined in Subsection 11.3 to evaluate whether the previously agreed upon Milestones should change. Prior to proposing changes to Milestones in its annual amendment to the SMP, the Army will first offer to meet with the other Parties to discuss the proposed changes. The Parties will attempt to agree on Milestones before the Army submits its annual amendment by June 15, but failure to agree on such proposed changes does not modify the June 15 date, unless agreed on by all the Parties. Any proposed extensions or other changes to Milestones must be explained in a cover letter to the draft amendment to the SMP. The draft amendment to the SMP should reflect any agreements made by the Parties during the POM process outlined in this Section. Resolution of any disagreement over adjustment of Milestones pursuant to this Subsection shall be resolved pursuant to Subsection 12.5.

12.5.1 The Parties shall meet as necessary to discuss the draft amendment to the SMP. The Parties shall use the consultation process contained in Section X – CONSULTATION, except that none of the Parties will have the right to use the extension provisions provided therein and comments on the draft amendment will be due to the Army no later than 30 days after receipt by EPA of the draft amendment. If either EPA, or, as applicable, DOI/FWS and USAOC provide comments and are not satisfied with the draft amendment during this comment period, the Parties shall meet to discuss the comments within 15 days of the Army's receipt of comments on the draft amendment. The draft final amendment to the SMP will be due from the Army no later than 30 days after the end of the EPA comment period. During this second 30-day time period, the Army will, as appropriate, make revisions and re-issue a revised draft herein referred to as the draft final amendment. To the extent that Section X – CONSULTATION contains time periods differing from these 30 day periods, this provision will control for consultation on the amendment to the SMP.

12.5.2.1 If the Army proposes, in the draft final amendment to the SMP, modifications of Milestones to which the Parties have not agreed, those proposed modifications shall be treated as a request by the Army for an extension. Milestones may be extended during the SMP review process by following Subsections 12.4 through 12.7. All other extensions will be governed by Section XIII – EXTENSIONS. The time period for EPA, DOI/FWS and USAOC to respond to the request for extension will begin on the date they receive the draft final amendment to the SMP, and EPA, DOI/FWS and USAOC shall advise the Army in writing of their position on the request within thirty days. If EPA, DOI/FWS, and USAOC approve the Army's draft final amendment, the document shall then await finalization in accordance with Subsections 12.5.3 and 12.6. If EPA denies the request for extension, then the Army may amend the SMP in conformance with EPA's, DOI/FWS', and USAOC's comments or seek and obtain a determination through the dispute resolution process established in Section XX – DISPUTE RESOLUTION within 21 days of receipt of notice of denial. Within 21 days of the conclusion of the dispute resolution process, the Army shall revise and reissue, as necessary, the draft final amendment to the SMP. If EPA, DOI/FWS, or USAOC initiates a formal request for a modification to the SMP to which the Army does not agree, EPA, DOI/FWS, or USAOC may initiate dispute resolution as provided in Section XX – DISPUTE RESOLUTION with respect to such proposed modification. In resolving a dispute, the persons or person resolving the dispute shall give full consideration to the bases for changes or extensions of the Milestones referred to in Subsection 11.6 asserted to be present, and the facts and arguments of each of the Parties.

12.5.2.2 Notwithstanding Subsection 12.5.2.1, if the Army proposes, in the draft final amendment to the SMP, modifications of Project End Dates which are intended to reflect the time needed for implementing the remedy selected in the Record of Decision but to which the Parties have not agreed, those proposed modifications shall not be treated as a request by the Army for an extension, but consistent with Section XX – DISPUTE RESOLUTION, any Party may initiate dispute resolution with respect to such Project End Date.

12.5.2.3 In any dispute under this Section, the time periods for the standard dispute resolution process contained in Subsections 20.2, 20.5, and 20.6 of Section XX – DISPUTE RESOLUTION shall be reduced by half in regard to such dispute, unless the Parties agree to dispute directly to the SEC level.

12.5.3 The Army shall finalize the draft final amendment as a final amendment to the SMP consistent with the mutual consent of the Parties, or in the absence of mutual consent, in accordance with the final decision of the dispute resolution process. The draft final amendment to the SMP shall not become final until 21 days after the Army receives official notification of Congress's authorization and appropriation of funds if funding is sufficient to complete Work in the draft final SMP or, in the event of a funding shortfall, following the procedures in Subsection 12.6. However, upon approval of the draft final amendment or conclusion of the dispute resolution process, the Parties shall implement the SMP while awaiting official notification of Congress's authorization and appropriation.

## Resolving Appropriations Shortfalls

12.6 After authorization and appropriation of funds by Congress and within 21 days after the Army has received official notification of the Army's allocation based on the current year's Environmental Restoration, Army (ER,A) Account, the Army shall determine if planned Work (as outlined in the draft final amendment to the SMP) can be accomplished with the allocated funds. (1) If the allocated funds are sufficient to complete all planned Work for that fiscal year and there are no changes required to the draft final amendment to the SMP, the Army shall immediately forward a letter to the other Parties indicating that the draft final amendment to the SMP has become the final amendment to the SMP. (2) If the Army determines within the 21-day period specified above that the allocated funds are not sufficient to accomplish the planned Work for the Site (an appropriations shortfall), the Army shall immediately notify the Parties. The Project Managers shall meet within thirty (30) days to determine if planned Work (as outlined in the draft final amendment to the SMP) can be accomplished through: 1) rescoping or rescheduling activities in a manner that does not cause previously agreed upon Near Term Milestones and Out Year Milestones to be missed; or 2) developing and implementing new cost-saving measures. If, during this thirty (30) day discussion period, the Parties determine that rescoping or implementing cost-saving measures are not sufficient to offset the appropriations shortfall such that Near Term Milestones, Out Year Milestones, and Project End Dates should be modified, the Parties shall discuss these changes and develop modified Milestones. Such modifications shall be based on the "Risk Plus Other Factors" prioritization process discussed in Subsection 11.3, and shall be specifically identified by the Army. The Army shall submit a new draft final amendment to the SMP to the other Parties within 30 days of the end of the 30 day discussion period. In preparing the revised draft final amendment to the SMP, the Army shall give full consideration to the Parties' input during the 30-day discussion period. If the Parties concur with the modifications made to the draft final amendment to the SMP, EPA shall notify the Army and the revised draft final amendment shall become the final amendment. In the case of modifications of Milestones due to appropriations shortfalls, those proposed modifications shall, for purposes of dispute resolution, be treated as a request by the Army for an extension, which request is treated as having been made on the date that the Parties receive the new draft final SMP or draft final amendment to the SMP. The Parties shall advise the Army in writing of its position on the request within 21 days. The Army may seek and obtain a determination through the dispute resolution process established in Section XX – DISPUTE RESOLUTION. The Army may invoke dispute resolution within fourteen days of receipt of a statement of nonconcurrence with the requested extension. In any dispute concerning modifications under this Section, the Parties will submit the dispute directly to the SEC level, unless the Parties agree to utilize the standard dispute resolution process, in which case the time periods for the dispute resolution process contained in Subsections 20.2, 20.5, and 20.6 of Section XX – DISPUTE RESOLUTION shall be reduced by half in regard to such dispute. Within 21 days after the conclusion of the dispute resolution process, the Army shall revise and reissue, as necessary, the final amendment to the SMP.

12.7 It is understood by all Parties that the Army will work with the representatives of the other Parties to reach consensus on the reprioritization of Work made necessary by any

appropriations shortfalls or other circumstances as described in Section 12.6. This may also include discussions with other EPA Regions and states with installations affected by the reprioritization; the Parties may participate in any such discussions with other states.

### Public Participation

12.8 In addition to any other provision for public participation contained in this Agreement, the development of the SMP, including its annual amendments, shall include participation by members of the public interested in this action. The Army must ensure that the opportunity for such public participation is timely; but this Subsection 12.8 shall not be subject to Section XXI – STIPULATED PENALTIES.

12.8.1 The Parties will meet, after seeking the views of the general public, and determine the most effective means to provide for participation by members of the public interested in this action in the POM process and the development of the SMP and its annual amendments. The “members of the public interested in this action” may be represented by inclusion of a restoration advisory board or technical review committee, if they exist for Ft. Meade Army Base, or by other appropriate means.

12.8.2 The Army shall provide timely notification under Section 12.6, regarding allocation of ER,A, to the members of the public interested in this action.

12.8.3 The Army shall provide opportunity for discussion under Sections 12.2, 12.5, 12.6, and 12.7 to the members of the public interested in this action.

12.8.4 The Army shall ensure that public participation provided for in this Subsection 12.8 complies with Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*.

### XIII. EXTENSIONS

13.1 A Schedule, Deadline or Milestone shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by the Army, DOI/FWS, or USAOC shall be submitted in writing and shall specify:

13.1.1 The Deadline or Milestone that is sought to be extended;

13.1.2 The length of the extension sought;

13.1.3 The good cause(s) for the extension; and

13.1.4 Any related Deadline or Milestone that would be affected if the extension were granted.

13.2 Good cause exists for an extension when sought in regard to:

13.2.1 An event of Force Majeure;

13.2.2 A delay caused by another Party's failure to meet any requirement of this Agreement;

13.2.3 A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;

13.2.4 A delay caused, or which is likely to be caused, by the grant of an extension in regard to another Deadline or Milestone; and

13.2.5 Any other event or series of events mutually agreed to by the Parties as constituting good cause.

13.3 Absent agreement of the Parties with respect to the existence of good cause, any Party may seek and obtain a determination through the dispute resolution process that good cause exists.

13.4 Within seven (7) days of receipt of a request for an extension of a Deadline or a Milestone, the EPA shall advise the requesting Party in writing of its position on the request. Any failure by the other Party to respond within the seven (7) day period shall be deemed to constitute concurrence in the request for extension. If EPA does not concur in the requested extension, it shall include in its statement of non-concurrence an explanation of the basis for its position.

13.5 If there is consensus among the Parties that the requested extension is warranted, the affected Party shall extend the affected Deadline or Milestone accordingly. If there is no consensus among the Parties as to whether all or part of the requested extension is warranted, the Deadline or Milestone shall not be extended except in accordance with a determination resulting from the dispute resolution process.

13.6 Within seven (7) days of receipt of a statement of non-concurrence with the requested extension, the affected Party may invoke dispute resolution.

13.7 A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected Deadline or Milestone until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and the requested extension is denied, stipulated penalties may be assessed and may accrue from the date of the original Deadline or Milestone. Following the grant of an extension, an assessment of stipulated penalties or an application for judicial enforcement may be sought only to compel compliance with the Deadline or Milestone as most recently extended.

#### **XIV. PROJECT MANAGERS**

14.1 On or before the Effective Date of this Agreement, EPA, DOI/FWS, USAOC, and the Army, shall each designate a Project Manager and notify the other Parties of the name and address of its Project Manager. The Army may designate separate Project Managers for active installation sites that are under current Army ownership/control, and sites that have been



transferred from Army ownership/control and are being handled by the BRAC office. The Project Managers shall be responsible for assuring proper implementation of all Work performed under the terms of the Agreement. To the maximum extent practicable, communications between the Army, DOI/FWS, USAOC and EPA on all documents, including reports, comments and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Project Managers. The Parties may designate an Alternate Project Manager to exercise the authority of the Project Manager in his or her absence.

14.2 The Parties may change their respective Project Managers. Such change shall be accomplished by notifying the other Parties, in writing, within five (5) days of the change and prior to the new Project Manager exercising his or her delegated authority.

14.3 The Parties' Project Managers shall meet or confer informally as necessary as provided in Section X – CONSULTATION. Although the Army has ultimate responsibility for meeting its respective Deadlines, the EPA Project Manager, DOI/FWS Project Manager, and the USAOC Project Manager shall endeavor to assist in this effort by scheduling meetings to review documents and reports, overseeing the performance of environmental monitoring at the Site, reviewing RI/FS or RD/RA progress, and attempting to resolve disputes informally. At least seven (7) days prior to each scheduled ninety (90) day meeting, the Army will provide to the EPA Project Manager, DOI/FWS Project Manager, and USAOC Project Manager a draft agenda and summary of the status of the Work.

14.3.1 These status reports shall include, when applicable:

14.3.1.1 Identification of all data received and not previously provided by the Army during the reporting period consistent with the limitations of Subsection 32.1;

14.3.1.2 All activities completed pursuant to this Agreement since the last Project Manager meeting as well as such actions and plans that are scheduled for the upcoming ninety (90) days; and

14.3.1.3 A description of any delays, the reasons for such delays, anticipated delays, concerns over possible timetable implementation or problems that arise in the execution of a Work Plan during the quarter and any steps that were or will be taken to alleviate the delays or problems.

14.3.2 The minutes of each Project Manager meeting will be prepared by the Army and will be sent to all Project Managers within twenty-one (21) days after the meeting. Any documents requested during the meeting will be provided in a timely manner, except for those documents for which express notification is required.

14.4 Necessary and appropriate adjustments to a Deadline, Target Date or Milestone may be proposed by any Party. The Party that requested the modification shall prepare a written memorandum detailing the modification and the reasons therefore and shall provide a transmittal in a timely manner prior to the Deadline, Target Date or Milestone to the other Parties for signature and return.

14.5 A Project Manager may also recommend and request minor field modifications to the Work performed pursuant to this Agreement, or in techniques, procedures or designs used in carrying out this Agreement. The minor field modifications proposed under this Part must be approved orally by all the Parties' Project Managers to be effective. No such Work modifications can be so implemented if an increase in contract cost will result without the authorization of the Army Contracting Officer. If agreement cannot be reached on the proposed additional work or modification to Work, dispute resolution as set forth in Section XX – DISPUTE RESOLUTION, shall be invoked by the Army, by submitting a written statement to EPA in accordance with Section XX – DISPUTE RESOLUTION. If all Parties agree to the modification, within five (5) business days following a modification made pursuant to this Section, the Project Manager who requested the modification shall prepare a written transmittal detailing the modification and the reasons therefore and shall provide the transmittal to the other Project Manager for signature and return.

14.6 Modifications of Work not provided for in Subsections 14.4 and 14.5 of this Section must be approved orally by all the Parties' Project Managers to be effective. No such Work modifications can be so implemented if an increase in contract cost will result without the authorization of the Army Contracting Officer. If agreement cannot be reached on the proposed modification to Work, dispute resolution as set forth in Section XX – DISPUTE RESOLUTION, shall be used. If the Parties agree to the modification, within five (5) business days following a modification made pursuant to this Section, the Project Manager who requested the modification shall prepare a transmittal detailing the modification and the reasons therefore and shall provide the transmittal to the other Project Manager for signature and return.

14.7 Each Party's Project Manager shall be responsible for ensuring that all communications received from the other Project Managers is appropriately disseminated to and processed by the Party that each represents.

14.8 The Parties shall transmit Primary and Secondary Documents and all notices required herein by next day mail, hand delivery, electronic transmittal or certified letter to the persons specified in Subsection 14.9 below by the Deadline established under Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN. Time limitations shall commence upon receipt. The Army shall provide to EPA a maximum of two (2) hard-copies of each Primary and Secondary Document, in addition to a CD-ROM disk version of each document for all Parties.

14.9 Notice to the individual Parties shall be provided under this Agreement to the following addresses:

14.9.1.1 For the Army (Active): Ft. Meade  
Directorate of Public Works, Environmental  
Division  
239 Chisholm Avenue  
Ft. Meade, Maryland 20755

14.9.1.2 For the Army (BRAC) Headquarters Department of the Army  
ACSIM-BRACD

NC3-Taylor Blvd., Room 5064A  
2530 Crystal Drive  
Arlington, VA 22202

- 14.9.1.3 For EPA: U. S. Environmental Protection Agency  
Attn: Ft. Meade Project Manager  
1650 Arch Street  
Philadelphia, PA 19103
- 14.9.1.4 For DOI/FWS: Mr. Brad Knudsen  
Refuge Manager  
U.S. Fish and Wildlife Service  
Patuxent Research Refuge  
National Wildlife Visitor Center  
10901 Scarlet Tanager Loop  
Laurel, MD 20708-4027
- 14.9.1.5 For USAOC: Architect of the Capitol  
Attn: Environmental Branch, Ft. Meade Project Manager  
Ford House Office Building, Room H2-555  
2<sup>nd</sup> & D Street, SW  
Washington, D.C. 20515

14.10 Nothing in this Section shall be construed to interfere with or alter the internal organization or procedures of a Party, including, without limitation, signature authority.

14.11 The Army Project Manager shall represent the Army with regard to the day-to-day field activities at the Site. The Army Project Manager or other designated representative shall be physically present at the Site or available to observe Work during implementation of all the Work performed at the Site pursuant to this Agreement. The absence of EPA Project Manager from the Site shall not be cause for Work stoppage or delay, unless the Project Managers agree otherwise in writing.

14.12 The authority of the Project Managers shall include, but not be limited to:

14.12.1 Taking samples and ensuring that sampling and other field work is performed in accordance with the terms of any final Work Plans, and Quality Assurance / Quality Control (QA/QC) Plan;

14.12.2 Observing, taking photographs, and making such other reports on the progress of the Work as the Project Managers deem appropriate, subject to the limitations set forth in Section XVI – ACCESS hereof;

14.12.3 Reviewing sampling data, records, files, and documents relevant to the Agreement, subject to the limitations set forth in Section XXXI - RECORD PRESERVATION; and

14.12.4 Determining the form and specific content of the Project Manager meetings.

14.13 If any event occurs or has occurred that may delay or prevent the performance of any obligation under this Agreement, whether or not caused by a Force Majeure event, any Party shall notify by telephone the other Party's Project Manager within three (3) business days of when the Party first became aware that the event might cause a delay. If the Party intends to seek an extension of a Deadline or Schedule because of the event, the procedures of Section XIII - EXTENSIONS, shall apply.

## **XV. EXEMPTIONS**

15.1 The Parties recognize that the President may issue an order, as needed to protect national security interests, regarding response actions at Ft. Meade, pursuant to Section 120(j) of CERCLA, 42 U.S.C. Section 9620(j). Such an order may exempt Ft. Meade or any portion thereof from the requirements of CERCLA for a period of time not to exceed one (1) year after the issuance of that order. This order may be renewed. The Army shall obtain access to and perform all actions required by this Agreement within all areas inside those portions of Ft. Meade, which are not the subject of or subject to any such order issued by the President.

## **XVI. ACCESS**

16.1 EPA and/or its representatives shall have the authority to enter the Site at all reasonable times for the purposes consistent with provisions of this Agreement. Such authority shall include, but not be limited to: inspecting records, logs, contracts, and other documents relevant to implementation of this Agreement; reviewing and monitoring the progress of the Army, and its contractors, in carrying out the activities under this Agreement; conducting, with prior notice to the Army, DOI/FWS, and USAOC, tests that EPA deems necessary; assessing the need for planning additional remedial response actions at the Site; and verifying data or information submitted to EPA. The Army, DOI/FWS, and USAOC shall honor all reasonable requests for access to the Site made by EPA and the Army upon presentation of credentials showing the bearer's identification and that he/she is an employee or agent of EPA or the Army. The Army Project Manager, the DOI/FWS Project Manager, the USAOC Project Manager or his/her designee will provide briefing information, coordinate access and escort to restricted or controlled-access areas, arrange for installation passes, and coordinate with each other regarding any other access requests, which arise. The Army, DOI/FWS, and USAOC shall use their best efforts to ensure that conformance with the requirements of this Subsection 16.1 do not delay access.

16.2 The rights granted in Subsections 16.1 and 16.4 to EPA regarding access shall be subject to regulations and statutes, including Ft. Meade security regulations, as may be necessary to

protect national security information ("classified information") as defined in Executive Order 12958, as amended, and comply with Ft. Meade's health and safety requirements. Such requirements shall not be applied so as to unreasonably hinder EPA from carrying out its responsibilities and authority pursuant to this Agreement.

16.3 The Army shall provide an escort whenever any Party requires access to restricted areas of Ft. Meade for purposes consistent with the provisions of this Agreement. A Party shall provide reasonable notice to the Army Project Manager, or his or her designee, to request any necessary escorts for such restricted areas. The Army shall not require an escort to any area of this Site unless it is a restricted, controlled-access area. Upon request of any Party, the Army shall promptly provide a written list of current restricted or controlled-access areas.

16.4 EPA shall have the right to enter all areas of the Site that are entered by contractors performing Work under this Agreement.

16.5 Upon a denial of any aspect of access, the Army, DOI/FWS, or USAOC shall provide an immediate explanation of the reason for the denial, including reference to the applicable regulations, and upon request, a copy of such regulations. Within forty-eight (48) hours, the Army, DOI/FWS, USAOC shall provide a written explanation for the denial. To the extent possible, the Army, DOI/FWS, and USAOC shall expeditiously provide a recommendation for accommodating the requested access in an alternate manner.

16.6 The Army shall ensure that all response measures, ground water rehabilitation measures and remedial actions of any kind that are undertaken pursuant to this Agreement on any areas that: a) are presently owned by the United States and which are occupied by the Army or leased by the Army to any other entity; or b) are in any manner under the control of the Army or any lessees or agents of the Army, shall not be impeded or impaired in any manner by any transfer of title or change in occupancy or any other change in circumstances of such areas.

16.7 DOI/FWS shall ensure that all response measures, ground water rehabilitation measures, and remedial actions of any kind which are undertaken pursuant to this Agreement on any Site areas which (a) are presently owned by the United States and which are occupied by DOI/FWS or leased by DOI/FWS to any other entity or (b) are in any manner under the control of DOI/FWS or any lessees or agents of DOI/FWS, shall not be impeded or impaired in any manner by any transfer of title or change in occupancy or any other change in circumstances of such areas.

16.8 USAOC shall ensure that all response measures, ground water rehabilitation measures and remedial actions of any kind which are undertaken pursuant to this Agreement on any Site areas which (a) are presently owned by the United States and which are occupied by USAOC or leased by USAOC to any other entity or (b) are in any manner under the control of USAOC or any lessees or agents of USAOC, shall not be impeded or impaired in any manner by any transfer of title or change in occupancy or any other change in circumstances of such areas.

16.9 Nothing herein shall be construed as limiting EPA's statutory authority for access or information gathering.

## XVII. PERMITS

17.1 The Army shall be responsible for obtaining all Federal, state and local permits, which are necessary for the performance of all Work under this Agreement.

17.2 The Parties recognize that under Sections 121(d) and 121(e)(1) of CERCLA, 42 U.S.C. Sections 9621(d) and 9621(e)(1), and the NCP, portions of the response actions called for by this Agreement and conducted entirely onsite, where such response actions are selected and carried out in accordance with CERCLA, are exempt from the procedural requirement to obtain Federal, state, or local permits. All activities must, however, comply with all the applicable or relevant and appropriate Federal and state standards, requirements, criteria, or limitations, which would have been included in any such permit

17.3 When the Army proposes a response action, other than an emergency removal action, to be conducted entirely onsite, which in the absence of Section 121(e)(1) of CERCLA, 42 U.S.C. Section 9621(e)(1), and the NCP would require a Federal, state or local permit, the Army shall include in its Draft ROD or removal memorandum:

17.3.1 Identification of each permit that would otherwise be required;

17.3.2 Identification of the standards, requirements, criteria, or limitations that would need to be met to obtain each such permit; and

17.3.3 An explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified immediately above.

17.4 Subsection 17.2 above is not intended to relieve the Army from the requirement(s) of obtaining a permit whenever it proposes a response action involving the shipment or movement of a hazardous substance, pollutant, or contaminant or hazardous waste off the Site or in any other circumstances where the exemption provided for at Section 121(e)(1) of CERCLA, 42 U.S.C. Section 9621(e)(1), does not apply.

17.5 The Army shall notify EPA and, as applicable, MDE in writing of any permits required for any off-site activities it plans to undertake as soon as it becomes aware of the requirement. The Army shall apply for all such permits and provide EPA with copies of all such permits, applications, and other documents related to the permit process and final permits.

17.6 The Army agrees to notify EPA and, as applicable, DOI/FWS and USAOC of its intention to propose modifications to this Agreement to obtain conformance with the permit, or lack thereof if a permit or other authorization that is necessary for implementation of this Agreement is not issued, or is issued or renewed in a manner that is materially inconsistent with the requirements of this Agreement. Notification by the Army of its intent to propose modifications shall be submitted within sixty (60) days of receipt by the Army of notification that: (1) a permit will not be issued; (2) a permit has been issued or reissued; or (3) a final determination with respect to any appeal related to the issuance of a permit has been entered. Within sixty (60) days from the date it submits its notice of intention to propose modifications to

this Agreement, the Army shall submit to EPA and, as applicable, DOI/FWS and USAOC its proposed modifications to this Agreement with an explanation of its reasons in support thereof.

17.7 The Parties shall review the Army's proposed modifications to this Agreement in accordance with Section XXXVII – AMENDMENT OF AGREEMENT. If the Army submits proposed modifications prior to a final determination of any appeal taken on a permit needed to implement this Agreement, EPA and, as applicable, DOI/FWS and USAOC may elect to delay review of the proposed modifications until after such final determination is entered.

17.8 During any appeal by any Party of any permit required to implement this Agreement or during review of any proposed modification(s) to the permit, the Army shall continue to implement those portions of this Agreement, which can be reasonably implemented independent of final resolution of the permit issue(s) under appeal. However, as to Work that cannot be so implemented, any corresponding Deadline, timetable, or Schedule shall be subject to Section XIII – EXTENSIONS.

17.9 Nothing in this Agreement shall be construed to affect the Army's obligation to comply with any RCRA permit(s) that the Facility may already have or will be issued in the future.

## **XVIII. REMOVAL AND EMERGENCY ACTIONS**

18.1 The Army shall provide EPA with timely notice of any proposed removal action.

18.2 Nothing in this Agreement shall alter the Army's or EPA's or, DOI/FWS' authority with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. Section 9604.

18.3 If during the course of performing the activities required under this Agreement, any Party identifies an actual or a substantial threat of a release of any hazardous substance, pollutant, or contaminant at or from the Site, that Party may propose that the Army undertake removal actions to abate the danger and threat that may be posed by such actual or threatened release. All removal actions conducted at the Site shall be conducted in a manner consistent with this Agreement, CERCLA, Executive Order 12580, DERP, including provisions for timely notification and consultation with EPA and the appropriate State, and local officials, and the NCP and shall, to the extent practicable, contribute to the efficient performance of any long-term remedial action with respect to the release(s) or threatened release(s) concerned. Prior to determining to undertake such actions, the Army shall submit to EPA and, as applicable, DOI/FWS and USAOC:

18.3.1 Documentation of the actual or threatened release at or from the Site;

18.3.2 Documentation that the actions proposed will abate the danger and threat that may be posed by release of hazardous substances, pollutants, or contaminants at or from the Site;

18.3.3 Documentation that the action is consistent with the NCP, applicable Maryland regulations, and, to the extent practicable, contributes to the efficient performance of any long-term remedial action with respect to the release or threatened release concerned;

18.3.4 Prepare an Engineering Evaluation/Cost Analysis (EE/CA), or its equivalent for a removal action whenever a planning period of at least six months exists before on-site activities must be initiated (Non-Time Critical Removal Action). The EE/CA shall contain an analysis of removal alternatives for a site. The screening of alternatives shall be based on criteria as provided in CERCLA and the NCP, such as cost, feasibility, and effectiveness.

18.3.5 A Non-Time-Critical Removal Action Plan and Target Date for the proposed action; and

18.3.6 EPA and, as applicable, DOI/FWS and USAOC shall expedite all reviews of these proposals to the maximum extent practicable.

18.4 The opportunity for review and comment for proposed removal actions, as stated in Subsection 18.3 above, may not apply if the action is in the nature of an emergency removal taken because a release or threatened release may present an imminent and substantial endangerment to human health or the environment. The Army may determine that review and comment, as stated in Subsection 18.3 above, is impractical. However, in the case of an emergency removal action, the Army shall provide EPA and, as applicable, DOI/FWS and USAOC with oral notice as soon as possible. A written notice shall be transmitted to all the Parties within forty-eight (48) hours after the Army determines that an emergency removal is necessary, which will include any deviations from the oral notice. Within seven (7) days after initiating an emergency removal action, the Army shall provide EPA and, as applicable, DOI/FWS and USAOC with the written basis (factual, technical and scientific) for such action and any available documents supporting such action. Upon completion of an emergency removal action, the Army shall state whether, and to what extent, the emergency removal action varied from the description of the action in the written notice provided pursuant to this Section. Within sixty (60) days of completion of an emergency response action, the Army will furnish EPA and, as applicable, DOI/FWS and USAOC with a Removal Action Memorandum addressing the information provided in the written notification, whether and to what extent the action varied from the description previously provided, and any other information required by CERCLA or the NCP, and in accordance with EPA Guidance for such actions. Such actions may be conducted at anytime, either before or after the issuance of a ROD.

18.5 If an imminent health hazard or an activity conducted pursuant to this Agreement that is creating a danger to the public health or welfare or the environment is discovered by any Party, the discovering Party will notify the other Parties and the Army will take immediate action to promptly notify all appropriate state and local agencies, potentially affected persons and officials in accordance with 10 U.S.C. Section 2705(a). The Army will expeditiously take appropriate measures to protect all persons affected.

18.6 All activities pursuant to this Agreement will be performed in accordance with the Health and Safety Plan and will be conducted so as to minimize the threat to the surrounding public.



## **XIX. PERIODIC REVIEW**

19.1 Consistent with Section 121(c) of CERCLA, 42 U.S.C. Section 9621(c), Section 300.430(f)(4)(ii) of the NCP, and in accordance with this Agreement, if the selected remedial action results in any hazardous substance, pollutants or contaminants remaining at the Site at levels above that allowing for unlimited use and unrestricted exposure, the Parties shall review the remedial action for each Operable Unit at least every five (5) years after the initiation of the remedial action to assure that human health and the environment are being protected by the remedial action being implemented. As part of this review, the Army shall report the findings of the review to EPA and, as applicable, DOI/FWS and USAOC upon its completion. This report, the Periodic Review Assessment Report, shall be submitted to EPA and, as applicable, DOI/FWS and USAOC for review and comment. Target Dates shall be established for the completion and transmission of the Periodic Review Assessment Report pursuant to Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN.

19.2 If upon such review it is the conclusion of EPA that additional action or modification of remedial action is appropriate at the Site in accordance with Sections 104 or 106 of CERCLA, 42 U.S.C. Sections 9604 or 9606, the Army shall implement such additional or modified action in accordance with Section IX – WORK TO BE PERFORMED.

19.3 Any dispute by the Parties regarding the need for or the scope of additional action or modification to a remedial action shall be resolved under Section XX – DISPUTE RESOLUTION, and enforceable hereunder.

19.4 Any additional action or modification agreed upon pursuant to this Section shall be made a part of this Agreement.

19.5 EPA reserves the right to exercise any available authority to seek the performance of additional work that arises from a Periodic Review, pursuant to applicable law.

19.6 The assessment and selection of any additional response actions determined necessary as a result of a Periodic Review shall be in accordance with Subsection 9.8. Except for emergency response actions, which shall be governed by Section XVIII – REMOVAL AND EMERGENCY ACTIONS, such response actions shall be implemented as a supplemental response action in accordance with Subsections 9.8.4 and 9.8.5.

## **XX. DISPUTE RESOLUTION**

20.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section shall apply. All Parties to this Agreement shall make reasonable efforts to resolve disputes informally at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Section shall be implemented to resolve a dispute.

20.2 Within thirty (30) days after: (1) issuance of a draft final Primary Document pursuant to Section X – CONSULTATION; or (2) any action that leads to or generates a dispute, the disputing Party shall submit to the DRC a written statement of dispute setting forth the nature of the dispute, the Work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position.

20.3 Prior to any Party's issuance of a written statement of dispute, the disputing Party shall engage the other Parties in informal dispute resolution among the Project Managers and/or their immediate supervisors. During this informal dispute resolution period, the Parties shall meet as many times as are necessary to discuss and attempt resolution of the dispute.

20.4 The Dispute Resolution Committee (DRC) will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. EPA's representative on the DRC is the Director, Hazardous Site Cleanup Division of EPA Region III. The Army's designated member is the Garrison Commander, Ft. Meade. For the closing areas, the Army's designated member is the Chief, BRAC Division, Office of the Assistant Chief of Staff for Installation Management. The DOI/FWS representative on the DRC is the Regional Director, U.S. Fish and Wildlife Service. The USAOC's representative on the DRC is the Director of Safety, Fire and Environmental Programs. Written notice of any delegation of authority from the Party's designated representative on the DRC shall be provided to the all other Parties pursuant to the procedures of Section XIV – PROJECT MANAGERS.

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

20.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. EPA's representative on the SEC is the Regional Administrator of EPA Region III. The Army's representative on the SEC is the Assistant Secretary of the Army (Installations and Environment). The DOI/FWS' representative on the SEC is the Director, U.S. Fish and Wildlife Service. The USAOC's representative on the SEC is the Deputy Architect/Chief Operating Officer or designee. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision signed by all Parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days, the EPA Regional Administrator shall issue a written position on the dispute. The Secretary of the Army or Interior, or the Architect of the Capitol may, within fourteen (14) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event that the Army, DOI/FWS, or USAOC elects not to elevate the dispute to the

Administrator within the designated fourteen (14) day escalation period, the party shall be deemed to have agreed with Regional Administrator's written position with respect to the dispute.

20.7 Upon elevation of a dispute to the Administrator of EPA pursuant to Subsection 20.6, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Secretary of the Army or Interior or the Architect of the Capitol to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the Army, DOI/FWS, and USAOC with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Section shall not be delegated.

20.8 The pendency of any dispute under this Section shall not affect the Army's, DOI/FWS', or USAOC's responsibility for timely performance of the Work required by this Agreement, except that the time period for completion of Work affected by such dispute shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the Work required by this Agreement that are not affected by the dispute, shall continue to be completed in accordance with the applicable Schedule.

20.9 When dispute resolution is in progress, Work affected by the dispute will immediately be discontinued if the Director, Hazardous Site Cleanup Division for EPA Region III requests, in writing, that Work related to the dispute be stopped because, in EPA's opinion, such Work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. To the extent possible, the Party seeking a Work stoppage shall consult with the other Parties prior to initiating a Work stoppage request. After stoppage of Work, if a Party believes that the Work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the Party ordering a Work stoppage to discuss the Work stoppage. Following this meeting, and further consideration of the issues, the EPA Division Director will issue, in writing, a final decision with respect to the Work stoppage. The final written decision of the EPA Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

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

20.11 Resolution of a dispute pursuant to this Section constitutes a final resolution of any dispute arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this Agreement.

## XXI. STIPULATED PENALTIES

21.1 In the event that the Army fails to submit a Primary Document, as listed in Section X – CONSULTATION, to EPA pursuant to the appropriate timetable or Deadlines in accordance with the requirements of this Agreement, or the Army, DOI/FWS, or USAOC fails to comply with a term or condition of this Agreement that relates to an interim or final remedial action, and, is applicable to the Army, DOI/FWS or USAOC, EPA may assess a stipulated penalty against the Army, DOI/FWS, or USAOC. A stipulated penalty may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this Subsection occurs.

21.2 Upon determining that the Army, DOI/FWS, or USAOC has failed in a manner set forth in Subsection 21.1, EPA shall so notify the Army, DOI/FWS, or USAOC in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Army, DOI/FWS, or USAOC shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Army, DOI/FWS, or USAOC shall not be liable for the stipulated penalty assessed by EPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

21.3 The annual reports required by CERCLA Section 120(e)(5) shall include, with respect to each final assessment of a stipulated penalty against the Army, DOI/FWS, or USAOC under this Agreement, each of the following:

21.3.1 The facility responsible for the failure;

21.3.2 A statement of the facts and circumstances giving rise to the failure;

21.3.3 A statement of any administrative or other corrective action taken, or a statement of why such measures were determined to be inappropriate;

21.3.4 A statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure; and

21.3.5 The total dollar amount of the stipulated penalty assessed for the particular failure.

21.4 In the event that stipulated penalties become payable by the Army, DOI/FWS, or USAOC under this Agreement, the Army, DOI/FWS, or USAOC will seek Congressional approval and authorization to pay such stipulated penalties to the Federal Hazardous Substances Superfund. Stipulated penalties assessed pursuant to this Section shall be payable only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the DoD, DOI/FWS, or USAOC. Any requirement for the payment of stipulated penalties under this Agreement shall be subject to the availability of funds, and no provision herein shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341.

21.5 In no event shall this Section give rise to a stipulated penalty in excess of the amount set forth in CERCLA Section 109.

21.6 This Section shall not affect the Army's, DOI/FWS', or USAOC's ability to obtain an extension of a timetable, Deadline or Schedule pursuant to Section XIII – EXTENSIONS.

21.7 Nothing in this Agreement shall be construed to render any officer or employee of the Army, DOI/FWS, or USAOC personally liable for the payment of any stipulated penalty assessed pursuant to this Section.

## **XXII. FORCE MAJEURE**

22.1 A Force Majeure shall mean any event arising from causes beyond the control of the Party that causes a delay in or prevents the performance of any obligation under this Agreement, including but not limited to:

22.1.1 Acts of God;

22.1.2 Fire;

22.1.3 War;

22.1.4 Insurrection;

22.1.5 Civil disturbance;

22.1.6 Explosion;

22.1.7 Unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance;

22.1.8 Adverse weather conditions that could not be reasonably anticipated;

22.1.9 Unusual delay in transportation;

22.1.10 Restraint by court order or order of public authority;

22.1.11 Inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the Army;

22.1.12 Delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and

22.1.13 Insufficient availability of appropriated funds, if the Army, DOI/FWS, or USAOC shall have made a timely request for such funds as a part of the budgetary process as set forth in Section XXVII – FUNDING.

22.2 A Force Majeure shall also include any strike or other labor dispute, whether or not within control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of response actions, whether or not anticipated at the time such response actions were initiated.

### **XXIII. ENFORCEABILITY**

23.1 The Parties agree that:

23.1.1 Upon the Effective Date of this Agreement, any standard, regulation, condition, requirement or order that has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person pursuant to CERCLA Section 310, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under CERCLA Sections 310(c) and 109;

23.1.2 All timetables and Deadlines associated with the RI/FS shall be enforceable by any person pursuant to CERCLA Section 310, and any violation of such timetables or Deadlines will be subject to civil penalties under CERCLA Sections 310(c) and 109;

23.1.3 All terms and conditions of this Agreement which relate to interim or final remedial actions, including corresponding timetables, Deadlines or Schedules, and all Work associated with the interim or final remedial actions, shall be enforceable by any person pursuant to CERCLA Section 310(c), and any violation of such terms or conditions will be subject to civil penalties under CERCLA Sections 310(c) and 109; and

23.1.4 Any final resolution of a dispute pursuant to Section XX – DISPUTE RESOLUTION that establishes a term, condition, timetable, Deadline or Schedule shall be enforceable by any person pursuant to CERCLA Section 310(c), and any violation of such term, condition, timetable, Deadline or Schedule will be subject to civil penalties under CERCLA Sections 310(c) and 109.

23.2 Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any action or Work where review is barred by any provision of CERCLA, including CERCLA Section 113(h).

23.3 Nothing in this Agreement shall be construed as a restriction or waiver of any rights EPA, may have under CERCLA, including but not limited to any rights under Sections 113, 120, 121 and 310, 42 U.S.C. Sections 9613, 9620, 9621 and 9659. The Army does not waive any rights it may have under CERCLA Section 120, SARA Section 211 and Executive Order 12580. DOI/FWS and USAOC do not waive any rights they may have under CERCLA Section 120, 42 U.S.C. § 9620.

23.4 The Parties agree to exhaust their rights under Section XX – DISPUTE RESOLUTION, prior to exercising any rights to judicial review that they may have.

23.5 The Parties agree that all Parties shall have the right to enforce the terms of this Agreement.

#### **XXIV. OTHER CLAIMS**

24.1 Subject to Section VIII – STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION, nothing in this Agreement shall restrict the Parties from taking any action under CERCLA, RCRA, state law, or other environmental statutes for any matter not specifically part of the Work performed under CERCLA, which is the subject matter of this Agreement.

24.2 Nothing in this Agreement shall constitute or be construed as a bar, or a discharge, or a release, from any claim, cause of action or demand in law or equity by or against any person, firm, partnership, or corporation not a signatory to this Agreement for any liability it may have arising out of, or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous waste, pollutants, or contaminants found at, taken to, or taken from the Site.

24.3 This Agreement does not constitute any decision or pre-authorization by EPA of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. Section 9611(a)(2) for any person, agent, contractor or consultant acting for the Army.

24.4 EPA shall not be held as a party to any contract entered into by the Army, DOI/FWS, or UASOC to implement the requirements of this Agreement.

24.5 The Army shall notify the appropriate Federal and Maryland Natural Resource Trustees of potential damages to natural resources resulting from releases or threatened releases under investigation, as required by Section 104(b)(2) of CERCLA, 42 U.S.C. Section 9604(b)(2), and Section 2(e)(2) of Executive Order 12580. Except as provided herein, the Army is not released from any liability that it may have pursuant to any provisions of state and Federal law, including any claim for damages for destruction of, or loss of, natural resources.

24.6 This Agreement does not bar any claim for:

24.6.1 Natural resources damage assessments, or for damage to natural resources; or

24.6.2 Liability for disposal of any hazardous substances or waste material taken from Ft. Meade.

#### **XXV. RESERVATION OF RIGHTS**

25.1 Notwithstanding anything in this Agreement, EPA may initiate any administrative, legal or equitable remedies available to it, including requiring additional response actions by the Army

in the event that: (a) conditions previously unknown or undetected by EPA arise or are discovered at the Site; or (b) EPA receives additional information not previously available concerning the premises that they employed in reaching this Agreement; or (c) the implementation of the requirements of this Agreement are no longer protective of public health and the environment; or (d) EPA discovers the presence of conditions on the Site that may constitute an imminent and substantial danger to the public health, welfare, or the environment; or (e) the Army, DOI/FWS, or USAOC fails to meet any of its obligations under this Agreement; or (f) the Army, DOI/FWS, or USAOC fails or refuses to comply with any applicable requirements of CERCLA or RCRA or state laws or regulations; or (g) the Army, DOI/FWS, or USAOC or their officers, employees, contractors, or agents falsify information, reports, or data, or make a false representation or statement in a record, report, or document relating to the release of hazardous materials at the Site, and this information affects the determination of whether a remedial action is protective of human health and the environment. For purposes of this Subsection, conditions at the Site and information known to EPA shall include only those conditions and information known as of the date of the relevant response action decision document.

25.2 The Parties agree to exhaust their rights under Section XX – DISPUTE RESOLUTION, prior to exercising any rights to judicial review that they may have.

25.3 The Parties, after exhausting their remedies under this Agreement, reserve any and all rights, including the right to raise or assert any defense they may have under CERCLA, or any other law, where those rights are not inconsistent with the provisions of this Agreement, CERCLA, or the NCP. This Section does not create any right that EPA does not already have under applicable law.

25.4 The Army and DOI/FWS acknowledge a disagreement regarding their respective authorities under section 104 of CERCLA, 42 U.S.C. § 9604 and Executive Order No. 12580 concerning lands formerly managed by the Army and transferred to DOI/FWS. They also acknowledge, however, their shared goals of moving expeditiously toward execution of this Agreement and of working collaboratively, within the framework of this Agreement, to protect public health and the environment at the Patuxent Research Refuge. Nothing in this Agreement alters or otherwise affects any section 104 authorities the Army or DOI may have.

## **XXVI. PROPERTY TRANSFER**

26.1 No change or transfer of any interest in the Facility or any part thereof shall in any way alter the status or responsibility of the Parties under this Agreement. The Army, DOI/FWS, and USAOC agree to give EPA sixty (60) days notice prior to the sale or transfer by the United States of any title, easement, or other interest in the real property affected by this Agreement. The Army, DOI/FWS, and USAOC agree to comply with Section 120(h) of CERCLA, 42 U.S.C. Section 9620(h), including the Community Environmental Response Facilitation Act (CERFA), and any additional amendments thereof, and with 40 C.F.R. Part 373, if applicable.

26.2 In accordance with Section 120(h) of CERCLA, 42 U.S.C. Section 9620(h), and 40 C.F.R. Part 373, the Army shall include notice of this Agreement in any Host/Tenant Agreement



or Memorandum of Understanding that permits any non-Ft. Meade activity to function as an operator on any portion of the Site.

## **XXVII. FUNDING**

27.1 It is the expectation of the Parties to this Agreement that all obligations of the Army, DOI/FWS, and USAOC arising under this Agreement will be fully funded. The Army, DOI/FWS, and USAOC agree to seek sufficient funding through their budgetary processes to fulfill their obligations under this Agreement.

27.2 In accordance with CERCLA Section 120(e)(5)(B), 42 U.S.C. Section 9620(e)(5)(B), the Army shall submit to DoD for inclusion in its annual report to Congress the specific cost estimates and budgetary proposals associated with the implementation of this Agreement.

27.3 Any requirement for the payment or obligation of funds, including stipulated penalties, by the Army, DOI/FWS and USAOC established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

27.4 If appropriated funds are not available to fulfill the Army's, DOI/FWS', or USAOC's obligations under this Agreement, EPA reserves the right to initiate an action against any other person, or to take any response action, which would be appropriate absent this Agreement.

27.5 Funds authorized and appropriated annually by Congress under the Environmental Restoration, Army (ER,A) appropriation in the Department of Defense Appropriations Act and the Military Construction Appropriations Act (BRAC funds) will be the source of funds for activities required by this Agreement consistent with 10 U.S.C. Chapter 160. However, should the ER,A and BRAC appropriation be inadequate in any year to meet the Army's total implementation requirements under this Agreement, the Army will, after consulting with the other Parties and discussing the inadequacy with the members of the public interested in the action in accordance with Section XII – BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN, prioritize and allocate that year's appropriation.

27.6 In determining whether funds are available to the USAOC, funds appropriated by the Congress to the USAOC for the specific purpose of complying with this Agreement shall be deemed to be the source for USAOC activities requires by this Agreement.

## **XXVIII. RECOVERY OF EPA EXPENSES**

28.1 The Parties agree to amend this Agreement at a later date in accordance with any subsequent national resolution of the issue of EPA cost reimbursement for CERCLA response

costs incurred by EPA. Pending such resolution, EPA reserves the rights it may have with respect to cost reimbursement.

## **XXIX. QUALITY ASSURANCE**

29.1 The Army shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. The Army has developed, in accordance with EPA Guidance, and EPA has approved, a Generic Quality Assurance Project Plan (GQAPP) that shall be used as a component of each RI, FS, RD, and RA Work Plan(s), as appropriate. If additional detail is required, the Army shall develop a site-specific Quality Assurance Project Plan. These work plans will be reviewed as Primary Documents pursuant to Section X – CONSULTATION. QA/QC Plans shall be prepared in accordance with applicable EPA Guidance, including the Uniform Federal Policy for Quality Assurance Project Plans (March 2005).

29.2 In order to provide for quality assurance and maintain quality control regarding all fieldwork and samples collected pursuant to this Agreement, the Army shall include in each QA/QC Plan submitted to EPA all protocols to be used for sampling and analysis. The Army shall also ensure that any laboratory used for analysis is a participant in a QA/QC program that is consistent with EPA Guidance.

29.3 The Army shall ensure that lab audits are conducted as appropriate and are made available to EPA upon request. The Army shall ensure that EPA and/or its authorized representatives shall have access to all laboratories performing analyses on behalf of the Army pursuant to this Agreement.

## **XXX. RECORD PRESERVATION**

30.1 Despite any document retention policy to the contrary, EPA, DOI/FWS, USAOC, and the Army shall preserve, during the pendency of this Agreement and for a minimum of ten (10) years after its termination or for a minimum of ten (10) years after implementation of any additional action taken pursuant to Section XIX – PERIODIC REVIEW, all records and documents in their possession that relate to actions taken pursuant to this Agreement. After the ten (10) year period, at the expiration of its document retention period, each Party shall notify the other Parties at least forty-five (45) days prior to the proposed destruction or disposal of any such documents or records. Upon the request by any Party, the requested Party shall make available such records or copies of any such records unless withholding is authorized and determined appropriate by law. The Party withholding such records shall identify any documents withheld and the legal basis for withholding such records. No records withheld shall be destroyed until forty-five (45) days after the final decision by the highest court or administrative body requested to review the matter.

30.2 All such records and documents shall be preserved for a period of ten (10) years following the termination of any judicial action regarding the Work performed under CERCLA, which is the subject of this Agreement.

## **XXXI. SAMPLING AND DATA/DOCUMENT AVAILABILITY**

31.1 Each Party shall make available to the other Parties all the results of sampling, tests, or other data generated through the implementation of this Agreement as needed in a timely manner.

31.2 At the request of any Party, a Party shall allow the other Parties or their authorized representatives to observe fieldwork and to take split or duplicate samples of any samples collected pursuant to this Agreement. Each Party shall notify the other Parties by telephone not less than fourteen (14) days in advance of any scheduled sample collection activity unless otherwise agreed upon by the Parties. The Party shall provide written confirmation within three (3) days of the telephone notification.

31.3 If preliminary analysis indicates that an imminent or substantial endangerment to human health or the environment may exist, all other Project Managers shall be immediately notified.

## **XXXII. PROTECTED INFORMATION**

32.1 The Army, DOI/FWS, and USAOC shall not withhold any physical, sampling, monitoring, or analytical data.

32.2 National Security Information:

32.2.1 Any dispute concerning EPA access to national security information (“classified information”), as defined in Executive Order 12958, as amended, shall be resolved in accordance with Executive Order 12958, as amended, and other applicable law, including the opportunity to demonstrate that the EPA representative has proper clearances and a need to know, appeal to the Information Security Oversight Office, and final appeal to the National Security Council.

32.2.2 Upon receipt from EPA of a request to meet with the classifying officer regarding access to classified information, the Army shall, within ten (10) days of such request, notify the requesting Party of the identity of the classifying officer and the level of classification of the information sought. If the document was classified by the Army, the classifying officer and the representative of the requesting Party shall meet within twenty-one (21) days following receipt of the request. The purpose of the meeting shall be to seek a means to accommodate the requesting Party’s request for access to information without compromising national security or violating security regulations. If no resolution is reached at the meeting, the Army shall notify the requesting Party of the classifying officer’s decision within fourteen (14) days following the meeting. Failure to render a timely decision shall be construed as a denial. Failure to respond is subject to dispute resolution under this Agreement.

32.2.3 Nothing in this Subsection 32.2 is intended to, or should be construed as, superseding any law, regulation, or promulgated Army directive regarding access to, release of, or protection of national security information.

### **XXXIII. COMMUNITY RELATIONS**

33.1 The Army has developed and is implementing a Community Relations Plan. This plan responds to the need for an interactive relationship with all interested community elements, both on and off Ft. Meade, regarding environmental response activities conducted pursuant to this Agreement by the Army. Any revision or amendment to the Community Relations Plan shall be submitted to EPA for review and comment.

33.2 Except in case of an emergency requiring the release of necessary information, and except in the case of an enforcement action, any Party issuing a press release with reference to any of the Work required by this Agreement shall use its best efforts to advise the other Parties of such press release and the contents thereof upon issuance of such release.

33.3 The Parties agree to comply with all relevant EPA policy and Guidance on community relations programs and the public participation requirements of CERCLA, the NCP and other applicable laws and regulations.

33.4 The Parties agree that Work conducted under this Agreement and any subsequent proposed remedial action alternatives and subsequent plans for remedial action at the Site arising out of this Agreement shall comply with all the Administrative Record and public participation requirements of CERCLA, including Sections 113(k) and 117, 42 U.S.C. Sections 9613(k) and 9617, the NCP, and all applicable Guidance developed and provided by EPA. This shall be achieved through implementation of the Community Relations Plan.

33.5 The Army shall establish and maintain an Administrative Record at or near Ft. Meade, in accordance with CERCLA Section 113(k), 42 U.S.C. § 9613(k), Subpart I of the NCP, and applicable EPA Guidance. Before the Effective Date of this Agreement, the Army established and began maintaining copies of an Administrative Record at two locations: 1) Anne Arundel West County Library and 2) Fort Meade Environmental Division Building 239. The Administrative Record developed by the Army shall be periodically updated and a copy of the Index will be provided to EPA. The Army will provide to EPA on request any document in the Administrative Record.

33.6 Pursuant to 10 U.S.C. Section 2705(c), the Army has established a Restoration Advisory Board (RAB). The purpose of the RAB is to provide a forum for cooperation between the Parties, local community representatives, and natural resource trustees on actions and proposed actions at the Site. The EPA and the Army shall participate in the RAB. DOI/FWS and USAOC will, in their discretion, determine their level of participation. The participants on the RAB are as follows:

33.6.1 The Directorate of Public Works Environmental Division Chief, Ft. Meade, who shall co-chair the RAB;

33.6.2 A member of the community will co-chair the RAB with the Army;

33.6.3 An EPA representative;

and

33.6.4 The Fort Meade Installation Restoration Program Manager.

The Parties shall encourage representatives from the following organizations to serve as members of the RAB:

33.6.5 A MDE representative;

33.6.5. Anne Arundel County; and

33.6.6 Local community.

33.7 The RAB generally meets every other month. The Army RAB co-chair shall provide the Parties written minutes of all RAB meetings. The purpose of RAB meetings is described below:

33.7.1 To facilitate early and continued flow of information between the community, Ft. Meade, and the environmental regulatory agencies in relation to restoration actions taken by Ft. Meade under the Installation Restoration Program and BRAC Program;

33.7.2 To provide an opportunity for RAB members and the public to review and comment on actions and proposed actions under the Installation Restoration Program and BRAC Program; and

33.7.3 To facilitate regulatory and public participation consistent with applicable laws.

33.8 Additional meetings of the Project Managers may be held as appropriate.

#### **XXXIV. PUBLIC COMMENT ON THIS AGREEMENT**

34.1 Within fifteen (15) days after the execution of this Agreement (the date by which all Parties have signed the Agreement), EPA shall announce the availability of this Agreement to the public for their review and comment. Such public notices shall include information advising the public as to availability and location of the Administrative Record as discussed in Subsection 33.5. EPA shall accept comments from the public for forty-five (45) days after such announcement. Within twenty-one (21) days of completion of the public comment period, EPA shall transmit copies of all comments received within the comment period to the Army, DOI/FWS, and USAOC. Within thirty (30) days after the transmittal, the Parties shall review the comments and shall decide that either:

34.1.1 The Agreement shall be made effective without any modifications; or

34.1.2 The Agreement shall be modified prior to being made effective.

34.2 If the Parties agree that the Agreement shall be made effective without any modifications, and if the Parties agree on the Responsiveness Summary, EPA shall transmit a copy of the signed Agreement to the Army and shall notify the Army in writing that the Agreement is effective. The Effective Date of the Agreement shall be the date of receipt by the Army of the signed Agreement from EPA.

34.3 If the Parties agree that modifications are needed and agree upon the modifications and amend the Agreement by mutual consent within sixty (60) days after the expiration of the public comment period, EPA in consultation with the Army, DOI/FWS, and USAOC will determine whether the modified Agreement requires additional public notice and comment pursuant to any provision of CERCLA. If EPA determines that no additional notice and comment are required, and the Parties agree on the Responsiveness Summary, EPA shall transmit a copy of the modified Agreement to the Army, DOI/FWS, and USAOC and shall notify it in writing that the modified Agreement is effective as of the date of the notification. If the Parties amend the Agreement within the sixty (60) days and EPA determines that additional notice and comment are required, such additional notice and comment shall be provided consistent with the provisions stated in Subsection 34.1 above. If the Parties agree, after such additional notice and comment has been provided, that the modified Agreement does not require any further modification and if the Parties agree on the Responsiveness Summary, EPA shall send a copy of the mutually agreed upon modified Agreement to the Army, DOI/FWS, and USAOC and shall notify it that the modified Agreement is effective. In either case, the Effective Date of the modified Agreement shall be the date of receipt by the Army from EPA of notification that the modified Agreement is effective.

34.4 In the event that the Parties cannot agree on the modifications or on the Responsiveness Summary within thirty (30) days after the EPA's transmittal of the public comments, the Parties agree to negotiate in good faith for an additional fifteen (15) days before invoking dispute resolution. The Parties agree to have at least one meeting during that 15-day period to attempt to reach agreement.

34.5 If, after the times provided in Subsection 35.4, the Parties have not reached agreement on:

34.5.1 Whether modifications to the Agreement are needed; or

34.5.2 What modifications to the Agreement should be made; or

34.5.3 Any language, any provisions, any Deadlines, any Work to be performed or any content of the Agreement or any Appendices to the Agreement; or

34.5.4 Whether additional public notice and comments are required; or

34.5.5 The contents of the responsiveness summary,

then the matters that are in dispute shall be resolved by the dispute resolution procedures of Section XX – DISPUTE RESOLUTION. For the purposes of this Section, the Agreement shall

then the matters that are in dispute shall be resolved by the dispute resolution procedures of Section XX – DISPUTE RESOLUTION. For the purposes of this Section, the Agreement shall not be effective while the dispute resolution proceedings are underway. After these proceedings are completed, the Final Written Decision shall be provided to the Parties indicating the results of the dispute resolution proceedings. Each Party reserves the right to withdraw from the Agreement by providing written notice to the other Parties within twenty (20) days after receiving from EPA the Final Written Decision of the resolution of the matters in dispute. Failure by a Party to provide such a written notice of withdrawal to EPA within this twenty (20) day period shall act as a waiver of the right of that Party to withdraw from the Agreement, and EPA shall thereafter send a copy of the final Agreement to the other Party and shall notify the other Party that the Agreement is effective. The Effective Date of the Agreement shall be the date of receipt of that letter from EPA to the Army.

34.6 At the start of the public comment period, the Army will transmit copies of this Agreement to the appropriate Federal, state, and local Natural Resource Trustees for review and comment within the time limits set forth in this Section.

34.7 Existing records maintained by Ft. Meade that will be included in the Administrative Record such as reports, plans, and Schedules shall be made available by the Army for public review during the public comment period.

#### **XXXV. EFFECTIVE DATE**

This Agreement shall be effective in its entirety among the Parties in accordance with Section XXXIV – PUBLIC COMMENT ON THIS AGREEMENT.

#### **XXXVI. AMENDMENT OF AGREEMENT**

36.1 Except as provided in Section XIV – PROJECT MANAGERS, this Agreement can be amended or modified solely upon written consent of all the Parties. Such amendments or modifications shall be in writing, and shall become effective on the third business day following the date on which EPA signs the amendments or modifications. The Parties may agree on a different Effective Date. As the last signing Party, EPA will provide notice to each signatory pursuant to Section XIV – PROJECT MANAGERS, of the Effective Date.

36.2 The Party initiating the amendment of this Agreement shall propose in writing the amendment for distribution and signature by the other Parties.

36.3 During the course of activities under this Agreement, the Parties anticipate that statutes, regulations, Guidance, and other rules will change. Those changed statutes, regulations, Guidance, and other rules shall be applied to the activities under this Agreement in the following manner:

36.3.1 Applicable statutes and regulations shall be applied in accordance with the statutory or regulatory language on applicability, and if applied to ongoing activities, shall be applied on the

36.3.2 Applicable policy or Guidance shall be applied as it exists at the time of initiation of the Work in issue; and

36.3.3 Applicable policy or Guidance that is changed after the initiation of the Work in issue or after its completion shall be applied subject to Section XX – DISPUTE RESOLUTION. The Party proposing application of such changed policy or Guidance shall have the burden of proving the appropriateness of its application. In any case, the Parties shall, to the extent practicable, apply any changed policy or Guidance in such a way as to avoid, as much as possible, the need for repeating Work already accomplished.

36.3.4 Changes in ARARs are governed by Section 300.430(f)(1)(ii)(B)(1) of the NCP.

### **XXXVII. SEVERABILITY**

37 If any provision of this Agreement is ruled invalid, illegal, or unconstitutional, the remainder of the Agreement shall not be affected by such a ruling.

### **XXXVIII. WITHDRAWAL OF RCRA ORDER**

38 When this Agreement becomes effective in accordance with Section XXXV-- PUBLIC COMMENT ON THIS AGREEMENT, EPA will withdraw the RCRA Section 7003 Order discussed in Section VI—FINDINGS OF FACT.

### **XXXIX. TERMINATION AND SATISFACTION**

39.1 The provisions of this Agreement, including those separate and discrete portions pertaining to the DOI/FWS or USAOC, shall be deemed satisfied upon a consensus of the Parties that the Army, DOI/FWS, and USAOC have completed their obligations under the terms of this Agreement. Following EPA Certification of all the response actions at the Site pursuant to Subsection 9.9 of Section IX – WORK TO BE PERFORMED, any Party may propose in writing the termination of this Agreement upon a showing that the requirements of this Agreement have been satisfied. The obligations and objectives of this Agreement shall be deemed satisfied and terminated upon receipt by the Army, DOI/FWS, and USAOC of written notice from EPA that the Army, DOI/FWS, and USAOC have demonstrated that all the requirements of this Agreement have been satisfied. A Party opposing termination of this Agreement shall provide a written statement of the basis for its denial and describe the actions necessary to grant a termination notice to the proposing Party within ninety (90) days of receipt of the proposal.

39.2 Any disputes arising from this Termination and Satisfaction process shall be resolved pursuant to the provisions of Section XX – DISPUTE RESOLUTION, of this Agreement.

39.3 Upon termination of this Agreement, the Army shall place a public notice announcing termination in two (2) local newspapers of general circulation.




39.4 This Section shall not affect the Parties' obligations pursuant to Section XIX – PERIODIC REVIEW or Section XXXI – RECORD PRESERVATION of this Agreement. In no event will this Agreement terminate prior to the Army's completion of the Work required by this Agreement.

**AUTHORIZED SIGNATURES**

The undersigned representative certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement. This Agreement shall apply to and be binding upon EPA, DOI/FWS, USAOC, and the Army.

IT IS SO AGREED:

By

  
\_\_\_\_\_  
Daniel L. Thomas                      19 Jun 2009  
Colonel, U.S. Army                      Date  
Commanding

**AUTHORIZED SIGNATURES**

The undersigned representative certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement. This Agreement shall apply to and be binding upon EPA, DOI/FWS, USAOC, and the Army.

IT IS SO AGREED:

By

A handwritten signature in black ink, consisting of several loops and a horizontal line at the end with the letters "IV" written below it.

Addison D. Davis, IV  
Deputy Assistant Secretary of the Army  
(Environment, Safety and Occupational Health)

Date JUN 19 2009

## AUTHORIZED SIGNATURES

The undersigned representative certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement. This Agreement shall apply to and be binding upon EPA, DOI/FWS, USAOC, and the Army.

IT IS SO AGREED:

By



William C. Early  
Acting Regional Administrator  
Environmental Protection Agency, Region III

Date JUN 18 2009

**AUTHORIZED SIGNATURES**

The undersigned representative certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement. This Agreement shall apply to and be binding upon EPA, DOI/FWS, USAOC, and the Army.

IT IS SO AGREED:

By



Date 6/18/05

Acting

Marvin E. Moriarty  
Regional Director  
Fish and Wildlife Service, Region 5  
Department of the Interior

**AUTHORIZED SIGNATURES**

The undersigned representative certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement. This Agreement shall apply to and be binding upon EPA, DOI/FWS, USAOC, and the Army.

IT IS SO AGREED:

By



Susan P. Adams  
Director, Safety, Fire and Environmental Programs  
Architect of the Capitol

6/19/09  
Date

**APPENDIX A**

**INITIAL LIST OF OPERABLE UNITS REQUIRING A REMEDIAL  
INVESTIGATION/FEASIBILITY STUDY**

(This appendix shows the initial list of sites that are in the remedial investigation/feasibility study (RI/FS) phase or sites where the RI/FS is a near-term future phase e.g., OU-45/FGGM-95 and OU-46/FGGM-96.)

<b>Operable Unit</b>	<b>AEDB-R Number</b>	<b>Site Name</b>
<b>Base Realignment and Closure Program</b>		
OU-37	FGGM-94	Trap and Skeet Range (Range 17)
<b>Installation Restoration Program</b>		
OU-1	FGGM-83	Trap and Skeet Range
OU-3	FGGM-87	Former NIKE Fire Control Site
OU-4	FGGM-47	Post Laundry Facility (Building 2250)
OU-4	FGGM-86	Former Motor Pool Maintenance Facility
OU-4	FGGM-88	Former Tank Maintenance Facility, Shop-1
OU-4	FGGM-89	Former Tank Maintenance Facility, Shop-1
OU-4	FGGM-90	Former Tank Cleaning Supply Warehouse
OU-4	FGGM-91	Former Missile Repair Shop
OU-4	FGGM-92	Former Heavy Gun Cleaning and Repair Shop
OU-5	FGGM-07	Defense Reutilization and Marketing Office
OU-10	FGGM-13	Pesticide Shop (Building 6621)
OU-12	FGGM-17	Closed Sanitary Landfill
OU-29	FGGM-74	Architect of the Capitol
OU-36	FGGM-93	Manor View Dump Site
OU-45	FGGM-95	Former Landfill Sites
OU-46	FGGM-96	Former Motor Pools and Wash Racks
<b>Military Munitions Response Program</b>		
OU-40	FGGM-003-R-01	Mortar Range

**APPENDIX B**  
**OPERABLE UNITS WITH RECORDS OF DECISION**

<b>OPERABLE UNIT</b>	<b>AEDB-R SITE NO.</b>	<b>SITE NAME</b>	<b>COMMENTS</b>
<b>Base Realignment and Closure</b>			
OU-8	FGGM-10	Inactive Landfill No. 1	July 1999; Record of Decision
OU-17	FGGM-31	Inactive Landfill Nos. 2 and 3	December 1998; Record of Decision July 1999; Record of Decision
OU-18	FGGM-32	Fire Training Area	December 1998; Record of Decision
OU-32	FGGM-80	Helicopter Hanger Area	December 1998; Record of Decision
OU-33	FGGM-81	Clean Fill Dump	September 2000; Record of Decision



**APPENDIX C**

**SITES BEING ADDRESSED UNDER ADDITIONAL REGULATORY PROGRAMS**

(This appendix shows operable units being addressed under the Maryland Department of the Environment, Oil Cleanup Program and the Resource Conservation and Recovery Act).

Operable Unit	AEDB-R SITE NO.	SITE NAME	Regulatory Program	APPLICABLE REGULATIONS
OU-2	<u>FGGM 05</u>	Troop Boiler Plant Case Number-92-0026-AA	MDE-OCP	Code of Maryland Regulations 26.10. "Oil Pollution and Tank Management"
OU-12	FGGM-17	Closed Sanitary Landfill; RCRA biannual groundwater sampling	Federal: Safe Drinking Water Act  State of Maryland: Solid Waste Management Program	40 CFR 141.11  <ul style="list-style-type: none"> <li>• COMAR 26.03</li> <li>• COMAR 26.04</li> <li>• COMAR 26.08</li> <li>• Numerical Criteria for Toxic Substances in Surface Water (1996)</li> <li>• COMAR 26.08.02.03 (Maximum Contaminant Levels)</li> <li>• COMAR 26.04.04.05, under B (2)(VI)</li> <li>• COMAR 26.04.01</li> </ul>

Definitions:

1. CFR – Code of Federal Regulations
2. COMAR – Code of Maryland Regulations
3. MDE – Maryland Dept of the Environment
4. OCP – Oil Control Program (State of Maryland)
5. OU – Operable unit

**APPENDIX D\***

**NO FURTHER ACTION SITES**

**\*This appendix shows no further action sites; the Parties will update once they review information, including Partnership meeting minutes, and agree in writing with the NFA determinations.**

<b>OPERABLE UNIT/ BUILDING NUMBER</b>	<b>SITE NO. / SWMU NO.</b>	<b>SITE NAME</b>	<b>NFA DATE (YYYYMM)</b>	<b>DOCUMENTATION</b>
OU-41	FGGM-004-R-01	Grenade and Bayonet Range A	200704	October 2007 Final Site Inspection Report
OU-42	FGGM-005-R-01	Pistol Range A <sup>2</sup>	200704	October 2007 Final Site Inspection Report
OU-43	FGGM-006-R-01	Pistol Range B <sup>2</sup>	200704	October 2007 Final Site Inspection Report
<b>Definitions:</b> 1) Bldg – buildings 2) DOL – Directorate of Logistics 3) ER-A – Environmental Restoration-Army			4) FGGM – Fort George G. Meade 5) MEC – Munitions and explosives of concern 6) PA SI – Preliminary Assessment Site Inspection 7) POL – petroleum, oils and lubricants 8) NFA – no further action  <b>Sources:</b> 1) Army Environmental Database-Restoration 2) September 2007 Fort George G. Meade Installation Action Plan	

**APPENDIX E\***

**Initial Information on Sites Suspected to Contain UXO, DMM or MCs**

**\* See Section 6 of the FFA for a brief description of operable units known or suspected to contain UXO, DMM, or MCs.**

**APPENDIX F**

**SITE MANAGEMENT PLAN (To be Added Once Finalized)**

**APPENDIX G**

**OPERABLE UNITS WITH KNOWN AREAS OF CONTAMINATED GROUNDWATER**

OPERABLE UNIT/ SITE NUMBER	SITE NAME	ADJACENT PROPERTY
<b>Base Realignment and Closure Program</b>		
OU-8/OU-17 FGGM-10/FGGM-31	Inactive Landfill Nos. 1 and 3 – Tipton Army Airfield	Affected groundwater is not known to impact the Patuxent Research Refuge-North Tract (PRR-NT).
OU-15 FGGM-20	Ordnance Demolition Area	Affected groundwater is not known to impact adjacent property (private properties off the PRR-NT).
OU-33 FGGM-81	Clean Fill Dump	Contaminated groundwater has been detected an adjacent property (PRR-NT).
<b>Installation Restoration Program</b>		
OU-2 FGGM-05	Troop Boiler Plant	Affected groundwater is not known to impact adjacent (non-Army) property.
OU-3 FGGM-87	Nike Control Site	Affected groundwater is not known to impact an adjacent (non-Army) property.
OU-4 FGGM-47	Former Post Laundry Facility	One plume is associated with Building 2286, and was shown in 2006 to be extending onto an adjacent property (USAOC).
OU-5 FGGM-07	Defense Reutilization and Marketing Office	The PCE plume extends south for approximately 1 mile onto an adjacent property (PRR-NT).  A plume of carbon tetrachloride ("CCL <sub>4</sub> ") was also detected emanating from the DRMO moving south onto adjacent properties (USAOC and the PRR-NT).
OU-10 FGGM-13	Pesticide Shop	Affected groundwater is not known to impact adjacent property.
OU-12 FGGM-17	Closed Sanitary Landfill	At this time there is insufficient data to determine if benzene detected in the Upper Patapsco aquifer from wells on Ft. Meade has migrated onto adjacent property.  Test results from monitoring wells located in Odenton have detected PCE, TCE, and CCL <sub>4</sub> .
OU-36 FGGM-93	Manor View Dump Site	At this time there is insufficient data to determine the extent of groundwater contamination. Additional investigations have been proposed.

Notes:

A) Attachment 3 shows the location of the contaminated groundwater described in this table.

- 1) PCE – tetrachloroethene
- 2) PLF - Post Laundry Facility (former)
- 3) PRR-NT – Patuxent Research Refuge-North Tract
- 4) TCE - trichloroethene

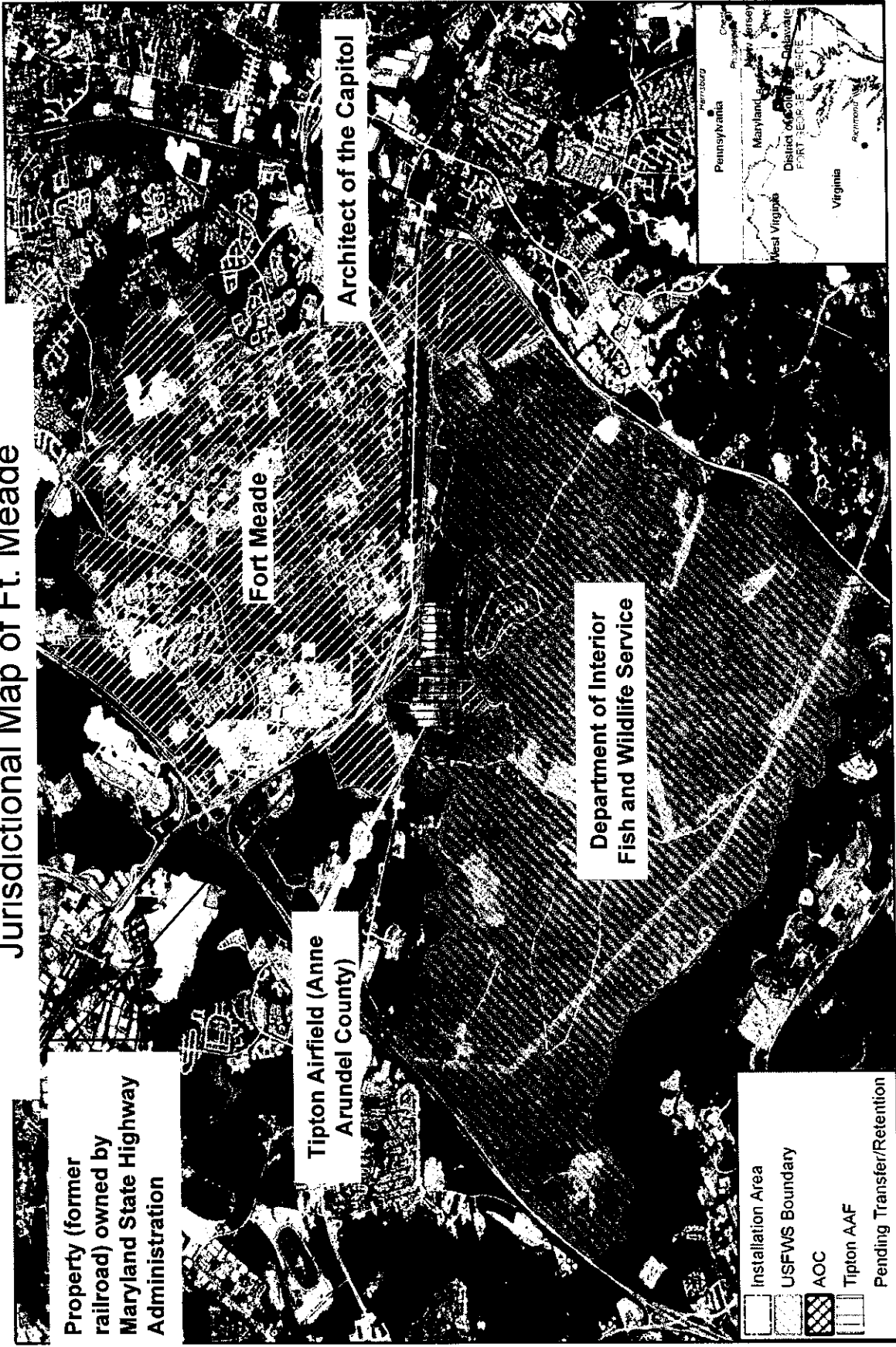
**APPENDIX G**

**OPERABLE UNITS WITH KNOWN AREAS OF CONTAMINATED GROUNDWATER**

<b>OPERABLE UNIT/ SITE NUMBER</b>	<b>SITE NAME</b>	<b>ADJACENT PROPERTY</b>
5) RBC – risk-based concentration 6) USAOC – United States, Architect of the Capitol 7) VOCs – volatile organic compounds		

## **ATTACHMENTS**

# Attachment 1 Jurisdictional Map of Ft. Meade








Property (former railroad) owned by Maryland State Highway Administration

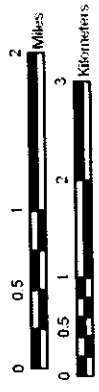
Tipton Airfield (Anne Arundel County)

Fort Meade

Architect of the Capitol

Department of Interior Fish and Wildlife Service

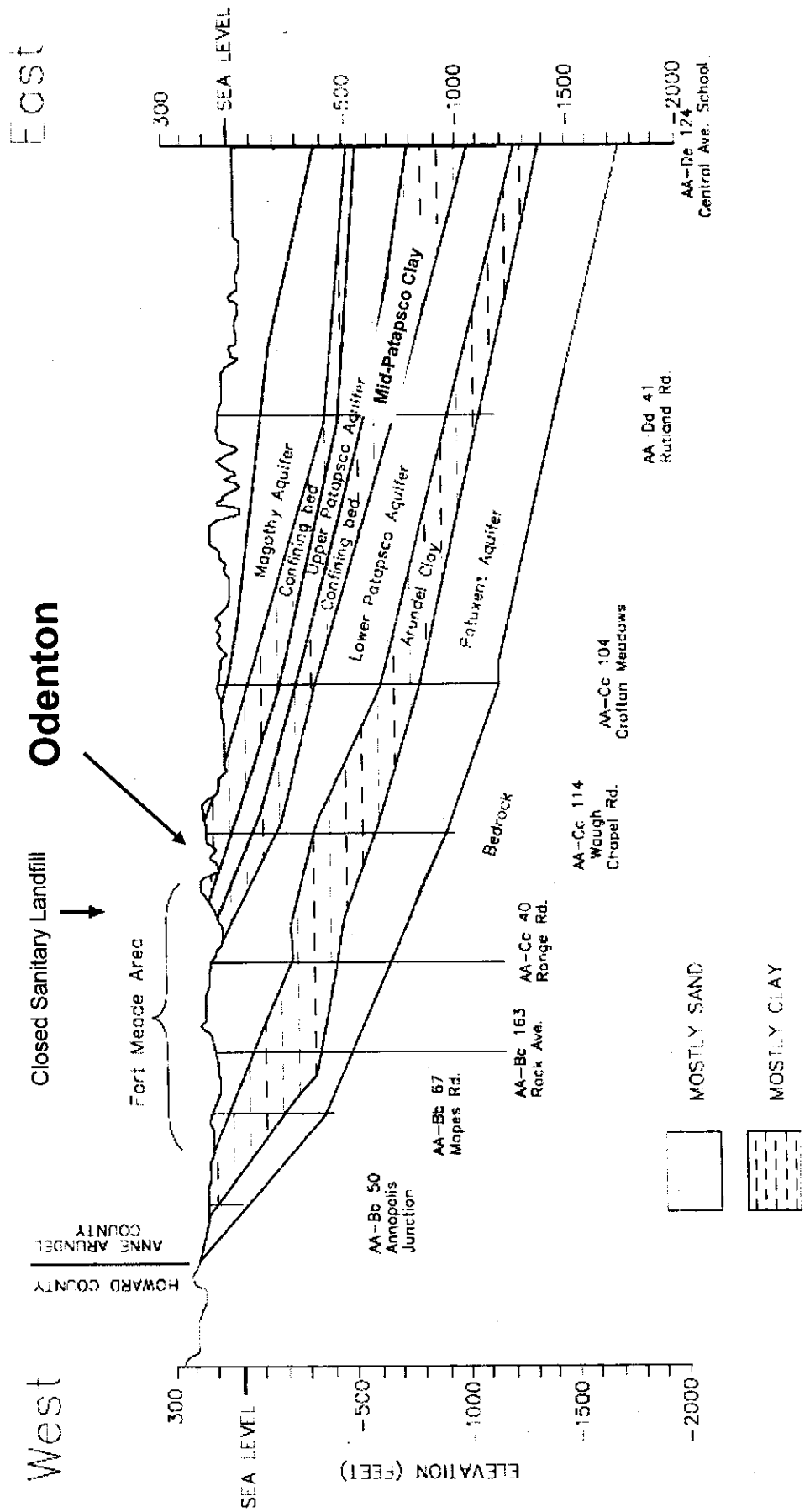
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-  USFWS Boundary
-  AOC
-  Tipton AAF
-  Pending Transfer/Retention



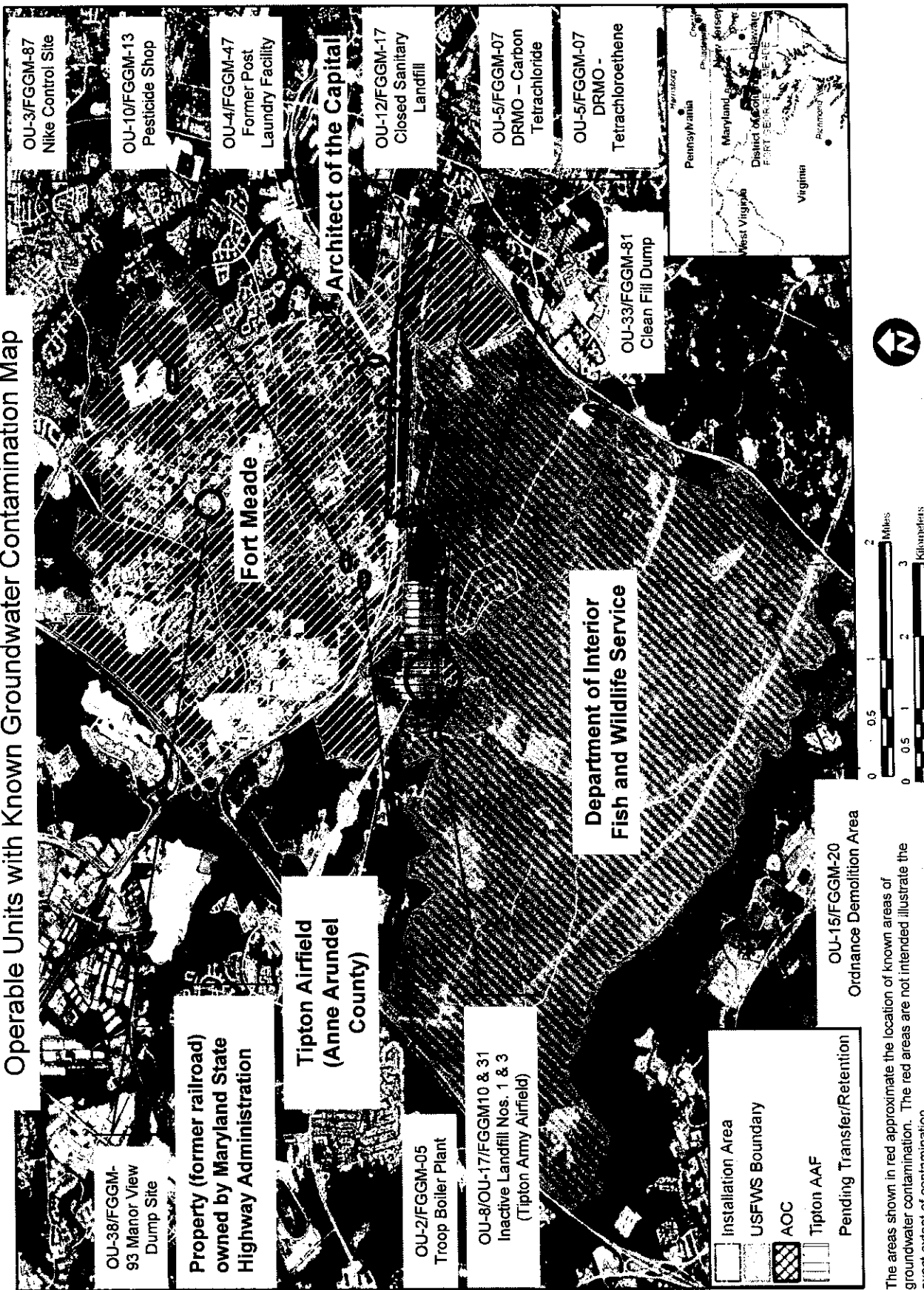
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 Date: 10/15/2010  
 Data Source: [Source], [Information System], [Proprietary], [NSR]  
 5000 C and Fort George, Ft. Meade



# Geologic Map of Fort Meade and Vicinity



# Attachment 3 Operable Units with Known Groundwater Contamination Map



The areas shown in red approximate the location of known areas of groundwater contamination. The red areas are not intended to illustrate the exact extent of contamination.