UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION II

UNITED STATES DEPARTMENT OF THE NAVY

UNITED STATES DEPARTMENT OF THE INTERIOR

AND THE COMMONWEALTH OF PUERTO RICO

IN THE MATTER OF:

U.S. Departments of the Interior and Navy Island of Vieques Puerto Rico	FEDERAL FACILITY AGREEMENT Under CERCLA Section 120 Administrative Docket Number: FFA-CERCLA-02-2007-2001

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Appendix A - A list of Areas of Concern ("AOCs") which are or shall be addressed through the remedial investigations and feasibility study process.

Appendix B - A list of Site Screening Areas ("SSAs") identified and to be identified which shall be evaluated under the Site Screening Process. Appendix B may be amended if additional areas are added in the future.

Appendix C - A list of Preliminary Screening Areas ("PSAs") identified and to be identified which shall be evaluated under the PSA process. Appendix C may be amended if additional areas are added in the future.

Appendix D - A list of draft Primary Documents which Navy has completed and transmitted to EPA, Interior, and the Commonwealth for review and comment prior to the Effective Date of this Agreement.

Appendix E - The Site Management Plan ("SMP"), as amended annually.

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

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

A. The U.S. Environmental Protection Agency ("EPA") Region II 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, as amended (hereinafter referred to as "CERCLA"), 42 U.S.C. § 9620(e)(1), and Sections 6001, 3008(h) and 3004(u) and (v) of the Resource Conservation and Recovery Act ("RCRA"), as amended (hereinafter referred to as "RCRA"), 42 U.S.C. §§ 6961, 6928(h), 6924(u) and (v), and Executive Order 12580 ("E.O. 12580");

B. EPA Region II enters into those portions of this Agreement that relate to interim remedial actions ("IRAs") and final remedial actions ("FRAs") pursuant to CERCLA Section 120(e)(2), 42 U.S.C. § 9620(e)(2), RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. §§ 6961, 6928(h), 6924(u) and (v), and E.O. 12580;

C. The Department of the Navy ("Navy") enters into those portions of this Agreement that relate to the RI/FS pursuant to CERCLA Section 120(e)(1), 42 U.S.C. § 9620(e)(1), RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. §§ 6961, 6928(h), 6924(u) and (v), E.O. 12580, the National Environmental Policy Act, 42 U.S.C. § 4321, and the Defense Environmental Restoration Program ("DERP"), 10 U.S.C. §§ 2701-2710;

D. Navy enters into those portions of this Agreement that relate to IRAs and FRAs pursuant to CERCLA Section 120(e)(2), 42 U.S.C. § 9620(e)(2), RCRA Sections 6001, 3008(h), 3004(u) and (v), 42 U.S.C. §§ 6961, 6928(h), 6924(u) and (v), E.O. 12580, and DERP.

E. Consistent with the two Memoranda of Agreement between Navy and the Department of the Interior ("Interior") dated January 17, 2001 and April 30, 2003, including all amendments thereto ("MOAs"), Interior enters into those portions of this Agreement that relate to remedial actions pursuant to CERCLA Section 120(e)(1) and 120(e)(2), 42 U.S.C. § 9620(e)(1) and 9620(e)(2), and Interior also enters this Agreement pursuant to E.O. 12580; and

F. The Commonwealth of Puerto Rico ("Commonwealth") enters into this Agreement pursuant to CERCLA Sections 120(f) and 121(f), 42 U.S.C. §§ 9620(f) and 9621(f), Law 9 of June 18, 1970, 12 Puerto Rico Laws Annotated ("PRLA") Section 1121 et seq., as amended; Law 81 of July 2, 1987, 12 PRLA Section 1271 et seq., as amended; and Law 416 of September 22, 2004, as amended.

II. DEFINITIONS

2.1 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.

A. "Accelerated Operable Unit" or "AOU" shall mean a remedial action that 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 ("RA") for that Operable Unit ("OU") prior to completion of the final Record of Decision ("ROD") for the total OU. AOUs are particularly appropriate where the size and complexity of the total RA would seriously delay implementation of independent parts of the action. AOUs will proceed only after complying with applicable procedures in the NCP, and the Parties shall make every effort to expedite these procedures. AOUs shall not diminish the requirements for or delay the conduct of a total RA.

B. "Agreement" shall refer to this Federal Facility Agreement, Docket Number FFA-CERCLA-02-2007-2001, and shall include all Attachments and Appendices to this document. All such Attachments and Appendices are integral parts of this Agreement and shall be enforceable to the extent provided herein.

C. "Applicable Commonwealth law" shall mean all Commonwealth of Puerto Rico laws administered by the Environmental Quality Board determined to be applicable under this agreement. The term shall also include all Commonwealth laws determined to be Applicable or Relevant and Appropriate Requirements.

D. "ARARs" shall mean "legally applicable" or "relevant and appropriate" requirements, standards, criteria, or limitations, as those terms are used in CERCLA Section 121, 42 U.S.C. § 9621, and as defined in the NCP.

E. "AOCs" and "areas of concern" shall mean, respectively, (a) a specific list of identified areas of concern set forth in Appendix A where it is agreed that remedial investigations and, as necessary, feasibility studies (RIs and FSs) shall be conducted under this Agreement ("AOCs"), and (b) more generally, an area which is or may be of concern based on actual or potential contamination by hazardous substances, pollutants, or contaminants, or hazardous wastes or constituents ("areas of concern").

F. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9675, and any amendments thereto.

G. "Commonwealth" shall mean the Commonwealth of Puerto Rico and its employees, members, successors, authorized representatives, and assigns.

H. "Community Relations" shall mean the program to inform and involve the public in the Environmental Restoration Program, CERCLA and RCRA processes, and to respond to community concerns.

I. "Corrective Action Order" shall mean the order signed by Navy and EPA Region II pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), pertaining to certain portions of the east end of Vieques.

J. "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 Commonwealth holiday, or any non-work day for a federal or Commonwealth agency for any reason, shall be due on the following business day.

K. "Deadlines" shall mean the Near Term Milestones specifically established for the current fiscal year under the Site Management Plan ("SMP"). Deadlines are subject to stipulated penalties in accordance with Section XXI (Stipulated Penalties).

L. "Deliverable Document" shall mean those required documents listed as Primary and Secondary Documents under this Agreement.

M. The terms "documents" or "records" shall mean any documents, writings, correspondence, and all other tangible things on which information has been stored that relate to this Agreement or to any activities to be undertaken relating to this Agreement.

N. "EPA" or "Agency" shall mean the United States Environmental Protection Agency, its employees, agents, authorized representatives, successors, and assigns.

O. "EQB" shall mean the Commonwealth of Puerto Rico Environmental Quality Board and its employees, agents, authorized representatives, successors, and assigns.

P. "Exclusion Zone" shall mean any areas of the Site mutually designated as such by the Project Managers or any area designated as such by Navy based on the presence or potential presence of unexploded ordnance or other military munitions which present an unacceptable health or safety risk. Navy shall base any such designation on the criteria set forth in Department of Defense Explosive Safety Board and Naval Ordnance Safety and Security Activity regulations. The standard is set forth at DOD 6055.9-STD, "DOD Ammunition and Explosives Safety Standards," effective October 2004, which is promulgated pursuant to DOD Directive 6055.9. Navy's implementing regulation is the Naval Sea Systems Command (NAVSEA) OP-5 Vol. 1, "Ammunition and Explosives Safety Ashore," effective January 2001. Access to any such Exclusion Zone shall be coordinated as set forth in Section XVI (Access).

Q. "Facility" shall mean, solely for the purposes of this Agreement, that property located on and around the Island of Vieques in the Commonwealth of Puerto Rico which was formerly under the control of Navy and utilized as part of what the Commonwealth described as the Atlantic Fleet

Weapons Training Area and which it identified as part of its one-time selection of its highest priority facility, pursuant to CERCLA Section 105(a)(8)(B), 42 U.S.C. § 9605(a)(8)(B). The Facility for the purposes of this Agreement includes those areas located on the Eastern and Western portions of Vieques and related waters where contamination has come to be located, or from which that contamination came, as a result of activities of the United States Department of Defense and its predecessor departments or agencies, as those areas have been identified in EPA's listing of the Site on the National Priorities List ("NPL"), which was published in the Federal Register on February 2, 2005. The "Facility" for the purposes of this Agreement is a portion of the facility which was proposed for listing on CERCLA's NPL by the Commonwealth. This definition is for the purpose of describing a geographical area and not a governmental entity.

R. "Fiscal year" or "FY" shall mean the time period used by the United States Government for budget management and commences on October 1 and ends September 30 of the following calendar year.

S. "Focused Feasibility Study" or "FFS" shall mean a comparison of alternatives that concentrates on a particular contaminated medium or a discrete portion of the Site that does not need added investigation in order to progress in the remedial process.

T. "Guidance" shall mean any requirements or policy directives issued by EPA which are of general application to environmental matters and are deemed to be applicable to Work under this Agreement.

U. "Interim Remedial Action" or "IRA" shall mean all discrete RAs, including, but not limited to, AOUs, implemented prior to a FRA that are taken to prevent or minimize the release of hazardous substances, pollutants, or contaminants.

V. "Interior" shall mean the U.S. Department of the Interior, including the U.S. Fish and Wildlife Service, and its employees, agents, authorized representatives, successors, and assigns. For purposes of this Agreement, Interior's role is limited to (1) those portions of the Site over which Interior exercises jurisdiction, custody, or control as a land manager, and (2) those portions of the Site where a response action is undertaken wholly or partially on land over which Interior exercises jurisdiction, custody, or control.

W. "Land use control" or "LUC" shall mean any restriction or administrative action, including institutional controls and other legal and engineering restrictions which arise from the need to reduce risk to human health and the environment.

X. "Milestones" shall mean the dates established by the Parties in the SMP 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.

Y. "MOAs" shall mean both of the Memoranda of Agreement executed between Navy and Interior pertaining to the island of Vieques and its surrounding waters, one dated January 17,

2001 and the second dated April 30, 2003, and including any subsequent amendments thereto. The MOAs and any other such written agreements are independent of this Agreement and shall not be construed to relieve any Party to this Agreement of any obligation set forth herein or establish any right of enforcement by any non-party to such MOA or agreement.

Z. "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.

AA. "Navy" shall mean the U. S. Department of the Navy, including the Naval Facility Engineering Command (NAVFAC), the Naval Facility Engineering Command Atlantic (NAVFACLANT), all Navy employees, agents, authorized representatives, successors, and assigns. Navy 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.

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

CC. "On-site" shall have the meaning as defined in the NCP.

DD. "Operable Unit" or "OU" shall mean a discrete remedial action that comprises an incremental step toward comprehensively remediating the Site. This discrete remedial action manages migration, or eliminates or mitigates a release, threat of release, or pathway of exposure related to the Site. OUs 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 OUs, 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 OUs shall be addressed in accordance with the NCP, EPA Guidance, and the requirements of CERCLA.

EE. "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).

FF. "Parties" shall mean Navy, EPA, Interior, and the Commonwealth collectively. "Party" shall mean Navy, EPA, Interior, or the Commonwealth, individually.

GG. "Primary Actions" as used in this Agreement shall mean those specified major, discrete actions that the Parties identify as such in the SMP. The Parties should identify all major,discrete actions, for which there is sufficient information to be confident that the date for taking such action is implementable.

HH. "Project End Dates" shall mean the dates established by the Parties in the SMP 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 as a result of uncertainties associated with establishing such dates.

II. "Project Manager" shall mean the person designated by each Party to represent that Party's interests and manage all response actions, or the oversight of such response actions, undertaken at the Site.

JJ. "Public Stakeholder" shall mean members of the public including residents, environmentalists, community leaders, public officials, citizens' action groups, and any other interested party.

KK. "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901- 6991, and any amendments thereto.

LL. "Remedial Action" or "RA" shall have the same meaning as set forth in CERCLA Section 101(24), 42 U.S.C. § 9601(24), and shall include IRAs, supplemental response actions, AOUs, and FRAs. A FRA is an RA which is anticipated to be the final RA for an AOC, an SSA, or the Site.

MM. "Record of Decision" or "ROD" shall be a public document that selects and explains which cleanup alternative(s) will be implemented at the Site, and includes the basis for the selection of such remedy. This shall include, but is not limited to, information and technical analyses generated during the RI/FS and consideration of public comments and community concerns.

NN. "Schedule" shall mean a timetable or plan that indicates the time and sequence of events.

OO. "Site" shall include those areas where a hazardous substance, hazardous waste, hazardous constituent, pollutant, or contaminant from the Facility has been released, deposited, stored, disposed of, or placed, or has migrated or otherwise come to be located. The Site is a "facility" within the meaning of CERCLA Section 101(9), 42 U.S.C. § 9601(9). The parties acknowledge that, for the purposes of this Agreement, the definition of "Site" does not include the entire facility as proposed by the Commonwealth for inclusion on the NPL. Specifically, this Agreement is not intended to address any portion of the island of Culebra or related waters thereto. The definition of "Site" is not intended to include hazardous substances or wastes intentionally transported from the Facility for proper disposal during waste management or environmental restoration activities.

PP. "Site Management Plan" or "SMP" shall mean a planning document, prepared specifically under Section XI (Deadlines and Contents of Site Management Plan) that contains a timetable, plan, or Schedule that indicates the time and sequence of events. The SMP will be used as a management tool in planning, reviewing, and setting priorities for all response

activities at the Facility. Deadlines developed under the terms of this Agreement are listed in the SMP. Final Deadlines listed in the SMP are subject to stipulated penalties.

QQ. "Site-Screening Areas" or "SSAs" shall mean those geographical areas identified in Appendix B and any additional areas agreed to by the Parties in the future to be investigated and evaluated for remediation pursuant to the requirements of the Agreement. SSAs may be either RCRA Solid Waste Management Units ("SWMUs") or RCRA or CERCLA areas of concern. When the Parties agree, SSAs may be expanded or contracted in size as information becomes available indicating the extent of contamination and the geographical area needed to be studied.

RR. "Site-Screening Process" or "SSP" refers to the mechanism described in Subsection 9.3 for evaluating whether identified SSAs should proceed with an RI and FS. The SSP encompasses both the Facility's RCRA areas of concern and SWMU areas and newly discovered CERCLA areas of concern within the Site. Appendix B lists those geographical areas that are being evaluated under the SSP. Additional areas may be agreed to by the Parties in the future, and if so, Appendix B will thereafter be amended accordingly.

SS. "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.

TT. "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.

UU. "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; or (3) it is sent by certified mail return receipt requested no later than 2 days before it is due to be delivered according to the requirements of this Agreement. Any other means of transmission must arrive on the due date to be considered as timely delivered.

VV. "Work" shall mean all activities that are required to be performed 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, Navy, Interior and the Commonwealth.

3.2 Navy shall notify EPA, Interior, and the Commonwealth of the identity and assigned tasks of each of its contractors performing Work under this Agreement upon their selection. Navy 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.

3.3 This Section shall not be construed as an agreement to indemnify any person or Party.

IV. PURPOSE

4.1 The general purposes of this Agreement are to:

A. Ensure that the environmental impacts associated with past and present activities at the Site are thoroughly investigated and that the appropriate RA is taken as necessary to protect human health or welfare or the environment;

B. Establish a procedural framework and Schedule for developing, implementing, and monitoring appropriate response actions at the Site in accordance with CERCLA, the NCP, CERCLA Guidance and policy, RCRA, RCRA Guidance and policy, and applicable Commonwealth law; and

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

4.2 The specific purposes of this Agreement are to:

A. Identify IRAs that are appropriate at the Site for an OU prior to implementation of a final RA for that OU. The IRA alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of IRA(s) to EPA, Interior, and the Commonwealth pursuant to CERCLA. This process is designed to promote cooperation among the Parties in identifying IRAs and their alternatives for OUs prior to selection of an IRA or the final RA for an OU.

B. Establish requirements for the performance of RIs to determine fully the nature and extent of the threat to human 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 FSs for the Site to identify, evaluate, and select alternatives for the appropriate RA(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 the NCP.

C. 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 the NCP.

D. Implement the selected RA(s) at the Site in accordance with CERCLA and the NCP, and meet the requirements of CERCLA Section 120(e)(2) for an interagency agreement.

E. Ensure compliance, through this Agreement, with RCRA and other federal and the Commonwealth hazardous waste laws and regulations for matters covered herein.

F. Coordinate response actions at the Site with the responsibilities, ongoing activities, and overall mission of the land managers and owners of the Facility.

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

H. Provide for operation and maintenance of any RA selected and implemented pursuant to this Agreement.

I. Provide for, in accordance with CERCLA and the NCP, Commonwealth involvement in the initiation, development, selection, and enforcement of RAs to be undertaken at the Site, including the review of all applicable data as they become available, and the development of studies, reports, and action plans; and to identify and integrate Commonwealth ARARs into the RA process.

J. As provided in 40 C.F.R. 300.430(b)(7), notify the Commonwealth and Federal natural resource trustees of releases that may threaten natural resources and seek to coordinate necessary assessments, evaluations, investigations, and planning with such trustees.

V. SCOPE OF AGREEMENT

5.1 This Agreement is entered into by the Parties to enable Navy to meet the provisions of CERCLA, 42 U.S.C. §§ 9601-9675, and RCRA Sections 3004(u) and (v) and 3008(h), 42 U.S.C. §§ 6924(u) and (v) and 6928(h).

5.2 Interior enters this Agreement subject to federal fish and wildlife and environmental laws, regulations, and orders, including but not limited to the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Public Law No. 106-398, as amended by Public Law No. 107-107; the National Wildlife Refuge System Administration Act of 1966, 16 U.S.C. §§ 668dd-668ee; the National Wildlife Refuge System Improvement Act of 1998, 112 Stat. 2957; the Endangered Species Act, 16 U.S.C. §§ 1531 - 1544; the Migratory Bird Treaty Act, 16 U.S.C. §§ 701 - 712; and the Refuge Recreation Act, 16 U.S.C. §§ 460k - 460k-4.

5.3 This Agreement arises from and reflects a unique set of facts and circumstances set forth with greater specificity in the following subparagraphs and, accordingly, this Agreement expressly does not constitute precedent for any other matter.

A. Express Congressional direction in 106 Pub. L. 398, Title XV, §§ 1501 – 1508, 114 Stat. 1654, Title XV, §§ 1501 – 1508, 106th Congress, 2nd Session, October 30, 2000; 107 Pub. L. 107, § 1049, 115 Stat. 1012, § 1049, 107th Congress, 1st Session, December 28, 2001, concerning land transfers and acceptable land use practices;

B. Navy and Interior acknowledge significant and substantive participation in transfer negotiations between Navy and Interior by the Council on Environmental Quality which led directly to specific requirements for land transfer and environmental response set forth in the Memorandum of Agreement between Navy and Interior governing East Vieques;

C. The Commonwealth's decision to utilize its one-time authority under 42 U.S.C. § 9605(a)(8)(B) to designate the Site as part of a site for inclusion on the NPL; and

D. The NPL listing clearly included the property transferred from Navy's jurisdiction to Interior's jurisdiction.

5.4 This Agreement covers 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 process 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 process for dealing with heretofore undiscovered releases. To accomplish remediation of newly discovered releases, Schedules and Deadlines will be established as necessary and as information becomes available and, if required, this Agreement will be amended as needed.

5.5 A portion of the Facility is subject to the Corrective Action Order. This Agreement is intended to address and satisfy the Facility's RCRA corrective action obligations that relate to the release(s) of hazardous substances, pollutants, or contaminants or hazardous wastes or hazardous constituents at or from all areas addressed under the Corrective Action Order. All requirements under the Corrective Action Order are integrated into this Agreement, and the response activities undertaken pursuant to the Corrective Action Order will continue, uninterrupted, until such time as this Agreement is fully effective. Thereafter, upon the effective date of this Agreement, the Corrective Action Order will terminate and the response activities undertaken pursuant to the Corrective Action Order will continue under the provisions of this Agreement. Pursuant to Section VIII (Statutory Compliance/RCRA- CERCLA Integration), all response actions performed under this Agreement will be deemed to satisfy any obligations that existed under the Corrective Action Order. This Agreement is not intended to limit any requirements under RCRA or any other law or regulation to obtain permits, and it is not intended to affect any permitted or regulated activities at the Facility not occurring in conjunction with CERCLA removal actions or RAs pursuant to this Agreement. This Agreement is not intended to encompass response to spills of hazardous substances from ongoing facility operations. This Agreement is intended to encompass those past releases and those releases which occur in conjunction with CERCLA response activities, those releases which become SSAs under this Agreement through the SSP process to identify SSAs, as set forth in Section 9.3, and those response actions addressed as removal actions under Section XVIII (Removal and Emergency Actions).

5.6 The scope of this Agreement extends to the entire Site, as defined herein. Neither the Site, nor any portion thereof, can be removed from the NPL unless it is determined, in accordance with CERCLA, the NCP, and this Agreement, that Navy has implemented all appropriate response actions and that the Site, or the relevant portion, no longer poses a threat to human health or the environment. All response actions at the Site shall occur in separate locations termed SSAs, or OUs, identified at the Site pursuant to this Agreement.

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

5.8 The Parties agree to expedite the initiation of response actions at the Site including AOUs and IRAs, and to carry out all activities under this Agreement so as to protect human health or welfare or the environment. Upon request by any Party, the Parties agree to provide and share applicable Guidance or reasonable assistance in obtaining such Guidance relevant to the implementation of this Agreement.

5.9 For that portion of the Site formerly in Navy's custody and currently under Interior's administration, it is intended that Navy will perform all response actions determined to be necessary under this Agreement except to the extent that Interior's activities cause or contribute to the release of hazardous substances, pollutants, or contaminants at or from the Site, including hazardous wastes and hazardous constituents. The determination of whether Navy or Interior will perform any necessary response activities will be governed by the MOAs, but the MOAs do not alter or relieve the obligations of the Parties to this Agreement in any manner.

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 Navy for any matters contained herein, nor shall anything in this Agreement constitute an admission by Navy with respect to any finding of fact or any legal determination noted herein.

6.2 The U.S. Navy began conducting operations at Vieques, in conjunction with Naval Station Roosevelt Roads, in the early years of World War II as a base for Allied fleets. Land was acquired in the eastern and western sectors of Vieques between 1941 and 1943, with further acquisitions occurring during the late 1940s.

6.3 Construction of Mosquito Pier and the building of facilities and magazines for an ammunition storage depot were generally completed by 1943. The Naval Ammunition Facility on western Vieques operated until 1948, when ammunition was removed and the facility closed. The facility was reactivated in 1962 in response to the Cuban missile crisis. Navy conducted ammunition storage and other related support operations on this property on the western portion of Vieques Island (about 8,100 acres) for the nearby military training activities until 2001.

6.4 In 1947, the need to conduct amphibious training exercises and maneuvers resulted in Navy's acquisition of additional land in the eastern portion of Vieques. Navy eventually managed on behalf of the United States about 14,600 acres on the Eastern portion of Vieques. This resulted in Navy acquiring and controlling two large areas of Vieques referred to herein as the Western portion of Vieques, as described above, and the Eastern portion of Vieques, which contained the eastern maneuver area, Camp Garcia, and the live surface impact area.

6.5 Throughout the 1950s, Vieques was utilized primarily for Fleet Marine Force, Atlantic, maneuvers and training. In 1960, Navy established naval gunfire support and air-to-ground targets on the Eastern portion of Vieques and began holding training exercises. This type of training frequently involved the use of various types of live ordnance. Navy operated a waste explosive ordnance detonation range on the Eastern portion of Vieques for many years in support of military training activities. Military training on the Eastern portion of Vieques continued into 2003.

6.6 In April 2001, Navy transferred the Western portion of Vieques pursuant to the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Public Law No. 106-398, as amended by Public Law No. 107-107. Portions of that property were transferred to the Municipality of Vieques (about 4,250 acres) and the Puerto Rico Conservation Trust (about 800 acres). The administrative jurisdiction of the remaining portion (about 3,050 acres) of the Western portion of Vieques was transferred to Interior. As required by law, Interior administers this area as a Wildlife Refuge. The law stipulates Interior cannot transfer this property without specific authorization to do so by the U.S. Congress.

6.7 Also pursuant to the Floyd D. Spence National Defense Authorization Act cited above, Navy transferred the administrative jurisdiction of approximately 14,600 acres of Navy property on the Eastern portion of Vieques to Interior in April of 2003. All lands transferred by Navy to Interior on East Vieques are administered as a Wildlife Refuge under the National Wildlife Refuge System Administration Act. Within the Refuge, the 900 acres formerly known as the "Live Impact Area" ("LIA") are managed as a Wilderness Area.. The Spence Act prohibits public access to the former LIA and requires Congressional authorization for Interior to dispose of any lands on the Eastern portion of Vieques transferred pursuant to the Spence Act.

6.8. Pursuant to a letter dated January 18, 2001 and a letter dated June 25, 2003, from EPA's Federal Facilities Enforcement Office, EPA acknowledged the conditions of the transfer of administrative jurisdiction of property on Vieques from Navy to Interior. In both letters, EPA stated that it intended to pursue any necessary enforcement action in a manner consistent with the
provisions and the intent of the MOAs with respect to the performance of response actions. EPA acknowledged the Congressionally mandated transfer of administrative jurisdiction of portions of Western Vieques (in 2001) and Eastern Vieques (in 2003) from Navy to Interior. EPA also acknowledged the existence of the MOAs which are intended to govern the respective roles of Navy and Interior regarding East and West Vieques transferred lands. Based on the foregoing, EPA, as stated in the afore-mentioned letters, intends to apply the "Policy Towards Landowners and Transferees of Federal Facilities" (dated June 13, 1997) to Interior. Consequently, and consistent with the above-referenced Policy, EPA intends to pursue any necessary enforcement action in a manner consistent with the provisions outlined in, and the general intent of, the MOAs with respect to performance of response actions or the payment of response costs incurred by EPA in response to contamination which exists as of the date of the transfer of administrative jurisdiction of the above-referenced portions of Vieques. Consistent with CERCLA Section 120, EPA reserves the right to initiate CERCLA enforcement activities against Interior or any subsequent lessee or transferee which causes, contributes to, or

exacerbates a release or threat of release of any hazardous substances through any act or omission. EPA also reserves its authority to seek information and access from any such person, pursuant to CERCLA.

6.9 Unexploded ordnance and remnants of exploded ordnance have been identified in the former range areas of Vieques and in the surrounding waters. Hazardous substances that may be present on former Navy property on Vieques associated with former Site use may include mercury, lead, copper, magnesium, lithium, polychlorinated biphenyls, solvents, and pesticides.

6.10 In response to the enactment of CERCLA, Navy developed its Navy Assessment and Control of Installation Pollutants ("NACIP") Program to identify and control environmental contamination from past use and disposal of hazardous substances at Navy and Marine Corps installations. The NACIP Program was similar to the EPA's Superfund Program authorized by CERCLA. The first phase under NACIP was called the "Initial Assessment Summary" ("IAS"), in which evidence of contamination that may threaten human health and/or the environment was collected through reviews of archival and activity records, interviews with activity personnel, and on-site surveys of the activity. In September 1984, Navy completed the IAS for Naval Station Roosevelt Roads. EPA considered this IAS to be equivalent to the Preliminary Assessment phase. Six areas of Navy-owned land on Vieques were identified as potentially contaminated with hazardous substances in this study. In April 1988, Navy completed a "Confirmation Study" for areas with potential contamination that were identified in this IAS. The purpose of the Confirmation Study was to perform investigations at the Site, including physical and analytical monitoring to confirm or refute the existence of contamination.

6.11 In November 1988, EPA completed a Phase II RCRA Facility Assessment for Vieques. In this report EPA identified eleven Solid Waste Management Units and eight RCRA areas of concern that were recommended for further restoration actions. Throughout the mid- to late 1990s, Navy submitted several RCRA Facility Investigation Work Plans and Reports for specific potentially contaminated locations on the Eastern portion of Vieques.

6.12 In January 2000 EPA issued a Corrective Action Order to Navy in accordance with RCRA Section 3008(h) for the Eastern portion of Vieques. The Corrective Action Order was intended as an interim instrument for implementing certain requirements of RCRA corrective action pending the issuance of a RCRA permit for the open burning/open detonation units on Eastern Vieques. The Corrective Action Order stated that twelve SWMUs and three RCRA areas of concern were defined. These SWMUs and RCRA areas of concern are either AOCs or SSAs as defined in this Agreement and are listed in Appendix A or B as appropriate.

6.13 In preparation for the transfer of the Western portion of Vieques, Navy submitted a report entitled, "Identification of Uncontaminated Property at the Naval Ammunition Support Detachment Vieques Island, Puerto Rico, Final Version." This report identified 7,389 acres as uncontaminated property at the Western portion of Vieques, and former Governor Rosselló concurred with this report in June 2000. This report also identified seventeen potentially contaminated areas totaling 490 acres. In the deeds for the transfers to the Municipality of

Vieques and the Puerto Rico Conservation Trust, Navy provided the CERCLA mandated covenant (pursuant to CERCLA Section 120(h)(3)(A), 42 U.S.C. § 9620(h)(3)(A)), which states that any response action found to be necessary after the date of transfer shall be conducted by the United States. With the Governor's concurrence, fourteen of the seventeen areas that were identified as "potentially contaminated" were conveyed pursuant to CERCLA's early transfer authority, CERCLA Section 120(h)(3)(C), 42 U.S.C. § 9620(h)(3)(C), provided that after conveyance Navy agreed to continue environmental restoration efforts at those areas under Navy's Environmental Restoration Program. The three remaining areas identified as potentially contaminated are under the administrative jurisdiction of Interior, and Navy has agreed it is responsible for environmental restoration of these areas. Navy was funding and executing the environmental restoration under CERCLA (prior to inclusion on the NPL) for all seventeen areas identified as potentially contaminated on the Western portion of Vieques until that area was listed on the NPL in February, 2005. Nine of the seventeen areas referred to above have been closed out with no further action. These are site 05, former fuel disposal area; site 10, former waste paint and solvents disposal area; site 14, former wash rack; site 15, former waste transportation vehicle parking area; site B, former wastewater treatment plant; site C, drainage ditch; site F, former septic tank; site K, former water well; and site L, abandoned septic tank. The remainder are listed in Appendix A as to undergo RIs. Upon the effective date of this Agreement, environmental restoration of these areas will be conducted in accordance with processes set forth in this Agreement.

6.14 In preparation for the transfer of the administrative jurisdiction of Navy property on the Eastern portion of Vieques to Interior, Navy prepared an Environmental Baseline Survey to document the environmental conditions on the former Navy property. During this survey, twenty-three areas or "Points of Interest" were identified as needing further investigative efforts. These twenty-three areas are also listed in Appendix A or B, as appropriate, and will be investigated further under CERCLA and within the process framework set forth in this Agreement.

6.15 On June 13, 2003 Governor Calderon of Puerto Rico requested that EPA include on the NPL those portions of Vieques and Culebra and surrounding areas used by Navy for training. Over the ensuing 18 months, EPA, Interior, the Commonwealth and Navy worked together toward an agreement regarding areas to be added to the NPL with respect to Navy's past training use of Vieques and its surrounding waters and with Navy's responsibility for environmental restoration of these areas. In February 2005, EPA announced that the Atlantic Fleet Weapons Training Area Vieques was added to the NPL, as defined in Subsection 2.1.OO.

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.

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

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

C. The Site is a "facility" as defined by CERCLA Section 101(9), 42 U.S.C. § 9601(9), and 10 U.S.C. §§ 2701-2710, and is subject to DERP.

D. The United States is an owner and operator of the Facility, as defined herein, for the purposes of CERCLA Sections 101(20) and 107(a)(1), 42 U.S.C. §§ 9601(20) and 9607(a)(1). Navy is the DoD component which, by this Agreement, agrees to fulfill the obligations set forth herein as the former owner/operator of a portion of the Facility, which is currently under the jurisdiction, custody, or control of Interior. Other owners of the remaining portions of the Facility include the Municipality of Vieques and the Commonwealth.

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

F. The actions performed in accordance with this Agreement are not inconsistent with the NCP.

G. The actions provided for in this Agreement are necessary to protect human health or welfare or the environment.

H. 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 Navy's CERCLA response obligations and RCRA corrective action obligations that relate to the release(s) of hazardous substances, pollutants, contaminants, hazardous wastes, or hazardous constituents covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. §§ 9601-9675; satisfy the corrective action requirements of RCRA Sections 3004(u) and (v), 42 U.S.C. §§ 6924(u) and

(v), for a RCRA Permit, and RCRA Section 3008(h), 42 U.S.C. § 6928(h), for interim status facilities; and meet or exceed ARARs, to the extent required by CERCLA Section 121, 42 U.S.C. § 9621.

8.2 Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement will 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. § 9621. Releases or other hazardous waste activities not covered by this Agreement remain subject to all applicable Commonwealth and Federal environmental requirements.

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 any potential hazardous waste management activities at the Site may require the issuance of permits under Federal or Commonwealth laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to any person or entity for hazardous waste management activities related to CERCLA response actions at the Site, EPA and/or EQB shall reference and incorporate any appropriate provisions, including appropriate schedules, of this Agreement into such permits. 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 any authority that EPA, Navy, or Interior may have with respect to removal actions conducted pursuant to CERCLA Section 104, 42 U.S.C. § 9604.

IX. WORK TO BE PERFORMED

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

B. Any Party may propose that a portion of the Site be designated as a distinct OU. If the Parties agree, it is not necessary to complete the Site-Screening Process ("SSP") prior to designating an OU. This proposal must be in writing to the other Parties, and it must stipulate the reasons for such a proposal. The proposal shall be discussed by all Project Managers within 45 days of receipt of the written notice. Dispute Resolution may be invoked by any Party if there is a dispute as to the proposal of a specific OU. If Dispute Resolution is not invoked within 30 days after the Project Managers' discussion concerning the proposal or if the need for

an OU is established through Dispute Resolution, the portion of the Site proposed shall be an OU as that term is defined in Section II (Definitions) of this Agreement.

C. Any Party may propose that an established OU be modified. The proposal must be in writing to the other Parties and must state the reasons for the modification. Dispute Resolution may be invoked by any Party if the Parties are not in agreement on the proposal for modifying a specific OU. If Dispute Resolution is not invoked within 30 days of the receipt of such a proposal or if the need for modifying an OU is established through Dispute Resolution, the OU, as defined in Section II (Definitions), shall be modified.

D. Navy shall develop, implement, and report upon SSAs as defined herein and identified in Appendix B to this Agreement (or as identified in the future and included in amendments to Appendix B) in order to satisfy its obligations under RCRA/CERCLA integration. The SSP, outlined in Subsection 9.3 of this Agreement, is intended to provide an investigative method whereby identified RCRA SWMUs and CERCLA areas of concern can be evaluated to determine whether a Remedial Investigation(s) is required for these areas. Additional SSP investigations may be initiated at areas later identified by the Parties. The SSP investigation(s) shall be conducted in accordance with an SSP Work Plan as agreed to by the Parties.

E. SSP Reports(s) shall be subject to the review and comment procedures described in Section X (Consultation). The SSP investigation(s) shall be conducted in accordance with the requirements set forth in Subsection 9.3, and the Deadlines established therein and set forth in Section XI (Deadlines and Contents of Site Management Plan).

Remedial Investigations and Feasibility Studies for Previously Identified AOCs

9.2 A. Navy is conducting or shall conduct remedial investigations and, as necessary, feasibility studies (RIs and FSs) for the AOCs identified in Appendix A which shall proceed in accordance with Subsection 9.4 - 9.6 of this Agreement.

B. In the SMP, Navy shall include a Deadline for submittal of the RI Work Plan for those sites identified in Appendix A and referenced in 9.2 A. above. The RI Work Plan shall contain a proposed Deadline for the submittal of each RI Report and each FS Report. The Schedule and Deadlines included in the Final RI Report shall be incorporated into the SMP in accordance with Section XI (Deadlines and Contents of the Site Management Plan) of this Agreement. The development of each FS shall proceed in accordance with Subsection 9.5 of this Agreement.

C. For those AOCs that the Parties determine represent a negligible or minimal impact on or risk to human health or welfare or the environment and are strong candidates for no action or for remediation limited to periodic monitoring, Navy shall include a Schedule in the SMP for submittal of a risk screening report and any sampling that may be recommended to support the risk screening. If the Parties determine that no further action is required at such an AOC, a Proposed Plan which proposes a no-action alternative will be prepared. This Schedule

will be finalized in accordance with Section XII (Budget Development and Amendment of the Site Management Plan) of this Agreement.

Site-Screening Areas

9.3 A. Determination of Site-Screening Areas. When a Party determines that an area at the Site that has not previously been identified as an area that may pose a threat, or potential threat, to human health or welfare or the environment, does pose such a threat, or potential threat, such Party shall notify in writing the other Parties of such determination. Notification of the other Parties under this Subsection shall at a minimum include the location of such area on the Site and the reason(s) the Party believes such an area poses a threat, or potential threat, to human health or welfare or the environment. The Parties shall have 45 days from the date of receipt of notification to discuss the proposal and for the Parties to agree whether such area shall be addressed under this Agreement as an SSA. If an agreement cannot be reached on whether to address such an area under the Agreement within 45 days from the date of receipt of notification, the Parties can initiate the dispute resolution process pursuant to Subsection 20.4 of this Agreement. If dispute resolution is not invoked within 45 days from the date of receipt of notification or if an SSA is established through the dispute resolution process, the proposed SSA will be addressed as an SSA in accordance with this Section.

B. Any area at the Site that is established as an SSA pursuant to the procedures described in this Section after the Effective Date of this Agreement shall be added to the list of SSAs found in Appendix B as an additional SSA to be investigated and possibly remediated pursuant to the requirements of this Agreement. For any SSAs established pursuant to this Section after the Effective Date of this Agreement, Navy shall, in the next draft Amended SMP, propose a Deadline(s) for the submittal of an SSP Work Plan(s). This Deadline(s) shall be approved in accordance with Section XI (Deadlines and Contents of Site Management Plan) and adopted in the SMP.

C. Appendix B contains a list of SSAs that the Parties agree may pose a threat, or potential threat, to human health and the environment. Navy shall submit an SSP Work Plan to the other Parties that shall outline the activities necessary to determine if there have been releases of hazardous substances, pollutants, contaminants, hazardous wastes, or hazardous constituents to the environment from the SSAs. The scope of the SSPs shall be determined by the Parties. The SSP Work Plan(s) shall include a proposed Target Date for the submittal of an SSP Report(s). The Target Dates or deadlines included in the final SSP Work Plan will be incorporated into the SMP in accordance with Section XI (Deadlines and Contents of Site Management Plan) of this Agreement.

1. In planning SSPs, Navy shall consider current CERCLA and RCRA Guidance to determine if there have been releases of hazardous substances, pollutants, contaminants, hazardous wastes, or hazardous constituents to the environment at or from the SSAs. Upon conclusion of an SSP, Navy shall submit to the other Parties a draft SSP Report that shall provide the basis for a determination that either: (1) an RI/FS should be performed on the area addressed by the SSP (or included within an RI/FS

addressing one or more other SSA(s)) or, (2) the area does not pose a threat, or potential threat to human health or welfare or the environment, and therefore the area should be removed from further study under this Agreement.

2. Unless otherwise agreed to by the Parties, within 60 days of receipt of a final SSP Report(s), the Parties shall determine which (if any) of the SSAs listed in Appendix B or established pursuant to Subsection 9.3 will require an RI/FS.

3. For those SSAs that the Parties agree do not warrant an RI/FS, Navy shall prepare, with EPA, the Commonwealth, and Interior assistance, a brief decision document reflecting that agreement. This agreement must be signed by all of the Project Managers.

4. The Parties may designate OUs for those SSAs that are to proceed with an RI/FS. If the Parties cannot agree on the determination of whether an SSA(s) shall proceed to an RI/FS, dispute resolution may be invoked in accordance with Section XX (Dispute Resolution). If an RI/FS is required, Navy shall, in the next draft Amended SMP, propose a Deadline for the submission of the RI/FS Work Plan for each OU consistent with Section XI (Deadlines and Contents of Site Management Plan). The Schedule and Deadlines included in the final RI/FS Work Plan(s) will be incorporated into the next update of the SMP and will be the enforceable Schedule for the submittal of the draft RI/FS.

D. Preliminary Screening Areas: Certain areas at the Site have been listed as Preliminary Screening Areas ("PSAs") in Appendix C to this Agreement, as amended. These areas will undergo a PSA evaluation, which involves a thorough review of all existing or easily obtainable documentation/information on the identified PSAs. If the Parties agree, the evaluation may also include obtaining limited samples from the area. The evaluation will include assessing information concerning the handling of hazardous substances, pollutants and contaminants at each PSA, or actions taken at each PSA, or actions that will be occurring under other regulatory programs. Based on this evaluation, a decision will be made by the Parties' Project Managers on which PSAs will proceed to the Site Screening Process as SSAs and which PSAs will require no further action and can be closed out. For those areas that will not proceed to the Site Screening Process, Navy shall prepare, with EPA, the Commonwealth, and Interior assistance, a brief PSA Close out document to memorialize the determination.

EPA, Interior, and the Commonwealth shall review all information submitted by Navy in support of the PSA evaluation and shall provide a response to Navy as to whether the information provided is sufficient to close out the area(s). The response shall be forwarded from EPA, Interior, and the Commonwealth to Navy within 60 days of the receipt of the supporting documentation. Within 120 days of the effective date of this Agreement or by a date otherwise agreed upon by all Parties, the determination on which PSAs will become SSAs and which PSAs shall be closed out shall be completed; except that if the evaluation of a PSA requires obtaining and analyzing samples or additional samples from the area in order to make a determination of whether the PSA should be an SSA or closed out, the sampling shall be completed within 180

days of the effective date of this Agreement or a date which is agreed upon by all Parties, and the resulting determination shall be made no later than 270 days after the effective date of this Agreement or a date which is agreed upon by all Parties.

Those PSAs which are not agreed upon by the Parties to be closed out will proceed to the Site Screening Process. If the Parties mutually agree, in writing, the evaluation for specific areas may be extended beyond the 120-day final PSA determination deadline. If Navy submits supporting documentation to EPA, Interior, and the Commonwealth in such a manner that the 30-day review and response time for EPA, Interior, and the Commonwealth extends beyond the final PSA determination deadline, the final PSA determination date will automatically be extended to allow for a full 30 days of review and discussion.

Navy shall include those PSAs that the Parties agree should proceed to the Site Screening Process as SSAs in the draft Amended SMP for future Fiscal Years and propose deadlines for submittal of SSP Work Plans as prescribed in Subsection 9.3.C.

Remedial Investigation and Feasibility Study

9.4 Navy shall develop, implement, and report upon an RI for areas identified in Subsections 9.2 and 9.3, as set forth in Subsection 10.2. RIs shall be conducted in accordance with the requirements and Schedules set forth in the approved RI/FS Work Plan and SMP. 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 RA clean-up level criteria will only be determined following completion of the Baseline Risk Assessment.

9.5 Navy shall develop, implement, and report upon an FS for those AOCs and SSAs where the RI necessitates one, as set forth in CERCLA and the NCP, and consistent with Subsection 10.2. The FS shall be conducted in accordance with the requirements and Schedules set forth in the approved RI/FS Work Plan and SMP. The FS shall meet the purposes set forth in Section IV (Purpose) of this Agreement.

Procedures for Interim Remedial Actions

9.6 A. Navy shall implement those IRAs necessary to prevent, minimize, or eliminate risks to human health and the environment caused by the release of hazardous substances, pollutants, or contaminants. An IRA is identified, proposed, selected, and implemented prior to an FRA. 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 an FRA(s) taken at an area or OU. An IRA must be protective of human health and the environment and comply with CERCLA, the NCP, and this Agreement.

B. When any Party determines that an IRA is necessary for an area(s) at the Site, such Party shall notify, in writing, the other Parties of the proposal. The Proposal Notification to the other Parties under this Subsection shall at a minimum include the location of such area(s) at the Site and the reason(s) the Party believes an IRA is required. Any Party may propose an IRA for those AOCs or SSAs most suitable for an IRA.

Within 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 arises over whether to address such an area(s) under this Agreement and that dispute cannot be settled between the Parties within 30 days from receipt of notification of the dispute, the dispute shall be immediately brought to the Dispute Resolution Committee ("DRC") pursuant to Section XX (Dispute Resolution) of this Agreement.

C. After the determination that an IRA is required under this Agreement, Navy shall, in the next draft Amended SMP, submit to EPA, Interior, and the Commonwealth proposed Deadlines for the submission of Work Plan(s) for the performance of a focused feasibility study ("FFS") for the identified area(s). The Deadlines will be finalized in accordance with Section XI (Deadlines and Contents of Site Management Plan). Each FFS Work Plan shall contain a proposed Deadline for the submittal of the FFS. The Schedule and Deadlines included in the approved, Final FFS Work Plan will immediately be incorporated in the SMP. The FFS shall include a limited number of proposed IRA 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. Navy shall develop, implement, and report upon each FFS in accordance with the requirements set forth in the Final FFS Work Plan. Navy shall follow the steps outlined in Subsections 9.7B through 9.14 below.

Records of Decision and Plans for Remedial Action

9.7 A. This Section shall apply to selection of RAs.

B. Within 30 days after finalization of an RI and FS or FFS, Navy shall submit a Draft Proposed Plan to EPA, Interior, and the Commonwealth for review and comment as described in Section X (Consultation) of this Agreement. Within 7 days after receiving EPA and Interior's acceptance of and the Commonwealth's comments on the Proposed Plan, Navy shall publish its Proposed Plan for 45 days of public review and comment. During the public comment period, Navy shall make the Administrative Record available to the public and distribute the Proposed Plan.

Navy shall hold a public information meeting during the public comment period to discuss the preferred alternative for each RA. 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 CERCLA Section 117(a), 42 U.S.C. § 9617(a), and applicable EPA Guidance.

C. Following public comment, Navy, in consultation with EPA, the Commonwealth, and Interior, will determine if the Proposed Plan should be modified based on the comments received. Modifications to any such Proposed Plan agreed upon by Navy, EPA and Interior will be made by Navy, and the modified documents will be reviewed by EPA and Interior. If required by the NCP (see 40 C.F.R. 300.430(f)(3)(ii)(B)), additional public comment shall be sought on a revised Proposed Plan. Determinations concerning whether Proposed Plans should be modified and whether additional public comment is necessary are subject to the dispute resolution provisions of this Agreement, Section XX (Dispute Resolution).

D. Navy shall submit its draft ROD to EPA, Interior, and the Commonwealth within 30

days following the close of the public comment period, including any extensions to the public comment period for 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. § 9620(e)(4)(A), EPA, Navy, and Interior, in consultation with the Commonwealth, shall make the final selection of the RA(s), consistent however with the procedures set forth in Section XX (Dispute Resolution).

E. 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 the Commonwealth may determine not to concur with a FRA plan.

F. In accordance with CERCLA Section 121(f)(3)(A), 42 U.S.C. § 9621(f)(3)(A), at least 30 days prior to the publication of Navy's Proposed Plan, if Navy proposes to select a remedy that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation, Navy shall provide an opportunity for the Commonwealth to concur or not concur in the selection of such plan. If the Commonwealth concurs or does not act within 30 days of receipt of notification by Navy of the pending publication of the Proposed Plan, the RA may proceed. If the Commonwealth does not concur, it may act pursuant to CERCLA Section 121(f)(3)(B), 42 U.S.C. § 9621(f)(3)(B).

G. The ROD shall be subject to the review and comment procedure described in Section X (Consultation), and is subject to the dispute resolution process in Section XX (Dispute Resolution) .

H. Notice of the final ROD shall be published by Navy and shall be made available to the public prior to commencement of the RA, in accordance with CERCLA Section 117(b), 42 U.S.C. § 9617(b). The ROD shall include a statement of whether or not the Commonwealth has concurred.

Remedial Design and Remedial Action

9.8 A. The SMP shall include a Target Date for submission of a Preliminary/Conceptual Remedial Design ("RD") document (a 30 percent complete design report); a Target Date for submission of a 90 percent complete design report, or Prefinal RD; and a Deadline for the Final RD, which 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).*

B. The RD shall provide the appropriate plans and specifications describing the intended remedial construction and shall include provisions necessary to ensure that the RA will achieve ARARs and performance standards identified in the ROD. The RD shall describe short and long-term implementation actions, and responsibilities for the actions, to ensure long-term protectiveness of the remedy, which may include both Land Use Controls and engineered measures (e.g., landfill caps, treatment systems) of the remedy. The term "implementation actions" includes all actions to implement, operate, maintain, and enforce the remedy.

C. The RA Work Plan(s) shall at a minimum contain a Schedule for the completion of the RA, a Health and Safety Plan, a Sampling and Analysis Plan, a Quality Assurance Project Plan ("QAPP"), RA Specifications, Erosion Control and Sedimentation Plan, Decontamination Plan, RA 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 SMP.

D. After the final design document is approved, pursuant to Section X (Consultation), Navy shall begin performance of the RA in accordance with the final RD and the RA Work Plans. The RA shall be completed in accordance with the approved final RD and RA Work Plans, and all applicable EPA Guidance.

Finalization of Remedial Actions

9.9 Navy agrees that it shall submit to the Parties a Remedial Action Completion Report ("RACR") in accordance with the Schedule in the SMP following the completion of the RA for each OU. As specified in the 2006 "EPA/DoD Joint Guidance on Streamlined Site Closeout and NPL Deletion Process for DoD Facilities," the RACR shall document the cleanup activities that took place at the OU and that performance standards specified in the ROD have been met. For each long-term RA, a RACR shall be prepared when the physical construction of the system is complete and the unit is operating properly and successfully as designed. Each such RACR shall be amended and finalized when the long-term RA performance standards specified in the ROD are achieved. The RACR shall outline in detail, and provide an explanation for, any activities that were not conducted in accordance with the final RD and/or RA Work Plan(s).

Accelerated Operable Unit ("AOU")

9.10 A. 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 OU be conducted as an AOU. The Party proposing an AOU shall be responsible for drafting an AOU proposal that shall clearly define the purpose, scope, and goals of the AOU. Navy shall evaluate all proposed AOUs.

B. Within 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 30 days following receipt of a proposal for an AOU, or 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 SMP as an AOU. Navy agrees to pursue additional funding within 10 days to initiate the AOU(s).

C. Within 15 days after the determination that an AOU is required under this Agreement, Navy shall submit to the Parties proposed Deadlines for the submission of Work Plan(s) for the performance of an AOU FFS for the identified AOU(s). Each proposed AOU FFS Work Plan shall contain a proposed Deadline for submittal of the AOU FFS and Proposed Plan.

The Schedule and Deadlines included in the final AOU FFS Work Plan will be incorporated in the next Draft Amended SMP. Navy shall develop, implement, and report upon each AOU FFS in accordance with the requirements set forth in the final AOU FFS Work Plan. Navy shall follow the steps outlined in Subsections 9.7B through 9.9.

Supplemental Response Action

9.11 The Parties recognize that subsequent to finalization of a ROD a need may arise that necessitates one or more supplemental response actions to be performed to address continuing or additional releases or threats of releases of hazardous substances, pollutants, or contaminants at or from the OU or area(s) which is/are the subject of the ROD. If such release or threat of release may present a threat to public health or welfare or the environment, consistent with the factors set forth in Section 300.415(b)(2) of the NCP, it shall be addressed either pursuant to this Section or Section XVIII (Removals and Emergency Actions). If such release or threat of release does not present a threat to public health or welfare or the environment consistent with the factors set forth in Section 300.415(b)(2) of the NCP, it shall be addressed pursuant to Subsections 9.12 through 9.17.

9.12 A supplemental response action shall be undertaken only when:

A. A determination is made by any Party that:

1. As a result of the release or threat of release of a hazardous substance, pollutant, or contaminant at or from the OU or area(s) which is/are the subject of the ROD, an additional response action is necessary and appropriate to ensure the protection of human health or the environment; or,

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,

B. In order for a determination to be made pursuant to Subsection 9.12.A., above, one of the following conditions must be met:

1. For supplemental response actions proposed after finalization of a 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;

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.

9.13 If, subsequent to ROD signature, any Party concludes that a supplemental response action is necessary, based on the criteria set forth in Subsection 9.12, such Party shall promptly notify the other Parties of its conclusion in writing. The notification shall specify the nature of the supplemental response action needed and the new information on which it is based. Upon receiving such notification,

the Project Managers shall confer on the need for a supplemental response action within 30 days. In the event that the Project Managers fail to reach consensus within 30 days of the notification described in this Subsection, any Party may notify the other Parties in writing within 10 days thereafter that it intends to invoke dispute resolution. If the Project Managers are still unable to reach consensus within 14 days of the issuance of notice invoking dispute resolution, the question of the need for the supplemental response action shall be resolved through the procedures set forth in Section XX (Dispute Resolution).

9.14 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 9.12, Navy shall propose a Deadline for submittal of the Supplemental Work Plan(s) and a Schedule for performance of the Work thereunder to the other Parties in the next Draft Amended SMP.

9.15 After submittal, approval, and finalization of a Supplemental Work Plan, Navy shall conduct a Supplemental Response Action RI/FS. Following finalization of the Supplemental Response Action RI/FS, the procedures described in Sections 9.7 through 9.9 shall be followed.

Construction Completion/ Remedial Action/Certification

9.16 The Parties will meet to discuss streamlined procedures for documenting completion of physical construction at any AOC or SSA and the procedures and schedule for delisting it from the NPL. Agreed upon procedures may be memorialized in an amendment to this Agreement.

9.17 Construction Completion. Navy agrees that it shall submit to the Parties information required to document completion of physical construction of the final RA at the Site within 30 days of completing physical construction of the final RA. This information must satisfy the NCP and provide a schedule for any remaining activities necessary to reach RA completion. The information will also address any five-year review requirements.

9.18 Remedial Action/ Site Completion.

A. When Navy determines that remedial actions at all AOCs and SSAs have been completed, it shall document such event by preparing a final RACR, or amending as appropriate a prior RACR to become the final RACR, and submitting it to the Parties for review. The information provided therein shall document compliance with statutory requirements and provide a consolidated record of all remedial activities for all AOCs and SSAs implemented at the Site. In order for an RA to be eligible for completion, the following criteria must be met:

1. Performance standards specified in all RODs have been met, and all cleanup actions and other measures identified in the RODs have been successfully implemented.

2. Response actions performed at all AOCs and SSAs are protective of human health and the environment.

3. The only remaining activities, if any, at an RA are operation and maintenance activities (which may include long-term monitoring).

B. Information provided shall summarize work at the entire Site (i.e., all AOCs and SSAs). As outlined in Subsection 9.9 of this Agreement, the RACR for each AOC and SSA, including the final RA, is required to document that the Work was performed according to design plans and specifications. Information included in the RACR for the purpose of demonstrating that the remedial action is complete shall include a discussion regarding any operation and maintenance requirements and/or land use restrictions regarding the RA.

C. Information provided for remedial action completion shall be signed by Navy'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 90 days of EPA's receipt of Navy's request for certification of Site completion, EPA, in consultation with Interior and the Commonwealth, shall:

1. Certify that all response actions (other than operation and maintenance and long-term monitoring of selected remedies, as required) 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

2. Deny Navy's request for certification of Site completion, stating the basis of its denial and detailing the additional Work needed for completion and certification.

D. If EPA, in consultation with Interior and the Commonwealth, denies Navy's request for certification for Site completion in accordance with this Agreement, Navy may invoke dispute resolution in accordance with Section XX (Dispute Resolution) of this Agreement within 20 days of receipt of the written denial of certification or determination that additional Work is necessary. If the denial of certification is not disputed by Navy or is upheld through the dispute resolution process, Navy will perform the requested additional Work.

E. If dispute resolution is not invoked, or if a denial of certification is upheld through dispute resolution, Navy shall, in the next draft Amended SMP 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 SMP. After performing the additional Work, Navy may resubmit a request for certification to EPA as outlined in this Subsection. EPA, in consultation with Interior and the Commonwealth, shall then grant or deny certification pursuant to the process set forth in this Subsection.

X. CONSULTATION

Review and Comment Process for Draft and Final Documents

10.1 Applicability:

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

Primary or Secondary Documents, as defined below. Consistent with the MOAs, Navy will be responsible for issuing Primary and Secondary Documents to the Parties, unless otherwise agreed to in writing by Navy and Interior or unless Interior is otherwise responsible for undertaking a specific response action based on it causing or exacerbating a condition at the Site. In any instance where Interior is required to prepare and submit a deliverable or perform a response action, the requirements of this Agreement shall apply to such submittal or Work. As of the Effective Date of this Agreement, all draft and final workplans and/or 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.

The designation of a document as "Draft" or "Final" is solely for purposes of consultation with EPA, Interior, and the Commonwealth 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 and the NCP.

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

A. Primary Documents include those documents that are major, discrete portions of RI/FS or RD/RA activities. Primary Documents are initially issued by Navy in draft subject to review and comment by EPA, Interior, and the Commonwealth. Following receipt of comments on a particular Draft Primary Document, Navy 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 30 days after issuance if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

B. Secondary Documents include those documents that are discrete portions of the Primary Documents and are typically input or feeder documents. Secondary Documents are issued by Navy in draft subject to review and comment by EPA, Interior, and the Commonwealth. With the exception of Non-Time Critical Removal Action Work Plans, as set forth in subsection 10.4.A.5. below, Navy will respond to comments received on draft Secondary Documents, but the draft Secondary Documents (other than Non-Time Critical Removal Action Work Plans) may be finalized in the context of the corresponding Draft Final Primary Documents. A Secondary Document may only be disputed at the time the corresponding Draft Final Primary Document is issued.

10.3 Primary Documents:

A. Prior to the Effective Date of this Agreement, Navy has completed and transmitted the following draft Primary Documents listed below to EPA, Interior, and the Commonwealth for review and comment. These documents are identified in Appendix D to this Agreement.

B. All Primary Documents shall be prepared in accordance with the NCP and applicable EPA Guidance. Navy shall complete and transmit drafts of the following Primary Documents and their amendments to EPA, Interior, and the Commonwealth for review and comment in accordance with the provisions of this Section:

1. RI/FS Workplans, including Sampling and Analysis Plan and QAPP
2. Risk Assessment Work Plans and Reports
3. RI Reports
4. Initial Screening of Alternatives
5. FS Reports
6. FFS Reports
7. Proposed Plans
8. Records of Decision
9. Final Remedial Designs (including a LUC component where such controls are employed as part of the remedy)
10. Remedial Action Work Plans (including a LUC component where such controls are employed as part of the remedy)
11. Site Management Plan
12. Remedial Action Completion Reports ("RACRs")

C. Draft Final Primary Documents identified above (and their amendments) shall be subject to dispute resolution in accordance with Section XX (Dispute Resolution) of this Agreement. Navy shall complete and transmit Draft Primary Documents to EPA, Interior, and the Commonwealth
for review and comment in accordance with the Schedule and Deadlines established in Section XI (Deadlines and Contents of Site Management Plan) of this Agreement.

10.4 Secondary Documents:

A. All Secondary Documents shall be prepared in accordance with the NCP and applicable EPA Guidance. Navy shall complete and transmit drafts of the following Secondary Documents to EPA, Interior, and the Commonwealth for review and comment in accordance with the provisions of this Section:

1. Health and Safety Plans
2. Emergency Removal Action Work Plans, to the extent time permits
3. Time Critical Removal Action Work Plans
4. SSP Work Plans and Reports
5. Non-Time Critical Removal Action Work Plans
6. Pilot/Treatability Study Work Plans
7. Pilot/Treatability Study Reports
8. Engineering Evaluation/Cost Analysis Report
9. Well Closure Methods and Procedures
10. Sampling and Data Results
11. Preliminary/Conceptual Designs, or Equivalents
12. Prefinal Remedial Designs
13. All Removal Action Memoranda/Closeout Reports
14. Periodic Five Year Review Assessment Report

For documents pertaining to non-time critical removal actions, Navy will coordinate and consult with Interior pursuant to the MOAs, and with EPA.

B. Although EPA, Interior, and the Commonwealth may comment on the Draft 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) of this Agreement.

10.5 Meetings of the Project Managers on Development of Documents:

The Project Managers shall meet approximately every 30 days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site on the Primary and Secondary Documents and the status of their implementation. Prior to preparing any draft document specified in Subsections 10.3 and 10.4 above, the Project Managers may meet, if any Project Manager requests, to discuss the document in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft documents.

10.6 Identification and Determination of Potential ARARs:

A. For those Primary Documents or Secondary Documents that consist of or include ARAR determinations, the Parties' 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. At that time, EPA, the Commonwealth, and Interior shall identify all potential ARARs for their respective entities as required by CERCLA Section 121(d)(2)(A)(ii), 42 U.S.C. § 9621(d)(2)(A)(ii), and the NCP that are pertinent to the document being addressed. Draft ARAR determinations shall be prepared by Navy in accordance with CERCLA Section 121, the NCP, and pertinent guidance issued by EPA, which is not inconsistent with CERCLA and the NCP.

B. 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 an AOC or SSA, the particular actions being considered for a remedy, and the characteristics of an AOC or SSA. 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:

A. Navy shall complete and transmit each draft Primary Document to the other Parties on or before the corresponding Deadline established pursuant to Section XI (Deadlines and Contents of Site Management Plan) of this Agreement for the issuance of the document. Navy shall complete and transmit each draft Secondary Document in accordance with the Target Dates established for the issuance of such documents.

B. Unless the Parties agree to another time period, all draft documents shall be subject to a 60-day period for review and comment. Any Amended SMP shall be reviewed and commented on in accordance with Section XII (Budget Development and Amendment of Site Management Plan) and or as agreed to by the Parties. Review of any document by EPA, Interior, or the Commonwealth may concern all aspects of the document (including completeness) and should include, but not be limited to, technical evaluation of any aspect of the document and consistency with CERCLA, the NCP, and any pertinent policy or Guidance issued by EPA. Comments by EPA, Interior, or the Commonwealth shall be provided with adequate specificity so that Navy 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 Navy's request, EPA, Interior, or the Commonwealth shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, EPA, Interior, or the Commonwealth may extend the 60-day comment period for an additional 20 days by written notice to Navy prior to the end of the 60-day period. On or before the close of any comment period, EPA, Interior, and the Commonwealth shall transmit their written comments to Navy.

C. The review period for documents shall not begin until the date any such document is received.

D. If documents not scheduled in the current SMP are determined by mutual agreement of the Program Managers to be necessary, review periods, Deadlines, and Target Dates shall be established and shall be incorporated into an Amended SMP.

E. Representatives of Navy shall make themselves readily available to EPA, Interior, and the Commonwealth 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 Navy at the close of the comment period.

F. In commenting on a draft document that contains a proposed ARAR determination, EPA, Interior, or the Commonwealth shall include a reasoned statement of whether it objects to any portion of the proposed ARAR determination. To the extent that EPA, Interior, or the Commonwealth does object, it shall explain the basis for the objection in detail and shall identify any ARARs that it believes were not properly addressed in the proposed ARAR determination.

G. Following the close of any comment period for a draft document, Navy shall give full consideration to all written comments on the draft document submitted during the comment period. Within 30 days of the close of the comment period on a Draft Secondary Document, Navy shall transmit to EPA, Interior, and the Commonwealth its written response to comments received within the comment period. Within 60 days of the close of the comment period on a Draft Primary Document, Navy shall transmit to EPA, Interior, and the Commonwealth a Draft Final Primary Document, which shall include Navy’s response to all written comments received within the comment period. While the resulting Draft Final Document shall be the responsibility of Navy, it shall be the product of consensus to the maximum extent possible.

H. Navy may extend the period set forth in Subsection 10.7.G for either responding to comments on a Draft Document or for issuing the Draft Final Primary Document for an additional 20 days by providing timely notice to EPA, Interior and the Commonwealth. In appropriate circumstances, this time period may be further extended in accordance with Section XIII (Extensions) hereof.

10.8 Availability of Dispute Resolution on Draft Final Primary Documents:

A. Dispute resolution shall be as set forth in Section XX (Dispute Resolution) and available to the Parties for Draft Final Primary Documents.

B. When dispute resolution is invoked on a Draft Final Primary Document, Work affected by the dispute 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 Navy's position be sustained.

If Navy's determination is not sustained in the dispute resolution process, Navy shall prepare, within not more than 35 days, a revision of the Draft Final Document that 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) hereof.

10.10 Subsequent Modification of Final Document:

Following finalization of any Primary Document pursuant to Subsection 10.9 above, any Party 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 A. and B. below.

A. Any Party may seek to modify a document after finalization if that Party 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.

B. If a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke the dispute resolution process to determine if such modification shall be conducted. Modification of a document shall be required only upon a showing that the requested modification is based on material new information, and the requested modification could be of material assistance in evaluating impacts on human health or welfare or

the environment, in evaluating the selection of remedial alternatives, or in protecting human health or the environment.

C. Nothing in this Subsection shall alter any Party's ability to request the performance of additional Work that was not contemplated by this Agreement. Any 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 This Agreement establishes a process for creating the SMP. The SMP shall be submitted within 30 days of the effective date of this Agreement and appended thereafter as Appendix E. The SMP and each annual Amendment to the SMP shall be Primary Documents. Milestones established in an SMP or established in a Final Amendment to an 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 response actions and actions that would otherwise be performed pursuant to RCRA corrective actions per Section VIII (Statutory Compliance/RCRA-CERCLA Integration), and the SMP outlines all response activities and associated documentation to be undertaken at the Site. The SMP incorporates all existing Milestones contained in approved Work Plans, and all Milestones approved in future Work Plans immediately become enforceable to the extent allowed under this Agreement and shall be included by Navy in the next annual amendment to 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 Site; (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 Navy.

11.4 The SMP and its annual Amendments include:

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

B. A description of all currently identified SSAs, OUs (including AOUs), IRAs, Supplemental RAs, RAs, and Time-Critical and Non-Time Critical Removal Actions planned or being performed pursuant to this Agreement;

C. Activities and schedules for response actions covered by the SMP, including at a minimum:

1. Identification of any Primary Actions;

2. All Deadlines;

3. All Near Term Milestones;

4. All Out Year Milestones;

5. All Target dates;

6. Schedule for initiation of RDs, RAs, including IRAs and Supplemental RAs, Emergency, Time-Critical, and Non-Time Critical Removal Actions, and any initiation of other planned response action(s) covered by this Agreement; and,

7. All Project End Dates.

11.5 Navy shall submit an Amendment 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 conform to 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 conditions at the Site; (ii) reprioritization of activities under this Agreement caused by changing priorities or new conditions elsewhere in Navy; (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 which 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 the Parties.

XII. BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN

12.1 Navy, 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 Management ("POM") process, is used to review total requirements for DoD programs and to 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 in a manner consistent with CERCLA and the NCP.

Site-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 Navy POM process; and, (3) participating in development of Navy's submission to the President's proposed budget, based on POM decisions for the year currently under consideration. Unless the Parties agree to a different time frame, Navy agrees to notify the other Parties within 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 5 days of receiving such notification to discuss the budget controls. However, this consultation must occur at least 10 days prior to Navy's initial budget submission to Naval Facilities Engineering Command (NAVFAC). 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 resolve these disagreements informally, either at the immediate or secondary supervisor level; this would also include discussions, as necessary, with NAVFAC. If agreement cannot be reached informally within a reasonable period of time, Navy shall resolve the disagreement, if possible with the concurrence of all Parties, and notify each Party. If any Party does not concur in the resolution, Navy will forward through NAVFAC to Navy Headquarters its budget request with the views of the Parties not in agreement and also inform Navy 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 Navy's budget submission to NAVFAC 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 as a result of fiscal controls (e.g., a projected budget shortfall). These supplemental reports shall accompany the cleanup budget that Navy 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 Navy'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.

Navy Budget for Clean Up Activities

12.3 Navy shall forward to the other Parties documentation of the budget requests (and any supplemental reports) for the Site, as submitted by NAVFACLANT through NAVFAC to Navy Headquarters, within 14 days after the submittal of such documentation to Navy Headquarters by NAVFACLANT. If Navy proposes a budget request relating to the terms and conditions of this Agreement that impacts other installations, Navy agrees that discussions with other affected EPA Regions and states regarding the proposed budget request will occur.

Amended SMP

12.4 No later than June 15 of each year after the initial adoption of the SMP, Navy shall submit to the other Parties a Draft Amendment to the SMP. When formulating the Draft Amendment to the SMP, Navy 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, Navy will first offer to meet with the other Parties to discuss the proposed changes. The Parties will attempt to agree on Milestones before Navy submits its annual Amendment by June 15, but failure to agree on such proposed changes does not modify the June 15 date, unless agreed by all 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 A. The Parties shall meet as necessary to discuss all Draft Amendments 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. Accordingly, comments on Draft Amendments will be due to Navy no later than 30 days after receipt by EPA, Interior, and the Commonwealth of a Draft Amendment. If EPA, Interior, or the Commonwealth provide comments and are not satisfied with the manner in which comments are addressed in the Draft Amendment during this comment period, the Parties shall discuss the comments within 15 days of Navy's receipt of comments on the Draft Amendment. A revised Draft Amendment to the SMP (hereinafter referred to as the "Draft Final Amendment") will be due from Navy no later than 30 days after the end of the EPA/Interior/Commonwealth comment period. During this second 30-day time period, Navy will, as appropriate, make revisions and re-issue a modified 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 Amendments to the SMP.

B. If Navy proposes in a Draft Final Amendment to the SMP modifications of Milestones to which any of the Parties have not agreed, those proposed modifications shall be treated as a request by Navy for an extension, and any such request will be indicated, in writing, with the submission of the Draft Final Amendment to the SMP. 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 response to the request for extension will begin on the date EPA receives the Draft Final Amendment to the SMP, and the other Parties shall advise Navy in writing of their respective positions on the request within 30 days. If the Parties approve of Navy's Draft Final Amendment, the document shall then await finalization in accordance with Subsections 12.5.E. and 12.6. If any Party denies the request for extension, then Navy may amend the SMP in conformance with the other Parties' 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, Navy shall revise and reissue, as necessary, the Draft Final Amendment to the SMP. If any Party initiates a formal request for a modification to the SMP to which Navy does not agree, that Party 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.

C. Notwithstanding Subsection 12.5.B, if Navy proposes in a Draft Final Amendment to the SMP modifications of Project End Dates that are intended to reflect the time needed for implementing a remedy selected in a ROD but to which a Party has not agreed, those proposed modifications shall not be treated as a request by Navy for an extension, but consistent with Section XX (Dispute Resolution) that Party may initiate dispute resolution with respect to such Project End Date.

D. 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 Senior Executive Committee (SEC) level.

E. Navy shall finalize the Draft Final Amendment as an effective 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 an approved Amendment to the SMP until 21 days after Navy receives official notification of Congress' authorization and appropriation of funds if funding is sufficient to complete the Work to be performed during the year covered by that authorization or appropriation, 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' authorization and appropriation.

Resolving Appropriations Shortfalls

12.6 After authorization and appropriation of funds by Congress and within 21 days after Navy has received official notification of Navy's allocation based on the current year's Environmental Restoration, Navy ("ER,N") Account, Navy 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, Navy shall immediately forward a letter to the other Parties indicating that the Draft Final Amendment to the SMP has become an effective Amendment to the SMP. (2) If Navy 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), Navy shall immediately notify the Parties. The Project Managers shall meet within 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 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 Navy. Navy 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, Navy shall give full consideration to EPA, Interior, and Commonwealth input during the 30-day discussion period. If the Parties concur with the modifications made to the Draft Final Amendment to the SMP, they shall notify Navy and the revised Draft Final Amendment shall become an effective Amendment to the SMP. In the case of modifications of Milestones as a result of appropriations shortfalls, those proposed modifications shall, for purposes of dispute resolution, be treated as a request by Navy for an extension (and shall be in writing, as set forth in Subsection 12.5.B, above), which request is treated as having been made on the date that EPA receives the new Draft Final SMP or Draft Final Amendment to the SMP. Each Party shall advise Navy in writing of its positions on the request within 21 days. Navy may seek and obtain a determination through the dispute resolution process established in Section XX (Dispute Resolution). Navy may invoke dispute resolution within 14 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 Senior Executive Committee ("SEC") level, unless the Parties agree to use 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, Navy shall revise and reissue, as necessary, the effective Amendment to the SMP.

12.7 Navy will work with representatives of the other Parties to reach consensus on the reprioritization of work made necessary by any annual appropriations shortfalls or other circumstances as described in Subsection 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 A. 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 response activities at the Site. Navy 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).

B. The Parties will meet, after seeking the views of the general public, to determine the most effective means to provide for participation by members of the public interested in response activities at the Site, 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 the Site, or by other appropriate means.

C. Navy shall provide timely notification under Subsection 12.6, regarding allocation of ER,N appropriations to the Site, to the members of the public interested in environmental restoration at the Site.

D. Navy shall provide opportunity for discussion under Subsections 12.2, 12.5, 12.6, and 12.7 to the members of the public interested in environmental restoration at the Site.

E. Navy shall ensure that public participation provided for in 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 timetable, Deadline, or Schedule 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 Navy shall be submitted in writing and shall specify:

A. The timetable and Deadline or Schedule that is sought to be extended;

B. The length of the extension sought;

C. The good cause(s) for the extension; and

D. Any related timetable and Deadline or Schedule that would be affected if the extension were granted.

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

A. An event of Force Majeure;

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

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

D. A delay caused, or likely to be caused, by the grant of an extension in regard to another timetable and Deadline or a Schedule; and

E. Any other event or series of events mutually agreed to by EPA and Navy 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 7 days of receipt of a request for an extension of a timetable and Deadline or a Schedule, the other Parties shall advise the requesting Party in writing of their respective positions on the request. Any failure to respond within the 7-day period shall be deemed to constitute concurrence in the request for extension. If any Party does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

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

13.6 Within 7 days of receipt of a statement of nonconcurrence with the requested extension, the requesting party may invoke dispute resolution.

13.7 A written, timely, and good faith request by Navy for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected timetable and Deadline or Schedule 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 timetable and Deadline or Schedule. 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 timetable and Deadline or Schedule as most recently extended.

XIV. PROJECT MANAGERS

14.1 On or before the Effective Date of this Agreement, EPA, Navy, Interior and the Commonwealth shall each designate a Project Manager and notify the other Parties of the name and address of their Project Manager. The Project Managers shall be responsible for ensuring proper implementation of all Work performed under the terms of the Agreement. To the maximum extent practicable, communications among Navy, EPA, Interior, and the Commonwealth on all documents, including reports, comments, and other correspondence concerning the activities

performed pursuant to this Agreement, shall be directed through the Project Managers. Each Party 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 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) of this Agreement. Although Navy has ultimate responsibility for meeting its Deadlines, EPA, Interior, and Commonwealth Project Managers 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 SSP, RI/FS or RD/RA progress; and attempting to resolve disputes informally. At least 1 week prior to each scheduled Project Manager meeting, Navy will provide to EPA, Interior, and Commonwealth Project Managers a draft agenda and summary of the status of the Work subject to this Agreement. These status reports shall include, when applicable:

A. Identification of all data received and not previously provided by Navy during the reporting period consistent with the limitations of Section XXXI (Sampling and Data/Document Availability);

B. 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 90 days; and

C. 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.

The minutes of each Project Manager meeting, with the meeting agenda, will be sent to all Project Managers within 14 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 Deadlines or Schedules 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 copy of the memorandum at least 7 days prior to the Deadline to the other Parties for signature and return prior to the Deadline. If agreed to by all the Parties, the proposed adjustment to the Deadlines or Schedules shall be deemed approved.

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 Subsection must be

approved (orally or in writing) 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 Navy Contracting Officer. If the Parties cannot reach agreement on the proposed additional Work or modification to Work, dispute resolution as set forth in Section XX (Dispute Resolution) shall be invoked by Navy, by submitting a written statement in accordance with Section XX (Dispute Resolution). If the Parties agree to the modification, the Project Manager who requested the modification shall prepare a written memorandum detailing the modification and the reasons therefore within 5 business days following a modification made pursuant to this Section, and he or she shall provide or mail a copy of the memorandum to the Project Managers of the other Parties for signature and return.

14.6 Modifications of Work not provided for in Subsections 14.4 and 14.5 of this Section also must be approved by the Project Managers to be effective. If agreement cannot be reached on the proposed modification to Work, dispute resolution as set forth in Section XX (Dispute Resolution) shall be used. Within 5 business days following a modification made pursuant to this Section, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the Project Managers of the other Parties 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 are 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, 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. Navy shall provide to EPA, Interior, and Commonwealth two copies respectively, of each Primary and Secondary Document.

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

A.	For Navy:	Commander Naval Facilities Engineering Command Atlantic Norfolk, VA 23508-1278
B.	For EPA:	Director, Caribbean Environmental Protection Division Centro Europa Building 1492 Ponce de Leon Avenue, Suite 417 Santurce, Puerto Rico 00907- 4127
C.	For Interior:	Regional Director Fish and Wildlife Service, Southeast Region 1875 Century Blvd. Atlanta, GA 30345

D. For the Commonwealth:

EQB Project Manager
Junta de Calidad Ambiental
Edificio de Agencias Ambientales Cruz A. Matos
Urbanización San José Industrial Park
1375 Avenida Ponce de León
San Juan, PR 00926-2604

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 Project Manager for Navy shall represent Navy with regard to the day-to-day field activities at the Site. Navy's Project Manager or other designated employee of Navy shall be physically present at the Site or available to supervise Work during implementation of all the Work performed at the Site pursuant to this Agreement. The absence of EPA, Interior, or Commonwealth Project Managers from the Site shall not be cause for Work stoppage or delay, unless the Project Managers mutually agree otherwise in writing.

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

A. Taking or arranging for the taking of samples and ensuring that sampling and other field work is performed in accordance with the terms of any final Work Plans, Sampling Plan, and Quality Assurance/Quality Control ("QA/QC") Plan;

B. Observing, taking photographs, and making such other reports on the progress of the Work as a Project Manager deems appropriate, subject to the limitations set forth in Section XVI (Access) hereof;

C. Reviewing sampling data, records, files, and documents relevant to the Agreement, subject to the limitations set forth in Section XXX (Record Preservation); and

D. 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, any Party shall notify by telephone the other Parties' Project Managers within 2 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 Executive Order, as needed to protect national security interests, regarding response actions at the Site, pursuant to CERCLA Section 120(j), 42 U.S.C. § 9620(j). Such an Executive Order may exempt the Facility or any portion thereof from the requirements of CERCLA for a period of time not to exceed 1 year after the issuance of such an order. This Executive Order may be renewed. Navy shall obtain access to and

perform all actions required by this Agreement within all areas inside those portions of the Facility that are not the subject of or subject to any such Executive Order issued by the President.

15.2 The Commonwealth reserves any statutory right it may have to challenge any order or exemption specified in Subsection 15.1 relieving Navy of its obligations to comply with this Agreement.

XVI. ACCESS

16.1 A. Interior grants Navy access to those portions of the Site under Interior's jurisdiction, custody, or control for purposes consistent with the provisions of this Agreement and the MOAs executed between Navy and Interior. In refuge portions of the Site, except in cases of emergency, Navy shall provide Interior with reasonable notice to allow for coordination between response actions and refuge management activities as set forth in the MOAs and this Agreement. Navy shall have access rights to lands not under the jurisdiction, custody, or control of Interior in accordance with any deed provisions for lands transferred out of Federal ownership, in accordance with Subsection 38.1 of this Agreement, or as set forth in CERCLA Section 104(e), 42 U.S.C. § 9604(e).

B. EPA and the Commonwealth and/or their representatives shall be provided access to enter the Site at all reasonable times for the purposes consistent with provisions of this Agreement, including entry into all areas of the Site that are entered by contractors performing Work under this Agreement. Such authority shall include, but not be limited to, the following: inspecting records, logs, contracts, and other documents relevant to implementation of this Agreement; reviewing and monitoring the progress of Navy, its contractors, and lessees in carrying out the activities under this Agreement; conducting tests and studies that are necessary to address environmental concerns; assessing the need for planning additional response actions at the Site; and verifying data or information submitted as part of response actions. Prior to entry on the refuge portion of the Site, except in cases of emergency, EPA and the Commonwealth shall provide Interior with reasonable notice to allow for coordination between response actions and refuge management activities.

C. Interior shall have access to the refuge portion of the Site.

16.2 A. General Access. EPA, Interior, and the Commonwealth agree to coordinate access to areas of the Site undergoing response actions with Navy's Project Manager, including Exclusion Zones and such other areas of the Site as all the Program Managers may so designate. Navy shall honor all reasonable requests for access to areas being addressed by response actions made by EPA, Interior, or the Commonwealth, upon presentation of credentials showing the bearer's identification and that he or she is an employee or agent of EPA, Interior, or the Commonwealth. Access shall be subject to applicable regulations and statutes, including Department of Defense munitions safety regulations which may be required to comply with the Department of Defense munitions response health and safety requirements. EPA, Interior, or the Commonwealth shall neither be unreasonably hindered from carrying out their oversight responsibilities nor shall this Section be deemed to limit any authority pursuant to this Agreement. Navy shall not require an escort to any area of the Site unless it is within an Exclusion Zone.

B. Exclusion Zone Access. The Parties agree that conditions at various areas of the Site may present a risk from unexploded ordnance. Accordingly, in order to ensure the safety of all personnel, EPA, Interior, and the Commonwealth shall enter "Exclusion Zones" only with the approval of Navy in accordance with this Subsection. Navy shall use its best efforts to ensure that conformance with the requirements of this Subsection does not delay access.

1. As part of the SMP and any Amendments to the SMP (Section XI and Subsections 11.4 and 11.5), Navy shall provide the EPA, Interior, and the Commonwealth with a list of Exclusion Zones. The lists shall include maps that sufficiently identify the location and perimeter of each Exclusion Zone. This list shall be updated on an annual basis and as necessary to reflect additions and deletions of Exclusion Zones.

2. Upon receipt of a request to enter an Exclusion Zone from any Party, Navy shall determine whether an escort is necessary, and if so, Navy shall provide an escort for access to Exclusion Zones for purposes consistent with the provisions of this Agreement. EPA, Interior, and the Commonwealth shall provide reasonable notice to the Navy's Project Manager, or his or her designee, to request any necessary escorts for such areas.

3. Navy's Project Manager or his/her designee will provide briefing information related to human health risks and potential hazards to EPA, Interior, and the Commonwealth in advance of providing access to any Exclusion Zone.

16.3 Upon a denial of any aspect of access, Navy 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 48 hours, Navy shall provide a written explanation for the denial. To the extent possible, Navy shall expeditiously provide a recommendation for accommodating the requested access in an alternate manner.

16.4 Nothing herein shall be construed as limiting any statutory authority for access or information gathering of any Party.

16.5 To the extent that access is required for work to be performed under this Agreement on property beyond the jurisdiction, custody, or control of Navy, Interior, or beyond the control of the Commonwealth, Navy or Interior, consistent with the MOAs, shall use its best efforts to obtain access from the present owner and/or lessee of any such property. Such access shall be obtained on behalf of all Parties.

XVII. PERMITS

17.1 Navy shall be responsible for obtaining all federal, Commonwealth, and local permits necessary for the performance of all Work under this Agreement.

17.2 The Parties recognize that under CERCLA Sections 121(d) and 121(e)(1), 42 U.S.C. §§ 9621(d) and 9621(e)(1), and the NCP, portions of the response actions called for by this Agreement and conducted entirely on-site, where such response actions are selected and carried out in accordance with CERCLA, are exempt from the requirement to obtain federal,

Commonwealth, or local permits. All activities must, however, comply with all the applicable or relevant and appropriate federal and Commonwealth substantive standards, requirements, criteria, or limitations as defined in the NCP that would have been included in any such permit.

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

A. Identification of each permit that would otherwise be required;

B. Identification of the substantive standards, requirements, criteria, or limitations that would have had to have been met under each such permit; and

C. 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 Navy 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 or constituent off the Site or in any other circumstances where the exemption provided for at CERCLA Section 121(e)(1), 42 U.S.C. § 9621(e), does not apply.

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

17.6 Navy agrees to notify EPA, Interior, and the Commonwealth of its intention to propose modifications to this Agreement to obtain conformance with the permit, or lack thereof, if a permit or other authorization which 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 Navy of its intention to propose modifications shall be submitted within 60 days of receipt by Navy 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 60 days from the date it submits its notice of intention to propose modifications to this Agreement, Navy shall submit to EPA, Interior, and the Commonwealth its proposed modifications to this Agreement with an explanation of its reasons in support thereof.

17.7 EPA, Interior, and the Commonwealth shall review Navy's proposed modifications to this Agreement in accordance with Section XXXVII (Amendment of Agreement) of this Agreement. If Navy submits proposed modifications prior to a final determination of any appeal taken on a permit needed to implement this Agreement, EPA, Interior, and the Commonwealth 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, Navy shall continue to implement those portions of this Agreement that 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) of this Agreement.

17.9 The Facility at the Site has been the subject of the Corrective Action Order issued pursuant to RCRA Section 3008(h). All requirements under the Corrective Action Order are integrated into this Agreement, and the response activities undertaken pursuant to the Corrective Action Order will continue, uninterrupted, until such time as this Agreement is fully effective. Thereafter, upon the effective date of this Agreement, the Corrective Action Order will terminate and the response activities undertaken pursuant to the Corrective Action Order will continue under the provisions of this Agreement.

XVIII. REMOVAL AND EMERGENCY ACTIONS

18.1 Navy shall provide EPA, Interior, and the Commonwealth with timely notice of any proposed removal action. Navy and Interior shall coordinate proposed removal actions as set forth in the MOAs.

18.2 Nothing in this Agreement shall alter any Party's authority under CERCLA or E.O. 12580 with respect to removal actions conducted pursuant to CERCLA Section 104, 42 U.S.C. § 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 Navy 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, E.O. 12580, DERP (including provisions for timely notification and consultation with EPA, Interior, and the Commonwealth), and the NCP, and they shall, to the extent practicable, contribute to the efficient performance of any long-term RA with respect to the release(s) or threatened release(s) concerned. Such a proposal by any Party that a removal action be undertaken shall be submitted to all other Parties and shall include:

A. Documentation of the actual or threatened release at or from the Site;

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

C. Documentation that the proposed action is consistent with the NCP and other applicable regulations and, to the extent practicable, contributes to the efficient performance of any long-term RA with respect to the release or threatened release concerned;

D. If the proposed removal action would be a non-time critical removal action, as defined in the NCP, Navy will prepare an engineering evaluation/cost analysis, or its equivalent. The engineering evaluation/cost analysis shall contain an analysis of removal alternatives for the proposed non-time critical removal action. The screening of alternatives shall be based on criteria as provided in CERCLA and the NCP, such as cost, feasibility, and effectiveness, and be subject to public comment; and

E. A Non-Time Critical Removal Action Plan, as appropriate, and Target Date for the proposed action.

The Parties 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. Consistent with Subsection 18.1 above, Navy may determine that review and comment, as intended in Subsection 18.3 above, is impractical for emergency removal actions. Therefore, in the case of an emergency removal action performed or to be performed by Navy, it shall provide the other Parties with oral notice as soon as possible and written notice within 48 hours after Navy determines that an emergency removal is necessary. Within 7 days after initiating an emergency removal action, Navy shall provide the other Parties 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, Navy 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 30 days of completion of an emergency response action, Navy will furnish the other Parties with an Action Memorandum addressing the information provided in the oral 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. In the case where EPA determines that review and comment, as intended in Subsection 18.3 above, is impractical for emergency removal actions it performs, it too will provide the other Parties with such notifications and documentation. Such removal 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 human health or welfare or the environment is discovered by any Party during the efforts covered by this Agreement, the discovering Party will notify the other Parties and Navy will take immediate action to promptly notify all appropriate Commonwealth and local agencies, potentially affected persons, and officials in accordance with 10 U.S.C. § 2705(a). Navy 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 CERCLA Section 121(c), 42 U.S.C. § 9621(c), and in accordance with this Agreement, if a selected RA results in any hazardous substance, pollutants, or contaminants remaining at the Site above levels that allow for unlimited use and unrestricted exposure, the Parties shall review the selected remedial action for such AOC and/or SSA at least every 5 years after the initiation of the RA to assure that human health and the environment are being protected by the RA being implemented. As part of this review, Navy or Interior shall report the findings of the review to the other Parties upon its completion. This report, the Periodic Review Assessment Report, shall be a Secondary Document as described in Section X (Consultation), and Target Dates shall be established for its completion and transmission and included in the SMP, as amended. The responsibility for preparing such report rests with Navy, or, consistent with any MOAs or other written agreements concluded between Navy and Interior, may rest with Interior at some future time.

19.2 If upon such review it is the conclusion of any Party that additional action or modification of the RA is appropriate at the Site in accordance with CERCLA Sections 104 or 106 , 42 U.S.C. §§ 9604 or 9606, Navy or Interior shall implement such additional or modified action in accordance with Section IX (Work to be Performed) of this Agreement. The responsibility for implementing such actions rests with Navy, or, consistent with any MOAs or other written agreements concluded between Navy and Interior, may rest with Interior at some future time.

19.3 Any dispute by any Party regarding the need for or the scope of additional action or modification to a RA shall be resolved under Section XX (Dispute Resolution) of this Agreement 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 The Parties reserve 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 Parties reserve the right to exercise any authority under applicable law to seek the performance of additional Work when it is determined that such additional Work is necessary.

19.7 The assessment and selection of any additional response actions determined necessary as a result of a Periodic Review shall be in accordance with Subsections 9.11 to 9.15. Except for removal 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 9.14 and 9.15.

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 informally resolve disputes 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 A. Within 30 days after issuance of a Draft Final Primary Document pursuant to Section X (Consultation) of this Agreement or any action which leads to or generates a dispute, the disputing Party shall submit a written statement of dispute to the appropriate members of the Dispute Resolution Committee ("DRC") 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 that 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 and/or confer as many times as are necessary to discuss and attempt resolution of the dispute. The informal dispute resolution period under this Section may be extended for a reasonable period agreed to by all Parties.

20.4 The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. In all instances, the DRC will include representatives from each Party. 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 of Caribbean Environmental Protection Division. The Commonwealth's representative on the DRC is the Special Assistant to the EQB Chairman. Navy's representative on the DRC is the Commander NAVFACLANT. Interior's representative on the DRC is the Director of the Region 4 Fish and Wildlife Regional Office. Written notice of any delegation of authority from the Party's designated representative on the DRC shall be provided to 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 21 days to unanimously resolve the dispute and issue a written decision signed by all Parties. If the DRC is unable to unanimously resolve the dispute within this 21-day period, the written statement of dispute shall be forwarded to the SEC for resolution, within 7 days after the close of the 21-day resolution period.

20.6 The SEC will serve as a forum for resolution of disputes for which agreement has not been reached by the DRC. The SEC will be comprised of representatives from each Party. EPA shall be represented on the SEC by the Regional Administrator of EPA Region II. Navy shall be represented on the SEC by the Deputy Assistant Secretary of the Navy (Environment). The Commonwealth shall be represented on the SEC by the EQB Chairman. Interior shall be represented on the SEC by its Deputy Assistant Secretary for Fish and Wildlife and Parks. In the event of a delegation of authority to serve on the SEC, the positions presented by the delegatees shall represent the positions of the designated members of the SEC. Any documents issued by the SEC or its members pertaining to a dispute shall be issued by the Regional Administrator of EPA Region II, the Deputy Assistant Secretary of the Navy (Environment), the SEC representatives of

the Commonwealth and Interior. Notice of any delegation of authority from a Party's designated representative on the SEC shall be provided to the other Parties in writing before the delegation takes effect. The SEC members shall, as appropriate, confer, meet, and exert their best efforts to resolve the dispute and issue a unanimous written decision signed by all Parties. If unanimous resolution of the dispute is not reached within 21 days, EPA Regional Administrator for Region 2 shall issue a written proposed resolution of the dispute. The Secretary of the Navy and Interior and the Governor of the Commonwealth may, within 21 days of the Regional Administrator's issuance of EPA's proposed resolution, 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 Navy and/or the Commonwealth and/or Interior elect not to elevate the dispute to the Administrator within the designated 21-day escalation period, the decision will become final and the Work will proceed in accordance with the 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 above, the Administrator will review and resolve the dispute within 21 days. Upon request, the EPA Administrator shall meet and confer with the Secretary of Navy, the Secretary of the Interior, and the Governor of Puerto Rico prior to resolving the dispute. Upon resolution, the Administrator shall provide the other Parties with a written final decision setting forth resolution of the dispute. The duties of the Administrator pursuant to this Subsection may be delegated only to the Assistant Administrator for Enforcement and Compliance Assurance. The duties of the Secretary of the Department of Interior pursuant to this Subsection may be delegated only to the Assistant Secretary for Policy and Management and Budget. The duties of the Secretary of the Navy pursuant to this Subsection may be delegated only to the Assistant Secretary of the Navy (Installations and Environment). The duties of the Governor of Puerto Rico pursuant to this Subsection may be delegated only to the EQB Chairman.

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

20.9 When dispute resolution is in progress, Work affected by the dispute will immediately be discontinued if the Director of the Emergency and Remedial Response Division for EPA Region II 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. Interior or the Commonwealth may request the EPA Division Director to order Work stopped for the reasons set out above. To the extent possible, EPA 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 EPA 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 subject to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of Navy.

20.10 Within 21 days of resolution of a dispute pursuant to the procedures specified in this Section, Navy 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 as set forth in the SMP.

20.11 EPA, Interior, and Navy agree that resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution to any dispute arising under this Agreement. EPA, Interior, and Navy 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 If Navy fails to submit a Primary Document, as listed in Section X (Consultation), to EPA or the Commonwealth pursuant to the appropriate timetable or Deadlines in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement that relates to an interim or final remedial action, EPA may assess a stipulated penalty against Navy. 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 Section occurs. The Commonwealth and EPA agree that all stipulated penalties shall be shared equally.

21.2 Upon determining that Navy has failed in a manner set forth in Subsection 21.1, EPA shall so notify Navy in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, Navy shall have 15 days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. Navy 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, or if dispute resolution is not invoked, the expiration of the time for Navy to invoke dispute resolution.

21.3 The annual reports required by CERCLA Section 120(e)(5), 42 U.S.C. § 9620(e)(5), shall include, with respect to each final assessment of a stipulated penalty against Navy under this Agreement, each of the following:

A. The Site where the failure occurred;

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

C. A statement of any administrative or other corrective action taken at the relevant AOC or SSA, or a statement of why such measures were determined to be inappropriate;

D. A statement of any additional action taken to prevent recurrence of the same type of failure; and

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

21.4 Stipulated penalties assessed against Navy pursuant to this Section shall be payable to the Hazardous Substances Superfund only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the DoD. In the event that stipulated penalties become payable by Navy under this Agreement, Navy will seek Congressional approval and authorization to pay such penalties in equal amounts to the federal Hazardous Substances Superfund and to the Commonwealth's EQB Emergency Account. 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. § 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, 42 U.S.C. § 9609, as amended by the Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121, 40 C.F.R. Part 19.4, and its implementing regulations.

21.6 This Section shall not affect Navy's ability to obtain an extension of a timetable, Deadline, or Schedule as set forth in the SMP, pursuant to Section XIII (Extensions).

21.7 Nothing in this Agreement shall be construed to render any officer or employee of Navy 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:

A. Acts of God;

B. Fire;

C. War;

D. Insurrection;

E. Civil disturbance, including vandalism or other interference with the Site;

F. Explosion;

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

H. Adverse weather conditions that could not be reasonably anticipated;

I. Unusual delay in transportation as a result of circumstances beyond the control of Navy;

J. Restraint by court order or order of public authority;

K. Inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits, or licenses as a result of action or inaction of any governmental agency or authority other than Navy;

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

M. Insufficient availability of appropriated funds, if Navy made a timely request for such funds as a part of the budgetary process as set forth in Section XXVII (Funding) of this Agreement.

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.

22.2 When circumstances that may delay or prevent the completion of Navy's obligation under this Agreement are caused by an alleged Force Majeure event, Navy shall notify EPA, Interior, and Commonwealth Project Managers orally of the circumstances within 48 hours after Navy first became aware of these circumstances. Within 15 days of the oral notification, Navy shall supply to EPA, Interior, and the Commonwealth an explanation in writing of the cause(s) of any actual or expected delay and the anticipated duration of any delay. Navy shall exercise its best efforts to avoid or minimize any such delay and any effects of such delay.

22.3 The Party seeking an extension based on Force Majeure shall describe the Force Majeure event being alleged. Any disputes regarding whether an alleged event constitutes a Force Majeure will be resolved pursuant to Section XX (Dispute Resolution).

XXIII. ENFORCEABILITY

23.1 The Parties agree that:

A. 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, 42 U.S.C. §§ 9659(c) and 9609.

B. All timetables and Deadlines associated with an RI/FS shall be enforceable by any person pursuant to CERCLA Section 310, and any violation of such timetables and Deadlines will be subject to civil penalties under CERCLA Sections 310(c) and 109, 42 U.S.C. §§ 9659(c) and 9609;

C. All terms and conditions of this Agreement that relate to RAs, including corresponding timetables, Deadlines, or Schedules, and all Work associated with the RAs, 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, 42 U.S.C. §§ 9659(c) and 9609; and

D. Any final resolution of a dispute pursuant to Section XX (Dispute Resolution) of this Agreement which 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, 42 U.S.C. §§ 9659(c) and 9609.

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), 42 U.S.C. § 9613(h).

23.3 Nothing in this Agreement shall be construed as a restriction or waiver of (1) any rights EPA may have under CERCLA, including but not limited to any rights under CERCLA Sections 113, 120, 121 and 310, 42 U.S.C. §§ 9613, 9620, 9621 and 9659, or (2) any rights or defenses, including sovereign immunity, that the Commonwealth may have under federal or Commonwealth law.

Navy does not waive any rights it may have under CERCLA Section 120, SARA Section 211, 10 U.S.C. §§ 2701-2710, and E.O. 12580.

Interior does not waive any rights it may have under applicable law and E.O. 12580.

The Commonwealth does not waive any rights it may have under applicable law.

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 as provided herein.

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, Commonwealth 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 CERCLA Section 111(a)(2), 42 U.S.C. § 9611(a)(2), for any person, agent, contractor, or consultant acting for Navy.

24.4 EPA, Interior, and the Commonwealth shall not be held as a party to any contract entered into by Navy to implement the requirements of this Agreement.

24.5 Navy shall notify the appropriate federal and Commonwealth natural resource trustees of potential damages to natural resources resulting from releases or threatened releases under investigation and shall coordinate the assessments, investigations and planning with Federal and Commonwealth natural resource trustees, as required by CERCLA Section 104(b)(2), 42 U.S.C. § 9604(b)(2), and Section 2(e)(2) of E.O. 12580. Except as provided herein, Navy is not released from any liability that it may have pursuant to any provisions of Commonwealth 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:

A. Natural resources damage assessments, or for damage to natural resources; or

B. Liability for disposal of any hazardous substances or waste material taken from the Facility.

XXV. RESERVATION OF RIGHTS

25.1 Notwithstanding anything in this Agreement, EPA, Interior, and the Commonwealth may initiate any administrative, legal, or equitable remedies available to them, including requiring additional response actions by Navy in the event that: (a) conditions previously unknown or undetected by EPA or the Commonwealth arise or are discovered at the Site and not addressed hereunder; or (b) EPA or the Commonwealth receive additional information not previously available concerning the premises that it relied upon in reaching this Agreement; or (c) the implementation of the requirements of this Agreement are no longer protective of human health or welfare or the environment; or (d) EPA, the Commonwealth, or Interior discover the presence of conditions on the Site that may constitute an imminent and substantial danger to human public health or welfare or the environment which are not addressed hereunder; or (e) Navy fails to meet any of its obligations under this Agreement; or (f) Navy fails or refuses to comply with any applicable requirement of CERCLA, RCRA, or their implementing regulations; or (g) Navy, its 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 an RA is protective of human health and the environment. For purposes of this Subsection, conditions at the Site and information known to EPA, Interior, and the Commonwealth shall include only those conditions and information known as of the date of the relevant response action decision document.

25.2 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 the Parties do not already have under applicable law.

25.3 Notwithstanding any other Section of this Agreement, the Commonwealth shall retain any statutory right it may have to obtain judicial review of any final decision of EPA including, without limitation, any authority the Commonwealth may have under CERCLA Sections 113, 121(e)(2), 121(f)(3), and 310, 42 U.S.C. §§ 9613, 9621(e)(2), 9621(f)(3), and 9659, RCRA Section 7002, Section XXIII (Enforceability) of this Agreement, and Commonwealth law, except that the Commonwealth expressly agrees to exhaust any applicable remedies provided in Section X (Consultation) and Section XX (Dispute Resolution) of this Agreement prior to exercising any such rights.

25.4 Notwithstanding anything in this Agreement, the Commonwealth reserves the right to initiate any administrative, legal, or equitable remedies available to it based upon: (a) Navy's failure or refusal to comply with any requirement of Commonwealth laws or regulations required under this Agreement; or (b) except as provided in a ROD, past, present, or future disposal of hazardous substances or contaminants outside the boundaries of the Site; or (c) past, present, or future violations of federal or Commonwealth criminal law; or (d) violations of federal or Commonwealth law other than those addressed in this Agreement that occur during or after implementation of an RA; or (e) damages for injury to, destruction of, or loss of natural resources, and the cost of any natural resource damage assessments. The Commonwealth expressly agrees to exhaust any applicable remedies provided in Section X (Consultation) and Section XX (Dispute Resolution) of this Agreement, prior to exercising any such rights.

25.5 With regard to all matters not expressly addressed by this Agreement, the Commonwealth specifically reserves all rights to institute equitable, administrative, civil, and criminal actions for any past, present, or future violation of any statute, regulation, permit, or order, or for any pollution or potential pollution to the air, land, or waters of the Commonwealth. After exhausting the dispute resolution provisions in Section XX (Dispute Resolution) of this Agreement, the Commonwealth reserves whatever rights it may have with regard to Commonwealth laws that are not selected and/or enforced as ARARs under a ROD, and the Parties reserve whatever rights they may have to raise any defenses.

25.6 In the event that Navy's obligations under this Agreement are not fulfilled for six consecutive months, the Commonwealth shall have the option of terminating all provisions of the Agreement affecting the Commonwealth's rights and responsibilities, and the Commonwealth may

thereafter seek any appropriate relief. The Commonwealth, however, expressly agrees to exhaust any applicable remedies provided in Section X (Consultation) and Section XX (Dispute Resolution) of this Agreement prior to exercising any such rights. Thereafter, the Commonwealth will provide the other Parties with 10 days notice of its intent to terminate. This Section does not create any right that Commonwealth does not already have under applicable law.

25.7 Notwithstanding anything in this Agreement, Interior reserves whatever rights it may have to pursue any administrative remedy available for natural resource damages for injury to, destruction of, or loss of natural resources, including the cost of any natural resource damage assessment.

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. In the event that Interior receives Congressional authorization to dispose of any portion of the Site and Interior intends or is required to do so, Interior agrees to, after consultation and coordination with Navy, provide EPA and the Commonwealth with 60 days notice of any transfer prior to such transfer, unless such advance notice is not possible consistent with the applicable transfer legislation in which case it will provide as much notice as is practicable. A transfer for the purposes of this Section would include any sale or transfer by the United States of any title, easement, or other interest in the real property affected by this Agreement. Interior and Navy agree to comply with CERCLA Section 120(h), 42 U.S.C. § 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 CERCLA Section 120(h), 42 U.S.C. § 9620(h), and 40 C.F.R. Part 373, Interior and Navy shall include notice of this Agreement in any Host/Tenant Agreement or Memorandum of Understanding that permits any entity other than Interior or Navy to perform activities of, or function as, an operator on any portion of the Site.

26.3 Subject to the MOAs, Navy and Interior shall ensure that all response measures, groundwater rehabilitation measures, and RAs of any kind that are undertaken pursuant to this Agreement on any areas that are or were formerly in any manner under the control of Navy or any lessees or agents of Navy 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.

XXVII. FUNDING

27.1 It is the expectation of the Parties to this Agreement that all obligations of Navy arising under this Agreement will be fully funded. Navy agrees to seek sufficient funding through its budgetary process to fulfill its obligations under this Agreement.

27.2 In accordance with CERCLA Section 120(e)(5)(B), 42 U.S.C. § 9620(e)(5)(B), Navy 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 Navy 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. § 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 Navy's obligations under this Agreement, EPA, Interior, and the Commonwealth reserve the right to initiate an action against any other person, or to take any response action, that would be appropriate absent this Agreement.

27.5 Funds authorized and appropriated annually by Congress under the ER,N appropriation in the DoD Appropriations Act will be the source of funds for activities required by this Agreement consistent with 10 U.S.C. Chapter 160. However, should the ER,N appropriation be inadequate in any year to meet the total Navy's implementation requirements under this Agreement, Navy 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.

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 Navy shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. Navy shall develop a site-specific QAPP. These QAPP Work Plans will be reviewed as Primary Documents pursuant to Section X (Consultation) of this Agreement. QA/QC Work Plans shall be prepared in accordance with applicable EPA Guidance.

29.2 In order to provide for QA and maintain QC regarding all field work and samples collected pursuant to this Agreement, Navy shall include in each QA/QC Plan submitted to EPA, Interior, and the Commonwealth all protocols to be used for sampling and analysis. Navy 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 Navy shall ensure that laboratory audits are conducted as appropriate and are made available to the Parties upon request. Navy shall ensure that the Parties and their authorized representatives shall have access to all laboratories performing analyses on behalf of Navy pursuant to this Agreement.

XXX. RECORD PRESERVATION

30.1 Despite any document retention policy to the contrary, the Parties shall preserve, during the pendency of this Agreement and for a minimum of 10 years after its termination or for a minimum of 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 10-year period, each Party shall notify the other Parties at least 45 days prior to the proposed destruction or disposal of any such documents or records. Upon the request by any Party, the Party requesting destruction or disposal 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. If such withholding of documents is opposed by another Party, no records withheld shall be destroyed until 45 days after the final decision by the highest court or administrative body requested to review the matter.

30.2 Notwithstanding Subsection 30.1, above, all such records and documents shall be preserved for a period of 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, in a timely manner, all the results of sampling, tests, or other data generated through the implementation of this Agreement.

31.2 At the request of any other Party, a Party shall allow the other Parties or their authorized representatives to observe field work 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 14 days in advance of any scheduled sample collection activity unless otherwise agreed upon by the Parties. The Party shall provide written confirmation within 3 days of the telephonic 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 Navy shall not withhold any physical, sampling, monitoring, or analytical data.

32.2 National Security Information:

A. Any dispute concerning EPA, Interior, or Commonwealth access to national security information ("classified information"), as defined in Executive Order 12356, shall be resolved in accordance with Executive Order 12356 and 32 C.F.R. Part 159, including the opportunity to demonstrate that EPA, Interior, the Commonwealth or their respective representatives have proper clearances and a need to know, a right to an appeal to the Information Security Oversight Office, and a right to a final appeal to the National Security Council.

B. Upon receipt of a request from EPA, Interior, or Commonwealth to meet with the classifying officer regarding access to classified information, Navy shall, within 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 Navy, the classifying officer and the representative of the requesting Party shall meet within 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, Navy shall notify the requesting Party of the classifying officer's decision within 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.

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

XXXIII. COMMUNITY RELATIONS

33.1 Navy shall develop and implement a Community Relations Plan. This plan responds to the need for an interactive relationship with all interested community elements, both on and off the Facility, regarding environmental activities conducted pursuant to this Agreement by Navy. Any revision or amendment to the Community Relations Plan shall be submitted to EPA, Interior or the Commonwealth for review and comment. In formulating this plan, Navy shall consider utilizing as appropriate, in whole or in part, any existing community relations plans that may exist for various portions of the Site.

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 prior to 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 laws and regulations.

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

33.5 The Information Repository is located at Biblioteca Electronica, Calle Carlos LeBrum #449 Isabel II, Vieques, PR 00765. Navy has established and is maintaining an Administrative Record file at or near the Site and has made it available to the public in accordance with CERCLA Section 113(k), 42 U.S.C. § 9613(k), Subpart I of the NCP, and applicable Guidance issued by EPA. The Administrative

Record developed by Navy shall be periodically updated and a copy of the Index will be provided to EPA, Interior, and the Commonwealth. Navy will provide to EPA, Interior, or the Commonwealth on request any document in the Administrative Record.

XXXIV. PUBLIC COMMENT ON THIS AGREEMENT

34.1 Within 15 days after the execution of this Agreement (the date by which all Parties have signed the Agreement) or as soon thereafter to conform with RCRA integration requirements, EPA shall announce the availability of this Agreement to the public for its review and comment, including publication in at least two major local newspapers of general circulation. Such public notices shall include information advising the public as to the availability and location of the Administrative Record file discussed in Subsection 34.7. EPA shall accept comments from the public for 45 days after such announcement. Within 21 days of completion of the public comment period, EPA shall transmit copies of all comments received during the comment period to the other Parties. Alternatively, if the comments are voluminous, the Parties may agree to other methods for EPA to make the comments available to the other Parties. Within 30 days after the public comments are shared with the other Parties, the Parties shall review the comments and shall decide that either:

A. The Agreement shall be made effective without any modifications; or

B. 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 other Parties and shall notify the other Parties in writing that the Agreement is effective. The Effective Date of the Agreement shall be the date of receipt by Navy 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, EPA, in consultation with the other Parties, will determine whether the modified Agreement requires additional public notice and comment pursuant to any provision of CERCLA. If the Parties determine 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 Navy, Interior, and the Commonwealth, and EPA shall notify them in writing that the modified Agreement is effective as of the date of the notification. If the Parties amend the Agreement and determine 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 Navy, Interior and the Commonwealth and shall notify them that the modified Agreement is effective. In either case, the Effective Date of the modified Agreement shall be receipt by Navy from EPA of notification that the modified Agreement is effective.

34.4 In the event that the Parties cannot agree on the need for modifications to this Agreement or the specific modifications to be made or the Responsiveness Summary within 30 days after EPA has shared the public comments with the other Parties, the Parties agree to negotiate in good faith for an additional 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 expiration of the times provided in Subsection 34.4, the Parties have not reached agreement on:

A. Whether modifications to the Agreement are needed; or

B. What modifications to the Agreement should be made; or

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

D. Whether additional public notice and comments are required; or

E. The contents of the responsiveness summary,

the matters in dispute shall be resolved by the dispute resolution procedures of Section XX (Dispute Resolution) above. 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 prior to it becoming effective (but not thereafter) by providing written notice to the other Parties within 20 days after receiving from EPA the Final Written Decision of the resolution of the matters in dispute. If the Commonwealth withdraws, and the remaining Parties agree to proceed, the Agreement shall be effective as to those remaining parties. Failure by the Commonwealth to provide such a written notice of withdrawal to EPA within this 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 each Party and shall notify each Party that

the Agreement is effective. The Effective Date of the Agreement shall be the date of receipt of that notification letter from EPA to Navy.

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

34.7 Existing records maintained by Navy and/or Interior pertaining to the Site that will be included in the Administrative Record file such as reports, plans, and Schedules, shall be made available by Navy for public review during the public comment period.

XXXV. RESTORATION ADVISORY BOARD

35.1 Navy has established a Restoration Advisory Board (RAB) that meets the requirements of 32 C.F.R. Part 202, Restoration Advisory Boards. The RAB shall provide (1) an opportunity for

stakeholders involvement in the environmental restoration process at Vieques, (2) act as a forum for discussion and exchange of restoration program information between the Navy, EPA, EQB, Interior and the community, and (3) provide an opportunity for RAB members to review progress and participate in a dialogue with the decision makers concerning the cleanup of Vieques.

35.2 The RAB membership should consist of the Navy, members of the community, EPA, Interior, EQB, and local government representatives, as appropriate. The Navy will serve as co-chair and the community members of the RAB shall select the community co-chair. Meetings of the RAB shall be for the purpose of reviewing progress under the Agreement and for the following purposes:

A. To facilitate early and continued flow of information between the community, the Navy and/or Interior, and the environmental regulatory agencies in relation to restoration actions taken by Navy and/or Interior under the Installation Restoration Program or other appropriate authority,

B. To provide an opportunity for RAB members and the public to review and comment on actions and proposed actions taken by the Navy and/or Interior under the Installation Restoration Program or other appropriate authority, and,

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

35.3 The co-chairs shall schedule regular meetings of the RAB and can vary in frequency depending on the pace and progress of the cleanup. Special meetings of the RAB may be held at the request of the members.

XXXVI. EFFECTIVE DATE

This Agreement shall be effective in its entirety among the Parties in accordance with Section XXXIII (Public Comment on this Agreement).

XXXVII. AMENDMENT OF AGREEMENT

37.1 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.

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

37.3 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 will be applied to the activities under this Agreement in the following manner:

A. 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 effective date provided. However, the Parties shall, to the extent practicable, apply them in such a way as to avoid as much as possible the need for repeating Work already accomplished.

B. Applicable policy or Guidance shall be applied as it exists at the time of initiation of the Work in issue.

C. 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.

XXXVIII. COMMONWEALTH OF PUERTO RICO OBLIGATIONS

38.1 The Commonwealth acknowledges the need for and hereby grants a right of entry for Navy, Interior, and EPA personnel and contractors to go upon lands belonging to the Commonwealth, including submerged lands, for any purpose associated with the implementation of this Agreement.

38.2 The Commonwealth agrees to provide in full any Commonwealth or independent studies, including data sets and peer reviews, that it has in its possession that have been done concerning potential contamination and their effects on human health or welfare or the environment regarding the Site. The Commonwealth further agrees to provide in full any studies, including data sets and peer reviews, that it may commission or acquire during the life of this Agreement.

38.3 As stated above, the Commonwealth expressly agrees to exhaust any applicable remedies provided in Section X (Consultation) and Section XX (Dispute Resolution) of this Agreement prior to exercising any rights it may have independent of this Agreement under CERCLA, RCRA, or any other law.

XXXIX. SEVERABILITY

39.1 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.

XL. TERMINATION AND SATISFACTION

40.1 The provisions of this Agreement shall be deemed satisfied upon EPA determining that all obligations under the terms of this Agreement have been completed. Following EPA Certification of all the response actions at the Site pursuant to Subsection 9.18.C 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 Navy of written notice from EPA, with concurrence of the Commonwealth and Interior, that Navy has demonstrated that all the requirements of this Agreement have been satisfied. EPA, in the event it opposes 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 90 days of receipt of the proposal.

40.2 Any disputes arising from this Termination and Satisfaction process shall be resolved pursuant to the provisions of Section XX (Dispute Resolution) of this Agreement.

40.3 Upon termination of this Agreement, Navy shall place a public notice announcing termination in two major local newspapers of general circulation.

40.4 This Section shall not affect the Parties' obligations pursuant to Section XIX (Periodic Review) of this Agreement. In no event will this Agreement terminate prior to Navy's completion of the Work required by this Agreement.

AUTHORIZED SIGNATURES

The undersigned representative of the Department of the Navy certifies that he is fully authorized by the Department of the Navy to enter into the terms and conditions of this Agreement and to legally bind the Department of the Navy to this Agreement.

IT IS SO AGREED:

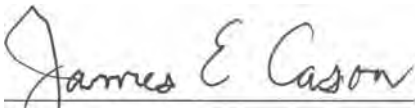
By Donald R Schregardus Date 8/17/2007

Donald R. Schregardus
Deputy Assistant Secretary of Navy
(Environment)

AUTHORIZED SIGNATURES

The undersigned representative of the Department ofthe Interior certifies that he is fully authorized by the Department ofthe Interior to enter into the terms and conditions of this Agreement and to legally bind the Department of the Interior to this Agreement.

IT IS SO AGREED:

By  Date 8/2/07

Jamqs If,. Cason Asso~te
Deputy Secretary
Department ofthe Interior

AUTHORIZED SIGNATURES

The undersigned representative of the U.S. Environmental Protection Agency certifies that he is fully authorized by the U.S. Environmental Protection Agency to enter into the terms and conditions of this Agreement and to legally bind the U.S. Environmental Protection Agency to this Agreement.

IT IS SO AGREED:

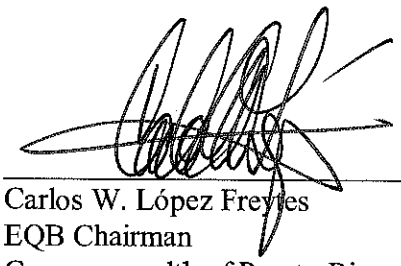
By Alan J. Steinberg Date 9-7-07

Alan J. Steinberg
Regional Administrator
Environmental Protection Agency, Region II

AUTHORIZED SIGNATURES

The undersigned representative of the Commonwealth of Puerto Rico certifies that he is fully authorized by the Commonwealth of Puerto Rico to enter into the terms and conditions of this Agreement and to legally bind the Commonwealth of Puerto Rico to this Agreement.

IT IS SO AGREED:

By  Date 9/7/07

Carlos W. López Freytes
EQB Chairman
Commonwealth of Puerto Rico