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FEDERAL FACILITIES AGREEMENT

BETWEEN

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY - REGION IV,

STATE OF FLORIDA,

AND

UNITED STATES DEPARTMENT OF THE AIR FORCE

FOR

HOMESTEAD AIR FORCE BASE

HOMESTEAD, FLORIDA

Version 5.0
May 25, 1990

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IV

STATE OF FLORIDA

AND

THE UNITED STATES DEPARTMENT OF THE AIR FORCE

IN THE MATTER OF:	)	FEDERAL FACILITY AGREEMENT
	)	UNDER CERCLA SECTION 120
The U.S. Department of the Air Force	)	
Homestead Air Force Base	)	
Homestead, Florida	)	U.S. EPA Administrative
	)	Docket Number: 90-07-F.F.
	)	
	)	FL. OGC Case Number: 90-0579

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

I. JURISDICTION

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

A. The U.S. Environmental Protection Agency (U.S. EPA), Region IV, enters into those portions of this Agreement that relate to the Remedial Investigation/Feasibility Study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA/SARA or CERCLA); Sections 6001, 3008(h), 3004(v) and 3004(u) of the Resource Conservation and Recovery (RCRA), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), as amended by the Hazardous and Solid Waste Amendments of 1984 (HWA) (hereinafter jointly referred to as RCRA/HSWA or RCRA); and Executive Order 12580.

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

C. The United States Department of the Air Force, Homestead Air Force Base (Homestead AFB or Air Force), enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, 42 U.S.C. Section 9620(e)(2); Sections 6001, 3008(h), 3004(u) and 3004(v) of RCRA, 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v); Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. Section 4321; and the Defense Environmental Restoration Program (DERP), 10 U.S.C. Section 2701 et seq.

D. The Air Force enters into those portions of this Agreement that relate to remedial actions for operable units and final remedial actions pursuant to Sections 120(e)(2) of CERCLA/SARA, 42 U.S.C. Section 9620(e)(2); Sections 6001, 3008(h), 3004(u) and 3004(v) of RCRA, 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v); Executive Order 12580; and the DERP.

E. The State of Florida (the State), acting through the Florida Department of Environmental Regulation (FDER) enters into this Agreement pursuant to Sections 120(f) and 121(f) of CERCLA/SARA, 42 U.S.C. Sections 9620(f) and 9621(f); Sections 6001 and 3006 of RCRA, 42 USC Sections 6961 and 6926; and Chapters 376 and 403 Florida Statutes (F.S.), Section 120.57(3) F.S., Florida Administrative Code (FAC) Rule 17-103.110.

II. PARTIES

A. The Parties to this Agreement are the U.S. EPA, the State and the Air Force. The terms of this Agreement shall apply to and be binding upon the Parties, their agents, employees, response action contractors for the Site and, to the extent provided by law, all subsequent owners, operators and lessees of Homestead AFB. The Parties will notify each other of the identity, qualifications and assigned tasks of each of its contractors performing work under this Agreement upon their selection. This Section shall not be construed as an agreement to indemnify any person. Each party shall take reasonable steps to notify their agents, employees, response action contractors for the site, and, to the extent provided by law, all subsequent owners, operators and lessees of Homestead AFB of the existence of this Agreement. Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to bind legally such Party to this Agreement.

B. The Florida Department of Environmental Regulations (FDER) is the designated single State agency, in accordance with Florida Statute, Section 403.807, responsible for the federal programs to be carried out under this Agreement, and the lead agency for the State of Florida.

III. DEFINITIONS

Except as noted below or otherwise explicitly stated, the terms herein shall have their ordinary meaning unless otherwise defined in CERCLA/SARA, CERCLA case law, the National Contingency Plan (NCP) or RCRA.

In addition:

A. "Agreement" shall mean this document and shall include all Attachments to this document referred to herein, to the extent they are consistent with the original agreement as executed or modified. All such Attachments shall be appended to and made an integral and enforceable part of this document.

B. "Administrative Record" shall have the same meaning as defined in CERCLA. The official Administrative Record will be maintained at Bldg 163, Homestead AFB, and a copy of the Administrative Record will be maintained in a repository near the Facility.

C. "Air Force" shall mean U.S. Department of the Air Force as represented by its operating entity, Homestead AFB, Homestead, Florida.

D. "ARARs" means legally applicable or relevant and appropriate standards, requirements, criteria or limitations as those terms are used in CERCLA 121(d)(2).

E. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499 and any subsequent amendments.

F. "CERCLA Response" means removal and remedial response activities conducted pursuant to CERCLA.

G. "Days" means calendar days unless otherwise specified in this Agreement. Any submittal, written notice of position, or written statement of dispute that under the terms of this Agreement would be due on a Saturday, Sunday or a federal/state holiday shall be due on the following business day.

H. "Documents" shall include but not be limited to any plan(s) or report(s) required pursuant to this Agreement.

I. "EPA" means the United States Environmental Protection Agency, its successors and assigns, and its duly authorized representatives, which may include its employees, agents, and contractors, as necessary.

J. "FAC" means Florida Administrative Code.

K. "Facility" means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site

or area where a hazardous substance has been deposited, stored, disposed of, placed or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

L. "Feasibility Study" (FS) means the study which fully evaluates and develops remedial action alternatives to prevent or mitigate the migration or the release of hazardous substances and pollutants, or contaminants at and from the Site.

M. "FDER" means the Florida Department of Environmental Regulation which is entering into this Agreement on the behalf of the State of Florida.

N. "F.S." means Florida Statutes.

O. "Hazardous Substances" shall have the meaning set forth by Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).

P. "HSWA" means the Resource Conservation and Recovery Act as codified at 42 U.S.C. 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616.

Q. "Letter of Intent to Execute" means document executed by the Parties prior to the release of this Agreement to the public for its review and comment.

R. "Meeting," in regard to Project Managers, shall mean an in-person discussion at a single location or a conference telephone call of all Project Managers. A conference call will suffice for an in-person meeting at the concurrence of the Project Managers.

S. "The National Contingency Plan" (NCP) means the plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. Section 9605, and codified at 40 C.F.R. Part 300, et. seq., as amended.

T. "On-Site" means the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action.

U. "Operable Unit" means a discrete action that comprises an incremental step toward comprehensively addressing site problems. Each operable unit manages migration, or eliminates/mitigates a release, threat of release or pathway of exposure. Operable units may address specific geographical portions of the site, specific site problems, or initial phases of a response (removal/remedial) 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. Operable units will not impede implementation of subsequent actions including final response actions at the site.

V. "Parties" means the Air Force, EPA and FDER.

W. "Pollutant or Contaminant" shall have the same meaning defined in 42 U.S.C. 9601(33).

X. "Potential Sources of Contamination" (PSC) means a location identified during the Installation Restoration Program (IRP) that may be a potential contamination source.

Y. "Project Managers" are the individuals designated by the U.S. EPA, FDER and the Air Force who oversee and provide technical assistance for the activities at the site.

Z. "Proposed Remedial Action Plan" (PRAP) means the plan for remedial action to be undertaken by the President that is compiled prior to issuance of public notice, pursuant to CERCLA Section 117(a), 42 USC Section 9617(a).

AA. "RCRA" or "RCRA/HSWA" shall mean the Resource Conservation and Recovery Act of 1976, Public Law 94-580, 42 U.S.C., Sec. 6901 et. seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, and any subsequent amendments.

BB. "Record of Decision" (ROD) means the public document that explains which alternative will be implemented for the final remedial action and includes the basis for the selection of that remedy.

CC. "Release" shall be used as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

DD. "Remedial Action" (RA) means those actions consistent with permanent remedy taken instead of, or in addtion to, removal action in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative water supplies, any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment and, where appropriate, post-removal site control activities. The term includes the costs of permanent relocation of residents and businesses and community facilities, including the cost of providing "alternative land of equivalent value" to an Indian tribe pursuant to CERCLA Section 126(b) where EPA determines that, alone or in combination with other measures, such relocation is more cost-effective than, and environmentally

preferable to, the transportation, storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials. For the purpose of the NCP, the term also includes enforcement activities related thereto.

EE. "Remedial Design" (RD) means all work undertaken to design the technical aspects of the remedial activities to be implemented at the Site.

FF. "Remedial Investigation" (RI) means the investigation conducted to determine fully the nature and extent of any and all releases or threat of releases of hazardous substances, pollutants, contaminants, wastes or constituents and to gather necessary data to support the feasibility study.

GG. "Significant New Information" for the purposes of this Agreement means information that is of material assistance in protecting or evaluating impacts on the public health, welfare or the environment, or in evaluating the selection of response/corrective action alternatives which became known after a document was finalized (see Section VIII. J. 1. of the Agreement).

HH. "Significant New Site Conditions" means those conditions of geology, hydrogeology or contamination that were not reasonably foreseeable or known at the time a Remedial Investigation (RI) was initiated.

II. "Site Management Plan" (SMP) means the yearly plan submitted by the Air Force with a list of operable units, priorities and schedule of actions to be taken for the current or next year as appropriate, and projections for subsequent year(s).

JJ. "Solid Waste Management Units" (SWMUs) means those units identified in the RCRA permit for the facility.

IV. INSTALLATION DESCRIPTION

A. For the purposes of this agreement, the United States Air Force, Homestead Air Force Base is located on 2,916 acres in southeast Dade County, Florida. It is approximately 25 miles southwest of Miami and seven miles east of Homestead. The base lies approximately two miles west of Biscayne Bay. The surrounding area is semi-rural, and for the most part its perimeter borders on agricultural land. Headquarters Tactical Air Command, located on Langley AFB, Virginia 23665, is the Air Force Major Air Command to which Homestead AFB is assigned, and the 31st Tactical Fighter Wing (TFW) is the host unit on Homestead AFB. The 31st TFW flies primarily F-16 jet aircraft. Work in support of the base mission includes fuel (JP-4, gasoline, diesel, heating oil), storage and transportation systems, and various maintenance shops. Activities at the base have resulted in materials being discharged into the environment. These materials include petroleum hydrocarbon fuels, solvents, pesticides, and heavy metals. Current disposal practices are regularly surveyed for conformity to local, state, and federal regulations.

B. The geology beneath Homestead AFB consists of the Miami Oolite, the Fort Thompson Formation and the Tamiami Formation. The uppermost geologic units, the Miami Oolite and Fort Thompson Formation comprise the highly permeable Biscayne aquifer. Westward migration of salty water in the Biscayne is typical along coastal areas due to inland pumping. The "front" of salt water in the Biscayne presently bisects the base. Underlying the Biscayne aquifer is the Floridan aquifer which is separated from the Biscayne by a confining unit of low-permeability sediments; these sediments are several hundred feet thick and generally consist of sandy and clayey marls, clays, and dense limestones of the Tamiami Formation. Ground water from the Floridan aquifer in southeastern Florida is generally mineralized and therefore is of limited usefulness as a source of water supply in the Homestead area.

C. Natural drainage is generally poor at Homestead AFB because the water table occurs at or near land surface. The construction of numerous drainage canals on the base has improved the surface water drainage. The drainage canals discharge to Boundary Canal, which partially surrounds the base. Boundary Canal flows to the storm-water reservoir located on the southeastern corner of the base. The reservoir discharges to Military Canal, which in turn flows to Biscayne Bay.

D. Twenty-four potential sources of contamination (PSC) have been identified within the facility by the Air Force and are listed in Attachment A. The parties will continually clarify the extent of each PSC on the basis of additional investigations performed by the Air Force to more accurately reflect the areas affected by discharges of hazardous substances related in whole or in any part to Homestead AFB. If any additional PSCs are discovered and determined to require an RI/FS and/or a RCRA Facility Investigation (RFI), appropriate action will be taken.

V. FINDINGS OF FACT

A. For the purposes of this Agreement, the following constitutes a summary of the findings upon which this Agreement is based. None of the findings related herein shall be considered admissions by any party. This paragraph contains findings of fact, determined solely by the Parties and shall not be used by any person related or unrelated to this Agreement for purposes other than determining the basis of this Agreement.

1. Homestead Army Air Field, a predecessor of Homestead AFB, was activated in September 1942. At that time the Caribbean Wing Headquarters took over the air field, which was previously used by Pan American Air Ferries, Inc. The airline had developed the site a few years earlier and used it primarily for pilot training. Prior to that time, the site was undeveloped. Initially, Homestead Army Air Field served as a staging facility for the Army Transport Command, which was responsible for maintaining and dispatching aircraft to overseas locations. In 1943, the field mission was changed when the Second Operational Training Unit was activated to train transport pilots and crews.

2. In September 1945, a severe hurricane resulted in extensive damage to the air field. Both the high cost of rebuilding the field and the anticipated post-war reductions in military activities led to the base being placed on an inactive status in October 1945. The base property was turned over to Dade County, which retained possession of it for the next eight years. During that time, the base was managed by the Dade County Port Authority; the runways were used by crop dusters and the buildings housed a few small industrial and commercial operations.

3. In 1953, the federal government again acquired the Homestead facility, together with some surrounding property, and over the next two yeas rebuilt it as a Strategic Air Command (SAC) base. The first operational squadron arrived at Homestead AFB in February 1955, and the base was formally reactivated in November of the same year. Except for a short period during 1960, when modifications were made to accommodate B-52 aircraft, the facility remained an operational SAC base until 1968.

4. The command of Homestead AFB was changed from SAC to Tactical Air Command in July 1968, and the 4531st Tactical Fighter Wing (TFW) became the new host unit. F-100 Cs and Ds were flown during this time. When the 31st TFW returned from Southeast Asia during October 1970, the designation 4531st TFW was deactivated and the 31st TFW became the host unit for Homestead AFB, flying F-4 Ds and Es. In 1981, the 31st was redesignated the 31st Tactical Training Wing. On October 1, 1984, the base converted to the 31st TFW which currently flies F-16 aircraft.

5. In August 1983, a Records Search was conducted at Homestead AFB as part of Phase I of the Air Force Installation Restoration Program (IRP) to identify past disposal sites and prioritize those that may pose hazards to public health or the environment. This Phase I Records Search document, prepared by Engineering Science of Atlanta, Georgia, identified 20 locations as having the potential for environmental contamination. These 20 locations are listed as PSCs in Attachment B.

6. In March 1986, a Phase II-Confirmation/Quantification IRP report was prepared to quantify the extent and degree of contamination, if present, at PSCs SP-1, SP-2, SP-4, SP-5, SP-6, SP-7, P-2, P-3, FPTA-2, and FPTA-3. The other PSCs listed in the Phase I document were not included in the Phase II study. The Phase II document was prepared by Science Applications International Corporation of McLean, Virginia.

7. In August 1987, a Remedial Action Plan/Feasibility Study was prepared for PSC SP-5 by CH2M Hill Southeast, Inc. of Gainesville, Florida. A Risk Assessment document was prepared in February 1988 by ICF Technology. A design document was prepared in May 1989 by Hazwrap, a division of Martin Marietta Energy Systems, Inc. Construction of the selected remedial system (pump and treat recovery system) for PSC SP-5 started in March 1990.

8. In September 1987, Geraghty & Miller, Inc. was retained by the U.S. Army Corps of Engineers to conduct Phase IV IRP remedial investigations at PSCs SP-1, SP-2, SP-4, SP-6, SP-7, FPTA-2, FPTA-3, P-2, and P-3. In 1988 the Flightline Fuel System (SP-9), the Thermal Treatment Facility (SP-11), and the Building 207 Suspected Tank Leak (SP-10) were added to the PSC list. The objectives of the Phase IV remedial investigation were to determine the areal and vertical extent of subsurface constituents at each PSC, and determine the risks to public health and the environment. Remedial Investigations (RIs) were conducted according to CERCLA guidelines for each PSC. Presently, these RI documents are at different stages of completion. The RI documents contain a detailed endangerment assessment which identifies and evaluates the potential risks to human health and the environment. A Feasibility study (FS) was conducted for PSC SP-7 that: (1) evaluated remedial alternatives to cleanup the site, and (2) recommended the preferred alternative. With exception of PSC SP-5, no other FS documents were prepared for PSCs at Homestead AFB.

9. On January 5, 1990, a permit was issued to Homestead AFB under the Resource Conservation and Recovery Act (RCRA) as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984. The permit listed 21 Solid Waste Management Units (SWMUs) and required that a RCRA Facility Investigation (RFI) be performed at eight of the 21 SWMUs and further assessment be made at one of the 21 SWMUs.. A list of the SWMUs is contained in Attachment C. Each of the eight sites requiring RFIs have been extensively investigated under the Air Force Installation Restoration Program, pursuant to the power delegated by the President to the Department of Defense in Executive Order 12580, and in accordance with CERCLA guidelines.

10. In accordance with Section 120(d)(2) of the Superfund Amendments and Reauthorization Act (SARA) of 1986, the U.S. EPA prepared a final Hazardous Ranking System (HRS) scoring package. As a result of the HRS score, the facility was proposed for addition to the NPL on 14 July 1989 as listed in 54 Federal Register 134 at page 29820.

B. Based upon the information above, the Parties agree that the following are applicable to the provisions of this Agreement:

1. This Agreement is based upon the placement of Homestead AFB, Dade County, Florida, on the National Priorities List (NPL) update on as listed in Federal Register , at page , and is therefore subject to the special provisions for federal facility NPL sites in CERCLA Section 120.

2. Homestead AFB and the PSCs listed in Attachments A, B, C, and others found during future investigations, specifically, are facilities under the jurisdiction, custody, or control of the Department of Defense within the meaning of Executive Order 12580, 52 Federal Register 2923, 29 January 1987.

The Department of the Air Force is authorized to act in behalf of the Secretary of Defense for all functions delegated by the President through E.O. 12580 which are relevant to this Agreement.

3. Homestead AFB and the PSCs listed in Attachments A, B, C, and others found during future investigations, specifically, are facilities under the jurisdiction of the Secretary of Defense within the meaning of CERCLA section 120, 42 U.S.C. 9620, and Superfund Amendments and Reauthorization Act of 1986 (SARA) Sec. 211, 10 U.S.C. 2701 et. seq., and subject to the Defense Environmental Restoration Program (DERP) therein.

4. The Air Force is the authorized delegee of the President under Executive Order 12580 for receipt of notification of state ARARs required by CERCLA Section 121(d)(2)(A)(ii), 42 U.S.C. 9621(d)(2)(A)(ii).

5. The authority of the Air Force to exercise the delegated removal authority of the President pursuant to CERCLA section 104, 42 U.S.C. 9604 is not altered by this Agreement.

6. Attachment D to this Agreement shows those reports, secondary or primary, which have been proposed as final before or on the effective date of this Agreement. Within these reports, ten (10) PSCs were identified but subsequently concluded by the Air Force to require no remedial action. A list of these PSCs is located in Attachment E. Documents that support the Air Force's conclusions that no remedial action is needed at these sites will be provided to the other parties for their concurance. Failure by all parties to concur with the Air Force's conclusions will be subject to dispute resolution.

7. The actions to be taken pursuant to this Agreement are reasonable and necessary to protect the public health, welfare, or the environment.

8. The United States is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21), and the owner/operator of Homestead AFB as defined by Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. Sections 9601(20) and 9607(a)(1).

9. The Site (Homestead AFB) is a "Facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 101(9).

10. Hazardous substances, pollutants, contaminants or constituents within the meaning of 42 U.S.C. Sections 9601(14), 9601(33) and 9604(a)(2), Section 1004(5) of RCRA, 42 U.S.C. Section 6903(5) and 40 C.F.R. Part 261 (1988), as amended, have been managed and/or disposed of at the Site.

11. There have been releases of hazardous substances, pollutants, contaminants or constituents into the environment at the Site

within the meaning of 42 U.S.C. Sections 9601(22), 9604, 9606, and 9607 and Section 1004(5) of RCRA, 42 U.S.C. Section 6903(5) and 40 C.F.R. Part 261 (1988) as amended.

12. With respect to those releases and/or threat of releases, the Air Force is a responsible party within the meaning of 42 U.S.C. Section 9607.

VI. PURPOSE

A. The general purposes of this Agreement are to:

1. Ensure that the environmental impacts associated with past and present activities at the Facility are thoroughly investigated and appropriate CERCLA response is developed and implemented as necessary to protect the public health, welfare and the environment;

2. Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Facility in accordance with CERCLA/SARA, RCRA sections 3008(h), 3004(u) and 3004(v) the National Contingency Plan (NCP), applicable Florida statutes and regulations, and pertinent guidance and policy consistently applied by U.S. EPA and FDER;

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

B. Specifically, the purposes of this Agreement are to:

1. Identify incremental removal/remedial actions, also known as operable units, which are appropriate at specific locations of the Facility prior to the implementation of final CERCLA response. Any Party may propose incremental CERCLA response (operable units) to the other Parties and should do so as soon as the need for such incremental CERCLA response is identified. This process is designed to promote cooperation among the Parties in identifying incremental CERCLA response prior to their final proposal. The Parties do not intend that the identification or proposal of any incremental CERCLA response preclude the timely initiation of emergency actions necessary to address immediate threats to human health, welfare or the environment pursuant to Section XI (Imminent and Substantial Endangerment) of this Agreement.

2. Establish requirements for the performance of RIs to determine fully the nature and extent of the threat to the public health, welfare or the environment caused by the release and threatened release of hazardous substances, pollutants, contaminants or constituents at the Facility and to establish requirements for the performance of FSs for the Facility to identify, evaluate, and select alternatives for the appropriate CERCLA

response to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants, contaminants or constituents at the Facility in accordance with CERCLA/SARA and applicable State law.

3. Identify the nature, objective and schedule of CERCLA response to be taken at the Facility. Such response actions at the Facility shall attain that degree of remediation of hazardous substances, pollutants, contaminants or constituents mandated by CERCLA/SARA and applicable or relevant and appropriate requirements (ARARs) under State law.

4. Implement the selected CERCLA response in accordance with CERCLA and applicable federal and state law.

5. Meet the requirements of Section 120(e)(2) of CERCLA, 42 U.S.C. Section 9620(e)(2), for an interagency agreement among the Parties.

6. As provided in Section VII (Statutory Compliance/RCRA-CERCLA Integration) of this Agreement, assure compliance, through this Agreement, with RCRA and other federal and State hazardous waste laws and regulations for matters covered herein as consistent with the NCP and pertinent policy guidance, consistently applied by U.S. EPA and FDER.

7. Coordinate CERCLA response on site at the Facility with the mission and support activities of units at Homestead Air Force Base.

8. Expedite the remediation process to the extent consistent with protection of human health, welfare and the environment.

9. Provide for FDER involvement in the initiation, development, and selection and enforcement of CERCLA response to be undertaken at the Facility, including the review of all applicable data as it becomes available and the development of studies, reports, and action plans; and to identify and integrate State ARAR's into the CERCLA response process subject to Sections 121(d)(4) and (f)(3) of CERCLA, 42 U.S.C. Sections 9621(d)(4) and (f)(3).

10. Provide for operation and maintenance of any CERCLA response selected and implemented pursuant to this Agreement.

VII. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

A. The facility is subject to the terms and conditions of Hazardous Waste Permit NO. H013-133141 issued by FDER on February 5, 1988 and the RCRA/HSWA permit No. FL7570024037 issued by U.S. EPA on January 5, 1990. U.S. EPA and FDER shall commence the process of modifying the permit(s) to incorporate the provisions of this Agreement in a timely manner. The permit(s) shall be similarly modified after selection of the final remedial action(s) for the operable units or Facility and any public comment period

shall run concurrently with the comment period in accordance with Section XXIX (Administrative Record and Public Participation) and Sections 117 and 113(k) of CERCLA.

B. The parties intend to integrate the Air Force's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, hazardous constituents, pollutants or contaminants into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. Section 9601 et seq.; satisfy the corrective action requirements of Sections 3004(u) and (v) of RCRA for a RCRA permitted facility, and Section 3008(h), 42 U.S.C. Section 6928(h) for interim status facilities; and meet or exceed all applicable or relevant and appropriate federal and state laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. Section 9621, and applicable State Law.

C. Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement will be protective of human health, welfare and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action (i.e., no further corrective action will be required) under RCRA, as amended. The Parties agree that with respect to releases of hazardous wastes or hazardous constituents covered by this Agreement, RCRA and applicable state laws shall be considered an applicable or relevant and appropriate requirement pursuant to Section 121 of CERCLA, 42 U.S.C. Section 9621. Releases or other hazardous waste activities not covered by this Agreement remain subject to all applicable State and federal environmental requirements.

D. 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 on-going hazardous waste management activities at the Facility may require the issuance of permits under federal and state laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, because RCRA permits have been issued to the Facility for on-going hazardous waste management activities at the Facility, U.S. EPA and/or FDER shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provisions for extension of such schedules), of this Agreement into such permits. With respect to those portions of this Agreement incorporated by reference into permits, the parties intend that administrative or judicial review of the incorporated portions shall, to the extent review is authorized by law, only occur under the provisions of CERCLA or applicable state law.

E. Nothing in this Agreement shall alter the Parties' authority with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. Section 9604; and Section 403.726 Florida Statutes.

VIII. CONSULTATION WITH U.S. EPA AND FDER

A. Applicability:

1. The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either primary or secondary documents. In accordance with Section 120 of CERCLA, 42 U.S.C. Section 9620, and 10 U.S.C. Section 2705, the Air Force will normally be responsible for issuing primary and secondary documents to U.S. EPA and FDER. As of the effective date of this Agreement, all draft and final documents for any deliverable identified herein shall be prepared, distributed and subject to dispute in accordance with Paragraphs B through J below.

2. The designation of a document as "draft" or "final" is solely for purposes of consultation with U.S. EPA and FDER 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.

B. General Process for RI/FS and RD/RA documents:

1. "Primary documents" include those reports, plans and studies that are major, discrete portions of RI/FS or RD/RA activities. Primary documents are initially issued by the Air Force in draft subject to review and comment by U.S. EPA and FDER. Following receipt of comments on a particular draft primary document, the Air Force 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 thirty (30) calendar days after issuance if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

2. "Secondary documents" include those reports, plans and studies that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by the Air Force in draft subject to review and comment by U.S. EPA and FDER. Although the Air Force will respond to comments received, the draft secondary documents may be finalized in the context of the corresponding primary documents. A secondary document may be disputed at the time the corresponding draft final primary document is issued.

C. Primary Documents:

1. The Air Force shall complete and transmit primary documents, if such documents are required under the SMP, to U.S. EPA and FDER for review and comment in accordance with the provisions of this Section. Unless otherwise specified, the documents shall be for a specific operable unit(s).

a. Site Community Relations Plan (CRP)

b. Remedial Investigation and/or Feasibility Study (RI/FS) Work Plans

c. Risk Assessment Reports

d. Remedial Investigation (RI) Reports

e. Feasibility Study (FS) Reports (including Detailed Analysis of Alternatives)

f. Proposed Remedial Action Plans (PRAPs)

g. Records of Decision (RODs)

h. Remedial Design Work Plans

i. Remedial Design (RD) Reports (including Design Plans and Specifications)

j. Remedial Action (RA) Work Plans

k. Remedial Action-Post Construction Reports (Project Closeout Reports)

2. Only the draft final primary documents identified above shall be subject to dispute resolution. The Air Force shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Section XXIII (Deadlines) of this Agreement.

D. Secondary Documents:

1. The Air Force shall complete and transmit draft documents of the following secondary documents, if such documents are required under the Site Management Plan to U.S. EPA and FDER for review and comment in accordance with the provisions of this Section. Unless otherwise specified, the documents shall be for specific operable unit(s). Secondary documents include:

a. Preliminary Characterization Summary Reports

b. Site Health and Safety Plan

c. Baseline Risk Assessment

d. Site Sampling and Analysis Plan (including Quality Assurance Project Plan (QAPP) and Field Sampling Plan)

e. Quarterly Progress Reports (RI and RA)

f. Treatability Study Reports

g. Remedial Preliminary Design Reports

2. Although U.S. EPA and FDER may comment on the draft documents for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Paragraph B hereof. Target dates shall be established for the completion and transmission of draft secondary documents pursuant to Section XXIII (Deadlines) of this Agreement.

E. Meetings of the Project Managers on Development of Documents:

The Project Managers shall confer monthly except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Facility on the primary and secondary documents. Prior to preparing any draft document described in Paragraphs C and D above, the Project Managers shall discuss the data to be reported in an effort to reach a common understanding with respect to the results to be presented in the draft document to the maximum extent practicable.

F. Identification and Determination of Potential ARARs:

1. For those primary or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft document, the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. FDER shall identify all potential State ARARs as early in the remedial process as possible consistent with the requirements of Section 121 of CERCLA, 42 U.S.C. Section 9621 and the NCP. Draft ARAR determinations shall be prepared by the Air Force in accordance with Section 121(d)(2) of CERCLA, 42 U.S.C. Section 9621(d)(2), the NCP and pertinent U.S. EPA/State guidance/policy that is consistent with CERCLA and the NCP.

2. In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on an operable unit basis. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be re-examined throughout the RI/FS process until a ROD is issued.

G. Review and Comment on Draft Documents:

1. The Air Force shall complete and transmit each draft primary document to U.S. EPA and FDER on or before the corresponding deadline established for the issuance of the document. The Air Force shall complete and transmit the draft secondary documents in accordance with the target dates established for the issuance of such documents pursuant to Section XXIII (Deadlines) of this Agreement.

2. Unless the Parties mutually agree to another time period, all draft documents shall be subject to a sixty (60) day period for review and comment. Review of any document by the U.S. EPA and FDER may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP and any pertinent U.S. EPA/State guidance or policy and with applicable State law. Comments by the U.S. EPA and FDER shall be provided with adequate specificity so that the Air Force may respond to the comment and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Air Force, the U.S. EPA and FDER shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy documents, U.S. EPA or FDER may extend the sixty (60) calendar day comment period for an additional twenty (20) calendar days by written notice to the Air Force prior to the end of the sixty (60) day period. On or before the close of the comment period, U.S. EPA and FDER shall transmit their written comments to the other Parties by the United States Postal Service (USPS) mail certified receipt.

3. Representatives of the Air Force shall make themselves reasonably available to U.S. EPA and FDER during the comment period for purposes of informally responding to questions and comments on draft documents. Oral comments made during such discussions need not be the subject of a written response by the Air Force.

4. In commenting on a draft document which contains a proposed ARAR determination, the objecting Party shall include a reasoned statement whenever it objects to any portion of the proposed ARAR determination. Whenever the U.S. EPA or FDER objects, it shall explain the basis for its objection(s) in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

5. Following the close of the comment period for a draft document, the Air Force shall give full consideration to all written comments on the draft document submitted during the comment period. Within thirty (30) days of the close of the comment period on a draft primary document, the Air Force shall transmit to U.S. EPA and FDER its written response to comments received within the comment period. Within thirty (30) days of the close of the Air Force's response period to EPA and FDER comments on a draft primary document, the Air Force shall transmit to U.S. EPA and FDER a draft final primary document, which shall include the Air Force's response to all written comments received within the comment period. While the resulting draft final document shall be the responsibility of the Air Force, it shall be the product of consensus to the maximum extent possible.

6. The Air Force may extend the thirty (30) day periods for either responding to comments in a draft document and/or for issuing the draft final primary document for an additional twenty (20) days by providing written notice to U.S. EPA and FDER. In appropriate circumstances, these time periods

may be further extended in accordance with Section XXIV (Extensions) of this Agreement.

H. Availability of Dispute Resolution for Draft Final Primary Documents:

1. Dispute resolution shall be available to the Parties for draft final primary documents as set forth in Section XXVI (Resolution of Disputes) of this Agreement.

2. When dispute resolution is invoked on a draft primary document, work may be stopped in accordance with the procedures set forth in Section XXVI (Resolution of Disputes) of this Agreement.

I. Finalization of Primary Documents:

The draft final primary document shall become the final primary document if no party invokes dispute resolution within thirty (30) days of issuance of the document or, if invoked, at completion of the dispute resolution process should the Air Force's position be sustained. If the Air Force's determination is not sustained in the dispute resolution process,the Air Force shall prepare, within not more than thirty-five (35) days, a revision of the draft final document which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section XXIV (Extensions) of this Agreement.

J. Subsequent Modifications of Final Primary Documents: Following finalization of any primary document pursuant to paragraph I above, any Party to this Agreement may seek to modify the document, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Subparagraphs 1 and 2 below.

1. A Party may seek to modify a primary document after finalization if it determines, based on significant new information that the requested modification is necessary. A party may seek such a modification by submitting a concise written request to the Project Manager of the other Parties. The request shall specify the nature of the requested modification and provide justification for such modification.

2. In the event that a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke dispute resolution to determine if such modification shall be conducted. Modification of a document shall be required only upon a showing that: (1) The requested modification is based on a significant new information, and (2) the requested modification could be of significant assistance in evaluating impacts on the public health, welfare or the environment, in evaluating the selection of remedial alternatives, or in protecting human health, welfare and the environment.

3. Nothing in this Section shall alter U.S. EPA's or FDER's ability to request the performance of additional work that was not contemplated by this Agreement. The Air Force's obligation to perform such work must be established by either a modification of a report or document or by amendment to this Agreement. (See Section XXXI [Amendment of Agreement]).

IX. SCOPE OF THE AGREEMENT

A. This Agreement shall apply to all releases and threats of release of hazardous substances, pollutants, contaminants or constituents for which response authorities are provided under CERCLA/SARA and Sections 3008(h), 3004(u) and 3004(v) of RCRA, 42 U.S.C. Sections 6928(h), 6924(u) and 6924(v).

B. The Air Force shall conduct the work identified within the scope of this Agreement in accordance with the authorities cited in Section I (Jurisdiction) of this Agreement; and CERCLA; the NCP, as amended; applicable or relevant and appropriate requirements of RCRA, and as provided for in pertinent U.S. EPA or State guidance or policy, as consistently applied, and other applicable Federal or State law.

C. The U.S. EPA and FDER shall identify/all pertinent guidance in response to written requests by the Air Force for said guidance to assist the Air Force in satisfying the requirements pursuant to this Agreement.

D. This Agreement does not extend to petroleum releases that are excluded under CERCLA sections 101(14) and 104(a)(2) and that are addressed under FAC Chapter 17-770. A list of potential sources of contamination as identified by the Air Force that fall in this category are listed in attachment F. Documents that support the Air Force's conclusion that these PSCs are not covered by CERCLA or RCRA will be provided to the other parties for their concurrence. Failure by all parties to concur with the Air Force's conclusions will be subject to dispute resolution.

X. PERMITS

A. The Parties recognize that under Sections 121(d) and 121(e)(1) of CERCLA/SARA, 42 U.S.C. Sections 9621(d) and 9621(e)(1), and the NCP, 40 CFR Part 300 et seq. (1988) as amended, portions of the response actions called for by this Agreement and conducted entirely on-site are exempted from the procedure requirement to obtain a federal, State, or local permit but must satisfy applicable or relevant and appropriate federal and State standards, requirements, criteria, or limitations which would have been included in any such permit.

B. When the Air Force proposes a response action other than an emergency removal action to be conducted entirely on-site, which because of Section 121(e)(1) of CERCLA/SARA and the NCP does not require a federal or State permit, the Air Force shall include in the Remedial Action Work Plan:

1. Identification of the standards, requirements, criteria, or limitations which the United States Air Force would have to meet.

2. Explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified in paragraph (2) immediately above, but only to the extent that this information is not covered by the statutory obligations of the Parties to identify ARARs. Upon request of the Air Force, U.S. EPA and FDER will provide their position with respect to 1 above in a timely manner.

C. Paragraph A above is not intended to relieve the Air Force from complying with federal, State, or local hazardous waste management requirements whenever it proposes a response action involving the shipment or movement of a hazardous substance/waste off of the site.

D. The Air Force shall provide FDER and U.S. EPA Project Managers written notice of any permits or other approvals required for off-site activities as soon as it becomes aware of the requirement. Upon request, the Air Force shall provide FDER and/or U.S. EPA Project Managers copies of all such permit applications and other documents related to the permit or approval process Upon request by the Air Force Project Manager, the Project Managers of EPA and the State will assist Homestead AFB to the extent feasible in obtaining any required permit.

E. If a permit or authorization necessary for implementation of this Agreement is not issued/granted (or is proposed to be issued or renewed in a manner which is materially inconsistent with the requirements of any Work Plan reached pursuant to this Agreement), the Air Force agrees to notify FDER and U.S. EPA of the denial, delay and/or inconsistency as soon as possible. The Project Managers shall then meet to consider the appropriate course of action.

F. During the dependency of any delay pursuant to Paragraph E above, the Air Force shall continue to implement those portions of the applicable Work Plan which are not directly or indirectly dependent upon a permit/approval in question and which can be implemented pending final resolution of the permit/approval issue(s).

XI. IMMINENT AND SUBSTANTIAL ENDANGERMENT

A. The Project Managers may collectively agree on a temporary cessation of work due to an imminent and substantial endangerment to human health or the environment.

B. In the absence of the Air Force Project Manager, the EPA or FDER Project Managers can order a temporary cessation of work in order to immediately consult with the Air Force Project Manager to determine whether a formal cessation of work is warranted. In the event the Air Force Project Manager does not concur with the EPA or FDER Project Managers on the need for an immediate cessation of work, the Parties agree to discontinue work for an

interim period of time to determine whether continued cessation of work is warranted. During this period of time, the matter will be immediately referred to the Homestead AFB Installation Commander for resolution. The Air Force Project Manager will also immediately provide EPA and FDER Project Managers with communication capability to his/her office to communicate with his/her superior. The EPA or FDER DRC representative or his/her designee may verbally direct the continued cessation of work followed immediately by a formal written request in accordance with Section XXVI (Resolution of Disputes). Upon such direction all work shall be cease pending completion of Dispute Resolution. Under federal procurement law principles as applied in the Air Force, only an authorized Air Force contracting official may actually order the contractor to cease work on an emergency basis. Therefore directions to cease work must be channeled to the Installation Commander who will in turn contact the appropriate Air Force contracting official to effectuate the emergency cessation of work.

C. Notwithstanding any other provision of this Agreement, the Air Force retains the right, consistent with Executive Order 12580, to conduct such emergency actions as may be necessary to alleviate immediate threats to human health, welfare or the environment from the release or threat of release of hazardous substances, pollutants, contaminants or constituents at or from the Site. Such actions may be conducted at any time and shall be conducted in accordance with all applicable laws. Consistent with 10 U.S.C. Section 2705, the Air Force shall provide an adequate opportunity for timely review and comment by U.S. EPA, FDER and local officials for any proposal to carry out response actions with respect to any releases or threatened releases of hazardous substances creating an imminent and substantial endangerment and before undertaking such response actions. The preceding sentence does not apply if the action is an emergency removal taken because of imminent and substantial endangerment to human health, welfare or the environment and consultation would be impractical.

D. The Air Force shall provide the other Parties with oral notice after the Air Force determines that an emergency action is necessary due to an imminent and substantial endangerment to human health, welfare or the environment. Oral notice will be given on or before the close of the next business day. If the notice is required on a weekend notice will be given to the U.S. EPA and FDER at a number supplied by the U. S. EPA and FDER. In addition, within fifteen (15) days of initiation of such emergency action, the Air Force shall provide written notice to the other Parties explaining why such action is or was necessary to abate an imminent and substantial endangerment. Promptly thereafter, the Air Force shall provide the other Parties with the written bases (factual, technical, scientific) for such action and any available documents supporting such action. Upon completion of such an emergency action, the Air Force shall notify the Parties in writing that the emergency action has been implemented. Such notice shall state whether, and to what extent, the emergency action varied from the description of the action provided in the written notice provided pursuant to the second sentence of this paragraph.

E. This Section shall not be construed to relieve the Air Force from compliance with State and federal notice requirements applicable to releases.

XII. REPORTING

The Air Force shall submit to FDER and U.S. EPA quarterly written progress reports which identify and briefly describe the actions which the Air Force has taken during the previous quarter to implement the requirements of this Agreement. Progress reports shall also identify and briefly describe the activities scheduled to be taken during the upcoming quarter. Progress reports shall be submitted by the twenty-fourth (24) day of January, April, July and October for each quarter following the effective date of this Agreement. The progress reports shall include a statement of the manner and extent to which the requirements and time schedules set out in this Agreement and approved Work Plans are being met. In addition, the progress reports shall identify any anticipated delays in meeting time schedules, the reason(s) for the delay and actions taken to prevent or mitigate the delay.

The Air Force shall submit notice of a significant new site condition within fifteen (15) days of such determination by the Air Force.

XIII. NOTIFICATION

A. Unless otherwise specified in this Agreement, the following shall be sent by the USPS mail, certified-return receipt, facsimile machine or hand delivery to Project Managers or their designated agent(s):

1. Any document provided pursuant to a schedule or deadline identified in or developed under this Agreement.

2. Any required notice of significant new site conditions.

3. Any decisions on remedial action selected by the EPA.

4. Any notice of dispute and response thereto submitted under Section XXVI (Resolution of Disputes)of this Agreement.

5. Any request, and response thereto, for extensions under Section XXIV (Extensions) of this Agreement.

6. Any notice of Force Majeure under Section XXV (Force Majeure) of this Agreement.

7. Any notice of cessation of work due to an imminent and substantial endangerment situation under Section XI (Imminent and Substantial Endangerment) of this Agreement.

B. The items listed in Paragraph A above shall be transmitted as shown below:

U.S. EPA: U.S. Environmental Protection Agency
Region IV
Waste Management Division
Attn: Homestead Air Force Base Remedial Project Manager
345 Courtland Street N.E.
Atlanta, Georgia 30365

FDER: Florida Department of Environmental Regulation
Bureau of Waste Clean up
Attention: Federal Facility Coordinator
2600 Blair Stone Road
Twin Towers Office Building
Tallahassee, Florida 32399-2400

Air Force: 31 CES/DEEV
Bldg 163
Homestead AFB, Florida 33039

C. Unless otherwise requested, all routine correspondences, including quarterly progress reports, may be sent via regular mail to the above-named persons.

D. Running of timetables end on the date the document is postmarked. Upon receipt by the party of the document timetables begin to run.

XIV. PROJECT MANAGERS

A. The U.S. EPA, FDER and the Air Force shall each designate a Project Manager and Alternate for the purpose of overseeing the implementation of this Agreement. Within ten (10) days of the effective date of this Agreement, each Party shall notify the other Parties in writing of the name and address of their Project Manager/Alternate. Any Party may change its designated Project Manager/Alternate by notifying the other Parties, in writing, within seven (7) days of the change. To the maximum extent possible, communications between the parties concerning the implementation of this Agreement shall be directed through the Project Managers as set forth in Section XIII (Notification) of this Agreement. As a matter of course, all written communications shall be sent to the primary point of contact as described in Section XIII (Notification) above. Each Project Manager shall be responsible for assuring that all communications from the other Project Managers are appropriately disseminated and processed by the entities which the Project Manager represents. The Air Force Project Manager will exercise the authority of the lead agency, remedial project manager and/or on-scene coordinator pursuant to the National Contingency Plan, 40 CFR Section 300.5 and 300.120(B)(1).

B. The Project Managers or their designees shall have the authority to:

1. Take samples, request split samples and ensure that work is performed properly and pursuant to Section XV (Sampling and Data Document Availability) of this Agreement as well as pursuant to the Appendices and plans incorporated into this Agreement;

2. Observe all activities performed pursuant to this Agreement;

3. Take photographs subject to national security-related restrictions that may be imposed by military authorities at specific locations pursuant to Section 120(j) of CERCLA, 42 U.S.C. Section 9620(j);

4. Make such other reports on the progress of the work as are appropriate, and;

5. Review records, files and documents relevant to this Agreement.

C. Any Project Manager may request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or designs utilized in carrying out this Agreement, which are necessary to the completion of the project. Any minor field modifications requested by any Party must be approved orally by all three (3) Project Managers to be effective. If unanimous agreement cannot be reached on the proposed minor field modification, the Parties shall use the procedures of Section XXVI (Resolution of Disputes) of this Agreement. Within seven (7) days following a modification made pursuant to this paragraph, the Project Manager who requested the modification shall provide written notification to the other Project Managers which delineates the modification and reasons therefore.

D. The Air Force Project Manager or his designated representative shall be physically present on the Facility or reasonably available to supervise work performed at Homestead AFB during implementation of the work performed pursuant to this Agreement.

E. Each Project Manager shall make himself reasonably available to the other Project Managers for the pendency of this Agreement.

XV. SAMPLING AND DATA DOCUMENT AVAILABILITY

A. The Parties shall provide as soon as possible, but no later than 120 days after collection, quality assured results of sampling, tests or other data generated by such Party, or on their behalf, with respect to the implementation of this Agreement. If results are not available within 120 days, the Party will request an extension prior to the exparation of the 120 day period. The Parties shall use current U.S. EPA/FDER-approved quality

assurance, quality control and chain of custody procedures throughout all sample collection and analysis activities. Any deviation from the current EPA/FDER approved procedures shall be submitted and approved as part of the site sampling analysis plan.

B. At the request of any Party the sampling Party shall allow split samples to be taken by any other Party during sample collection conducted during the implementation of this Agreement. The Project Manager obtaining the sample shall notify the other Project Managers not less than twenty-one (21) calendar days in advance of any sample collection to the maximum extent practicable. If it is not possible to provide twenty-one (21) calendar days notification, the Project Manager shall notify the other Project Managers as soon as possible after becoming aware that samples will be collected. Samples scheduled to be taken without 21 days notice shall be postponed by the request of any Party.

XVI. RETENTION OF RECORDS

Each Party to this Agreement shall preserve all records and documents forming the Administrative Record for a minimum of ten (10) years after termination of this Agreement despite any other document retention statute, regulation, or policy to the contrary. After the ten (10) year period, any Party desiring to destroy/dispose of document(s)/record(s) shall notify the other Parties at least forty-five (45) days prior to destruction/disposal of any such documents or records. Upon request by any Party, all records/documents pending destruction/disposal shall be made available for the requesting Party's review and retention, unless withholding is authorized and determined appropriate by law.

XVII. FACILITY ACCESS

A. U.S. EPA and FDER authorized representatives shall have authority to enter and move about the Facility at all reasonable times for any purpose consistent with this Agreement including, among other things:

1. Inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement;

2. Reviewing the progress of the Air Force, its response action contractors or lessees in implementing this Agreement;

3. Gathering samples and conducting such analyses of those samples as is necessary to implement this Agreement; and

4. Verifying the data submitted to the U.S. EPA and FDER by the Air Force.

The Air Force shall honor all reasonable requests for such access by the U.S. EPA and FDER conditioned upon presentation of proper credentials. However, such access shall be obtained in conformance with Air Force security regulations and in a manner minimizing interference with any military operations at Homestead AFB or national security. The Parties recognize that the Facility is a National Security installation thereby requiring that the U.S. EPA and FDER shall refrain from using cameras or recording devices at the Facility without the prior permission of the Air Force. Such permission shall not be unreasonably withheld. The Air Force shall provide an escort, whenever U.S. EPA or FDER requires access to the Facility for purposes consistent with the provisions of this Agreement. The U.S. EPA and FDER shall provide reasonable notice to the Air Force Project Manager to request any necessary escorts.

B. To the extent that access is required to areas of the Facility presently owned by or leased to parties other than the Air Force, the Air Force agrees to initiate negotiations and exercise any authority it may have to obtain access pursuant to Section 104(e) of CERCLA/SARA, 42 U.S.C. Section 9604(e), from the present owners and/or lessees within thirty (30) days after the relevant submittals which require access are finalized. The Air Force shall use its best efforts to obtain access agreements which shall provide reasonable access to the authorized representatives of all Parties.

C. To the extent practicable, the access agreements, if any, shall provide that the owners of any property where Air Force monitoring wells, pumping wells, treatment facilities or other response actions are to be located, shall notify the Parties by USPS mail, certified-receipt, at least forty-five (45) calendar days prior to any conveyance or any other transfer of any interest in the property. The Air Force will use its best efforts to insure the continued operation of the monitoring wells, treatment facilities, or other response actions installed pursuant to this Agreement.

D. Should the Air Force be denied access to non-federal property, it will advise the Parties of that denial and will describe those actions taken to gain access within thirty (30) days of the denial. Within fifteen (15) days of such notice, the Air Force shall submit appropriate modification(s) to affected Work Plans.

E. The Air Force Project Manager may request the assistance of the other Parties' Project Managers in obtaining access to non-federal property as appropriate.

XVIII. CONFIDENTIAL INFORMATION

A. The Air Force may possess information which is subject to a confidentiality claim as established by the Air Force pursuant to regulations found at 32 C.F.R. Part 806. In the event that the Air Force submits information to other parties pursuant to this Agreement which is subject to a confidentiality claim, such information shall be clearly designated by the Air

Force as confidential. If no confidentiality claim accompanies the information when it is submitted, the information may be made available to the public without further notice to the Air Force.

B. Upon receipt of material claimed as confidential, U.S. EPA shall review the confidentiality claim pursuant to 40 C.F.R. Part 2, and shall make an independent confidentiality determination. The Air Force's prior confidentiality determination made pursuant to 32 C.F.R. Part 806 shall be relevant to, but shall not control, U.S. EPA's confidentiality determination. In case of a dispute between interpretations of 40 C.F.R. Part 2 and 32 C.F.R. 806, U.S. EPA's and the Air Force's respective Office of General Counsel will resolve the confidentiality determination.

C. In the event that U.S. EPA determines that information submitted by the Air Force pursuant to this Agreement contains confidential business information ("CBI"), U.S. EPA shall manage such information according to U.S. EPA procedures for the management of CBI.

D. Nothing in this Part shall serve as a limitation on the Air Force's right to classify information for national security purposes pursuant to the national security provisions referenced in Section 120(j)(2) of CERCLA, 42 U.S.C. 9620(j)(2), or to seek site-specific Presidential orders under Section 120(j)(1) of CERCLA, 42 U.S.C. 9620(j)(1). Except as otherwise provided by Section 120(j) of CERCLA, or otherwise provided by law, analytical data shall not be claimed as confidential by the Air Force.

E. Notwithstanding the foregoing, the parties recognize that documents submitted to FDER, whether draft or final in form, are subject to provisions of Chapter 119 F.S.

XIX. FIVE YEAR REVIEW

If an RA is selected that results in any hazardous substances, pollutants, or contaminatns remaining at the site, the Air Force shall review such remedial action no less often than each five (5) years after the initiation of such RA to assure that human health and the environment are being protected by the RA then being implemented. The EPA and the FDER shall review the results of the five yeaar review and advise the Air Force of further action needed. Disagreements shall be resolved pursant to section XXVI (Resolution of Disputes).

XX. OTHER CLAIMS

A. Nothing in this Agreement shall constitute or be construed as a bar or release by any of the Parties 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

wastes, pollutants, contaminants or constituents found at, taken to, or taken from Homestead AFB.

B. Neither the U.S. EPA nor the State shall be held as a party to any contract entered into by the Air Force to implement the requirements of this Agreement.

C. The Air Force shall notify the appropriate federal and State natural resource trustees as required by Section 104(b)(2) of CERCLA/SARA, 42 U.S.C. Section 9604(b)(2), and Section 2(e)(2) of Executive Order 12580. Except as provided herein, the Air Force is not released from any liability which it may have pursuant to any provisions of State and federal law, including any claim for damages for liability to the destruction of, or loss of natural resources.

XXI. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

A. In consideration of the Air Force's compliance with this Agreement, and based on the information known to the Parties or reasonably available on the effective date of this Agreement, EPA, the Air Force, and the State agree that compliance with this agreement shall stand in lieu of any administrative, legal, and equitable remedies against the Air Force available to them regarding the releases or threatened releases of hazardous substances including hazardous wastes, pollutants or contaminants at the Site which are the subject of any RI/FS conducted pursuant to this Agreement and which have been or will be adequately addressed by the remedial actions provided for under this Agreement.

B. By entering into this Agreement, and notwithstanding this Section, or any other Section of this Agreement, the State does not waive any right or authority it may have under Florida law, but expressly reserves all of the rights and authority it may have thereunder, including the right to order abatement of an imminent hazard to the public health or the environment, and reserves all rights it may have under Section 121(f) of CERCLA, 42 U.S.C. Section 9621(f); and reserves the right cited in section XXXIV(D). However, the State expressly agrees to exhaust any applicable remedies provided in Section VIII (Consultation With U.S. EPA and FDER) and Section XXVI (Resolution of Disputes) of this Agreement, before pursuing any remedies it may have under the statutes which provide the jurisdictional basis for this Agreement. Unless expressly waived by law, Florida does not waive its Sovereign Immunity by entering into this Agreement.

XXII. STIPULATED PENALTIES

A. In the event that the Air Force fails to submit a primary document to U.S. EPA or FDER pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a material term or condition (including any deadlines or schedules for work under this Agreement) which relates to a CERCLA response action at the

Facility, U.S. EPA may assess a stipulated penalty against the Air Force. 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.

B. Upon determining that the Air Force has failed in a manner set forth in Paragraph A above, U.S. EPA or FDER shall so notify the Air Force in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Air Force shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Air Force shall not be liable for the stipulated penalty assessed by U.S. EPA if the failure is determined, through the dispute resolution process, not to have occurred. If dispute resolution is not invoked, a stipulated penalty shall be final upon assessment. If dispute resolution is invoked, stipulated penalties shall be final upon conclusion of dispute resolution procedures.

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

1. The facility responsible for the failure;

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

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

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

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

D. Stipulated penalties assessed pursuant to this Section shall be payable only in the manner and to the extent expressly provided for in Acts authorizing funds for and appropriations to the DoD.

E. U.S. EPA and FDER agree to share equally any stipulated penalties paid by the Air Force between the EPA Hazardous Substances Response Trust Fund, and the FDER Pollution Recovery Fund.

F. In no event shall this Section give rise to a stipulated penalty in excess of the amount set forth in Section 109 of CERCLA, 42 U.S.C. Section 9609.

G. This Section shall not affect the Air Force's ability to obtain an extension of a timetable, deadline or schedule pursuant to Section XXIV (Extensions) of this Agreement.

H. Nothing in this Agreement shall be construed to render any officer or employee of the Air Force personally liable for the payment of any stipulated penalty assessed pursuant to this Section.

XXIII. DEADLINES

A. The Air Force shall submit the Site Management Plan for federal fiscal year 1991 on or before 1 November 1990. The Site Management Plan shall include:

1. actions necessary to mitigate any immediate threat to human health or the environment;

2. a list of Operable Units subject to the Agreement;

3. a prioritization and rationale for the Operable Units at the Facility;

4. activities and schedules for work planned for the current federal fiscal year, including the schedule of submittal of primary documents; and

5. work projections for all subsequent federal fiscal years through the proposed end of each project.

B. Within the Site Management Plan, the Air Force shall propose schedule deadlines and work priorities for completion of each of the draft primary documents which shall be completed during the federal fiscal year.

C. No later than June 1 of each year thereafter, the Air Force shall submit a draft Site Management Plan which shall propose schedule deadlines and work priorities for completion of each of the draft primary and secondary documents to be submitted in the following fiscal year.

D. Within thirty (30) days of receipt of the draft Site Management Plan, U.S. EPA and FDER shall review and provide comments to the Air Force regarding the proposed schedule deadlines and work priorities for the Site. On or before 1 October the Air Force shall, as appropriate, make revisions and issue the Site Management Plan. The Parties shall meet as necessary to discuss and finalize the proposed schedule deadlines and work priorities for the Facility. If the Parties agree on proposed schedule deadlines and work priorities for the Facility, the finalized deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree on the draft

Site Management Plan on the proposed schedule deadlines and work priorities for the Facility, the matter shall immediately be submitted for dispute resolution described in Section XXVI (Resolution of Disputes).

E. The RI/FS schedules shall be jointly published by U.S. EPA and FDER in accordance with section 120(e)(1) of CERCLA.

F. The deadlines set forth in this Section, or to be established as set forth in this Section, may be extended pursuant to Section XXIV (Extensions) of this Agreement. The parties recognize that one possible basis for extension of the deadlines for completion of Remedial Investigation and Feasibility Study Reports is the identification of Significant New Site Conditions during the performance of the remedial investigation.

XXIV. EXTENSIONS

A. Either a timetable and deadlines or a 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 the Air Force shall be submitted in writing and shall specify:

1. The timetable and deadline or the schedule that is sought to be extended;

2. The length of the extension sought;

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

4. Any related timetable and deadline or schedule that would be affected if the extension were granted.

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

1. An event of force majeure as described in Section XXV (Force Majeure) of this Agreement. A force majeure shall only consistute good cause if the Air Force used all reasonable efforts to prevent or avoid the delay caused by the force majeure;

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

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

4. 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;

5. Any work stoppage within the scope of Section XI (Imminent and Substantial Endangerment); or

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

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

D. Within fourteen (14) days of receipt of a request for an extension of a timetable and deadline or a schedule, U.S. EPA and FDER shall advise the Air Force in writing of their respective positions on the request. If U.S. EPA or FDER does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position. Should U.S. EPA or FDER not concur in the requested extension or should that Party's notice of nonconcurrence not be provided within fourteen (14) days of receipt of the Air Force's written request for the extension, then the timetable and deadline or schedule which is the subject of the requested extension shall be tolled for the period of time in excess of the fourteen (14) days that it took the nonconcurring party to advise the Air Force of its position.

E. If there is consensus among the Parties that the requested extension is warranted, the Air Force shall extend the affected timetable and deadline or schedule accordingly. If there is no consensus among the Parties 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 determination resulting from the dispute resolution process.

F. Within fourteen (14) days of nonconcurrence with the requested extension, any Party may invoke dispute resolution in accordance with Section XXVI (Resolution of Disputes) of this Agreement.

G. A timely and good faith request 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, 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.

XXV. FORCE MAJEURE

A Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or prevents the performance of any obligation under this Agreement, including, but not limited to: acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage

or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; unusual delays in transportation; unusually severe weather conditions that could not be reasonably anticipated; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the Air Force; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriated funds, if the Air Force shall have made timely request for such funds as part of the budgetary process as set forth in Section XXXIV (Funding) of this Agreement. A Force Majeure shall also include any strike or other labor dispute against a Air Force contractor, whether or not within the 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 unless sufficient additional appropriated funds are not available.

XXVI. RESOLUTION OF DISPUTES

A. Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement the procedures of this Section shall apply.

B. Informal Resolution: All parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or their immediate supervisor level. If resolution cannot be achieved informally, the formal procedures of Paragraph C of this Section shall be implemented to resolve a dispute.

C. Formal Resolution:

1. Within thirty (30) days after: (1) the period established for review of a draft final primary document pursuant to Section VIII (Consultation with U.S. EPA and FDER) of this Agreement, or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position.

2. 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 immediate supervisors. During this informal dispute resolution period the Parties shall meet as many times as are necessary to discuss and attempt resolution of the dispute.

3. The Dispute Resolution Committee (DRC) will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section XIII (Notification) of this Agreement. The membership of the DRC includes:

a. U.S. EPA:

Principal: Director
Waste Management Division
U.S. EPA, Region IV

Alternate: Deputy Director
Waste Management Division
U.S. EPA, Region IV

b. State:

Principal: Director
Division of Waste Management
Florida Department of Environmental Regulation

Alternate: Deputy Director
Division of Waste Management
Florida Department of Environmental Regulation

c. Air Force:

Principal: Director of Environmental Management
HQ TAC/DEV
Langley AFB, Virginia 23665-5542

Alternate: Deputy Director of Environmental Management
HQ TAC/DEV
Langley AFB, Virginia 23665-5542

4. Following elevation of a dispute to the DRC, the DRC shall have twenty-one (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 twenty-one (21) day period, the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution within seven (7) days after the close of the twenty-one (21) day resolution period.

5. The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision signed by all Parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days, U.S. EPA's Regional Administrator shall issue a written position on the dispute. The Air Force or FDER may, within fourteen (14) days of the Regional Administrator's issuance of U.S. EPA's position, issue a written notice elevating the dispute to the Administrator of U.S. EPA for resolution in accordance with all applicable laws and procedures. In the event that a Party elects not to elevate the dispute to the Administrator within the designated fourteen (14) days escalation period, the Party shall be deemed to have agreed with Regional Administrator's written position with respect to the dispute. The membership of the SEC includes:

a. U.S. EPA: Regional Administrator
U.S. EPA, Region IV

b. State: Assistant Secretary
Florida Department of Environmental Regulation

c. Air Force: Deputy Chief of Staff for Engineering and Services
HQ TAC/DE
Langley AFB, Virginia 23665-5542

6. Upon escalation of a dispute to the Administrator of U.S. EPA pursuant to Subparagraph 4 above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the U.S. EPA Administrator shall meet and confer with the Deputy Assistant Secretary of the Air Force (Environment, Safety, and Occupational Health) and the Secretary of the Florida Department of Environmental Regulation to discuss the issue(s) under 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 set forth in this Section shall not be delegated. In the event the U.S. EPA Administrator and the Florida Secretary of the Department of Environmental Regulation disagree, the Secretary may exercise his authority pursuant to Section XXI (Covenant Not to Sue and Reservation of Rights).

D. The pendency of any dispute under this Section shall not affect the Air Force'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 of this Section. All elements of the work required by this

Agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable schedule.

E. When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Waste Management Division Director for U.S. EPA's Region IV directs, in writing, that work related to the dispute be stopped because, in U.S. EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health, welfare or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. FDER may request the U.S. EPA's Region IV Waste Management Division Director to direct work stopped for the reasons set out above. To the extent possible, the Party seeking a work stoppage shall consult with the other Parties prior to initiating a work stoppage request. After stoppage of work, if a Party believes that the work stoppage is inappropriate or may have potentially significant adverse impacts, the Party may meet with the Party directing the work stoppage to discuss that stoppage. Following this meeting, and further consideration of the issues, the U.S. EPA Waste Management Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the U.S. EPA Waste Management Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

F. Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Section, the Air Force 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.

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

XXVII. ENFORCEABILITY

A. The Parties agree that:

1. Upon the effective date of this Agreement, any standard, regulation, condition, requirement or order which has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person pursuant to Section 310 of CERCLA, 42 U.S.C. Section 9659, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. Sections 9659(c) and 9609.

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

3. All terms and conditions of this Agreement which relate to remedial actions, including corresponding timetables, deadlines or schedules, and all work associated with remedial actions, shall be enforceable by any person pursuant to Section 310(a) of CERCLA, 42 U.S.C. Section 9659(c), and any violation of such terms or conditions will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C.Sections 9569(c) and 9609.

4. Any final resolution of a dispute pursuant to Section XXVI (Resolution of Disputes) of this Agreement which establishes a term, condition, timetable, deadline or schedule shall be enforceable by any person pursuant to Section 310(a) of CERCLA, 42 U.S.C. Section 9659(c) and any violation of such term, condition, timetable, deadline or schedule will be subject to civil penalties under Sections 310(c) and 109 CERCLA, 42 U.S.C. Sections 9659(c) and 9609.

B. 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 Section 113(h) of CERCLA, 42 U.S.C. Section 9613(h), and state law.

C. Nothing in this Agreement shall be construed as a restriction or waiver of any rights the U.S. EPA or the State may have under CERCLA, including but not limited to any rights under Sections 113 and 310, 42 U.S.C. Sections 9613 and 9659. The Air Force does not waive any rights it may have under CERCLA Section 120, 42 U.S.C. Section 9620; SARA Section 211, 42 U.S.C. Section 2701 et seq.; and Executive Order 12580.

D. The Parties agree to exhaust their rights under Section XXVI (Resolution of Disputes) prior to exercising any rights to judicial review that they may have.

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

F. Notwithstanding any provision in this Section to the contrary, nothing in this Agreement shall be construed as preventing a person not subject to this Agreement from initiating judicial or administrative review of any final action made or taken by FDER as provided under state law.

XXVIII. CONVEYANCE OF TITLE

A. In the event the Air Force, General Services Administration, or any other department, agency or instrumentality of the United States, or any other party enters into any contract for the sale or transfer of all or any portion of the Site, the Air Force, the General Services Administration or other department, agency or instrumentality of the United States, or any such other party shall compy with the requirements of CERCLA Section 120(h), 42 U.S.C. 9620(h), in effectuating the sale or transfer, including but without limitation all notice requirements. In addition and as long as this Agreement is in full force and effect, the Air Force, the General Services Administration, or any other department, agency or instrumentality of the United States, or such other party shall include notice of this Agreement in any such contract and any document transferring ownership or operation of all or any portion of the Site and shall notify U.S. EPA and FDER of any such sale or transfer at least ninety (90) days prior to such sale or transfer.

B. As long as this Agreement is in full force and effect, no conveyance of any title, easement or other interest, whether legal, equitable or otherwise, in Homestead AFB or any portion thereof, shall be consummated by the Air Force, the General Services Administration, or any other department agency or instrumetality of the United States, or any other party without provision in any sale or transfer contract, transfer document or deed for performance under this Agreement. Such performance shall including, but without limitation continued operation and maintenance of any containment system, treatment system, monitoring system and the performance of any response action which is or may be installed, implemented or required pursuant to this Agreement in accordance with all applicable Federal Property Management Regulations. Furthermore, the Air Force, the General Services Administration, or any other department agency or instrumetality of the United States, or any other party shall also include in any such contract, transfer document or deed a provision for access to Homestead AFB, or the relevant portion thereof, to conduct such performance, operation and maintenacne. At least thirty (30) days prior to any such conveyance, the Air Force shall notify U.S. EPA and FDER of the provisions made for the contiued operation, maintenance and performance of any such response or remedial action(s) or systems. The Air Force shall not transfer any real property from the Facility except in compliance with Section 120(h) of CERCLA, 42 U.S.C. 9620(h) and with the terms of this Agreement.

C. No change in ownership of the Site or any portion thereof, or notice pursuant to Section 120(h)(3) of CERCLA, 42 U.S.C. 9620(h)(3), shall relieve the Air Force of its obligation to perform pursuant to the Agreement.

XXIX. ADMINISTRATIVE RECORD AND PUBLIC PARTICIPATION

A. The Parties recognize that this Agreement and all response actions arising thereunder shall comply with the administrative record and public participation requirements of CERCLA/SARA, including Sections 113(k) and 117 of SARA respectively, 42 U.S.C. Sections 9613(k) and 9617, the NCP, the public hearing requirements of Section 3008(h) of RCRA, 42 U.S.C. Section

6928(h), and U.S. EPA/State-issued guidances on administrative records, public participation and public hearings. The State agrees to inform the Air Force of all State requirements which it believes pertain to public participation. The provisions of this Section shall be carried out in a manner consistent with, and shall fulfill the intent of, Section VII (Statutory Compliance - RCRA/CERCLA Integration).

B. The Air Force shall develop and implement a Community Relations Plan (CRP) consistent with Section 117 of SARA, 42 U.S.C. Section 9617, the NCP, U.S. EPA issued guidance set forth in U.S. EPA's Community Relations Handbook, and any modifications thereto.

C. The public participation requirement of this Agreement shall be implemented so as to meet the public participation requirements applicable for modification of the RCRA permits.

D. To the extent practicable, any Party issuing any press release to the media or publishing a notice regarding any of the work required by this Agreement shall advise the other Parties of such press release or notice and the contents thereof at least forty-eight (48) hours before the issuance of such press release or notice and of any subsequent changes prior to release. This provision for notice, however, does not extend to contract solicitations for work or modifications thereto that are routinely publicized for competition purpose.

E. The Air Force agrees to establish and maintain a copy of the Administrative Record near and/or at the facility in accordance with Section 113(k) of CERCLA, 42 U.S.C. Section 9613(k). A copy of each Air Force document placed in the Administrative Record shall be supplied to U.S. EPA and FDER. An index of documents in the Administrative Record will be updated on at least a quarterly basis and provided to the U.S. EPA and FDER.

XXX. PUBLIC COMMENT

A. When the Parties agree that this Agreement or any amendments thereto, is ready for public review and comment they will sign a Letter of Intent to Execute. U.S. EPA shall then announce the availability of this Agreement or any amendment(s) thereto and the Letter of Intent to Execute for public review and comment. U.S. EPA shall accept comments from the public for a period of forty-five (45) days after such announcement. At the end of the comment period, the Parties shall review all such comments and shall either:

1. Determine that the Agreement should be executed in its present form and then be submitted for execution by those Parties;

2. Determine that further negotiation of the Agreement is necessary, in which case the Parties shall return to negotiation. After further negotiation, if agreement among the Parties is reached, the Agreement and Responsiveness Summary may be submitted again for public comment under

Paragraph A pursuant to Sections 117 and 211 of CERCLA/SARA, 42 U.S.C. Section 6917 and 10 U.S.C. Section 2705, and may be renoticed as proposed state agency action under FAC Rule 17-103.

B. As soon as possible after the execution of the Letter of Intent to Execute, the U. S. EPA shall publish a notice of proposed state agency action in a newspaper of general circulation in Dade County, Florida.

XXXI. AMENDMENT OF AGREEMENT

A. Any Party may submit a written request for amendment to the other Parties.

B. This Agreement may be amended by the unanimous written agreement of the Parties. If the Parties do not reach unanimous agreement to the proposed amendment they may enter into negotiations with a view toward resolving all points of disagreement. If, following negotiations, unanimity cannot be achieved, the amendment will not occur. Amendment proposals under this Agreement are not subject to Section XXVI (Resolution of Disputes) of this Agreement.

C. The notice procedures of CERCLA Section 117, 42 U.S.C. Section 2705 shall be followed for all proposed amendments. Public notice is not required for minor ministerial changes to this Agreement (e.g. changes in addresses). The amendment cannot be executed until such time as the public participation requirements of Section XXX (Public Comment) have been satisfied.

XXXII. RECOVERY OF EXPENSES

A. Reimbursement of U.S. EPA's Expenses:

The parties agree to amend this Section at a later date in accordance with subsequent resolution of the national issue of DoD-U.S. EPA cost reimbursement.

B. Reimbursement of Florida's Expenses:

Will be in accordance with the Defense and State Memorandum of Agreement.

XXXIII. TERMINATION

The provisions of this Agreement shall only be deemed satisfied and terminated upon receipt by the Air Force of written notice from U.S. EPA and FDER that the Air Force has demonstrated, to the satisfaction of the U.S. EPA and FDER, that all the terms of this Agreement have been completed (i.e. upon completion of all response/corrective actions at the Site). Written notice from U.S. EPA and FDER may not be unreasonably withheld. Within 90 days of receiving a written Air Force request for such notice, U.S. EPA and FDER shall

either issue a termination notice or provide a written statement of the basis for its denial and describe the Air Force actions which, in the view of U.S. EPA and FDER, would be satisfactory basis for granting a notice of completion. Such denial shall be subject to dispute resolution. Termination procedures shall be in accordance with Section XXX (Public Comment) and Section XXVI (Resolution of Disputes) of this Agreement.

XXXIV. FUNDING

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

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

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

D. If appropriated funds are not available to fulfill the Air Force's obligations under this Agreement, U.S. EPA and the State reserve the right to initiate an action against the Air Force or any other person, or to take any response/corrective action, which would be appropriate absent this Agreement.

E. Funds authorized and appropriated annually by Congress under the "Environmental Restoration, Defense" appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense (Environment) [DASD(E)] to the Air Force will be the source of funds for activities required by this Agreement consistent with Section 211 of SARA, 10 U.S.C. Section 2703. However, should the Environmental Restoration, Defense appropriation be inadequate in any year to meet the total Air Force CERCLA implementation requirements, the DOD shall employ and the Air Force shall follow a standardized DOD prioritization process which allocated that year's appropriations in a manner which maximizes the protection of human health, welfare and the environment. A standardized DoD prioritization model may be developed and utilized with the assistance of U.S. EPA and the State.

XXXV. EFFECTIVE DATE

A. This Agreement will not be executed until such time as public participation requirements of Section XXX (Public Comment) of this Agreement have been satisfied.

B. This Agreement is final agency action of the State pursuant to Section 120.69, F.S. and FAC Rule 17-103.110(3), and it is final and effective on the date filed with the Clerk of the Department of Environmental Regulation unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition this Agreement will not be effective as to the State until further order of the Department of Environmental Regulation.

C. The Parties agree that if any portion of this Agreement is determined to be unenforceable the balance of the Agreement shall remain in full force and effect.

D. This Agreement is effective upon its execution by all the Parties However, the schedules and deadlines under this Agreement will not commence until the Air Force receives written notification of execution from U.S. EPA.

XXXVI. TOTAL INTEGRATION

There are no promises, verbal understandings or other agreements of any kind pertaining to this Agreement or its appendices herein other than specified herein. This Agreement shall constitute the entire integrated agreement of the Parties.

IT IS SO AGREED:

FOR THE U.S. DEPARTMENT OF THE AIR FORCE

By: _____ DATE: 4 Feb 91
John L. Welde
31 TFW Commander, Homestead AFB, FL

FOR THE STATE OF FLORIDA

By: _____ DATE: 7 Jan 91
Dale Twachtmann, Secretary
Florida Department of Environmental Regulation

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

By: _____ DATE: DEC 18 1990
Greer Tidwell, Regional Administrator
EPA Region IV

ATTACHMENT A

This is a hisorical list of locations identified by the Air Force at Homestead AFB as PSCs under the Installation Restoration Program. These determinations have been made soley by the Air Force.

PSCs that have been investigated by Phase II or RI under the Air Force IRP and have been designated by the Air Force+ as sites requiring no further action are:

1. Fire Protection Training Area No. 2 (FPTA-2)
2. Fire Protection Training Area No. 3 (FPTA-3)
3. Electroplating Waste Disposal Area (SP-1)
4. Residual Pesticide Disposal Area (P-3)
5. Mogas Leak at the BX Service Station (SP-6)
6. Leak at the POL Bulk Fuel Storage Tank Farm (SP-4)
7. The Building 207 Suspected Tank Leak (SP-10)

PSCs that have been investigated by Phase II or RI under the Air Force IRP and remedial action may be warranted:

1. Oil Spill at the Aircraft Washrack (SP-7)
2. Leak at Pump Station No. 9 on the Flightline Apron (SP-5)
3. Leaks in the Flightline Fuel System (SP-9)
4. Entomology Storage Area (P-2)
5. Oil Leakage Behind the Motor Pool (SP-2)
6. The Thermal Treatment Facility (SP-11)

PSCs identified by the Air Force during Phase I record search as requiring no further action:

1. The Landfill (L-1)
2. PCB Spill in the Civil Engineering Storage Compound (SP-3)
3. Fire Protection Training Area No. 1 (FPTA-1)
4. Incinerator Ash Disposal Area (D-2)
5. Hardfill Storage Area (H-1)
6. Hardfill Storage Area (H-2)
7. Hardfill Storage Area (H-3)
8. Sewage Treatment Plant (D-1)
9. Defense Property Disposal Office Battery Storage Area (DPDO-1)
10. Entomology Shop-Building 371 (P-1)
11. Drum Storage Area-Building 720 (S-1)

ATTACHMENT B

PSCs at Homestead AFB Identified in the
Phase I-Records Search

1. Fire Protection Training Area No. 2 (FPTA-2)
2. Fire Protection Training Area No. 3 (FPTA-3)
3. Electroplating Waste Disposal Area (SP-1)
4. Residual Pesticide Disposal Area (P-3)
5. Mogas Leak at the BX Service Station (SP-6)
6. Leak at the POL Bulk Fuel Storage Tank Farm (SP-4)
7. Oil Spill at the Aircraft Washrack (SP-7)
8. Leak at Pump Station No. 9 on the Flightline Apron (SP-5)
9. Entomology Storage Area (P-2)
10. Oil Leakage Behind the Motor Pool (SP-2)
11. The Landfill (L-1)
12. PCB Spill in the Civil Engineering Storage Compound (SP-3)
13. Fire Protection Training Area No. 1 (FPTA-1)
14. Incinerator Ash Disposal Area (D-2)
15. Hardfill Storage Area (H-1)
16. Hardfill Storage Area (H-2)
17. Hardfill Storage Area (H-3)
18. Sewage Treatment Plant (D-1)
19. Entomology Shop-Building 371 (P-1)
20. Drum Storage Area-Building 720 (S-1)

ATTACHMENT C

Solid Waste Management Unit and Area of Concern Summary

1. List of Solid Waste Management Units requiring an RFI in accordance with the January 5, 1990 RCRA Permit:

SWMU ID No.	Description
SP-1	Electroplating Waste Disposal Area
SP-4	Leak at the POL Bulk Fuel Storage Tank Farm
FPTA-3	Fire Protection Training Area No. 3
FPTA-2	Fire Protection Training Area No. 2
P-2	Entomology Storage Area
SP-2	Oil Leakage Behind Motor Pool
P-3	Residual Pesticide Disposal Area
SP-7	Oil Spills at Aircraft Washrack

2. List of Solid Waste Management Units that do not require an RFI in accordance with the January 5, 1990 RCRA permit:

SWMU ID No.	Description
FPTA-1	Fire Protection Training Area No. 1
SP-6	Mogas Leak at BX Service Station
L-1	The Landfill
P-1	Entomology Shop-Building 371
H-1	Hardfill Storage Area
H-2	Hardfill Storage Area
H-3	Hardfill Storage Area
D-1	Sewage Treatment Plant
D-2	Incinerator Ash Disposal Area
DPDO-1	Defense Property Disposal Office Battery Storage Area
TTF-1	Thermal Treatment Facility

3. List of Solid Waste Management Units Requiring Further Assessment in accordance with the January 5, 1990 RCRA Permit:

SWMU ID No.	Description
SP-3	PCB Spill in the Civil Engineering Storage Compound

4. Area of Concern to be Referred to Underground Storage Tank and/or CERCLA Program in accordance with the January 5, 1990 RCRA Permit:

SWMU ID No.	Description
SP-5	Leak at Pump Station No. 9 on the Flight Apron

ATTACHMENT E

PSCs Requiring No Further Action as identified by the Air Force in Phase I/RI

1. The Landfill (L-1)
2. Fire Training Area No. 1 (FPTA-1)
3. Incinerator Ash Disposal Area (D-2)
4. Hardfill Storage Area (H-1)
5. Hardfill Storage Area (H-2)
6. Hardfill Storage Area (H-3)
7. Sewage Treatment Plant (D-1)
8. Defense Property Disposal Office Battery Storage Area (DPDO-1)
9. Entomology Shop-Building 371 (P-1)
10. Drum Storage Area-Building 720 (S-1)

ATTACHMENT F

FAC Chapter 17-770 Sites as identified by the Air Force as excluded by this agreement.

1. Mogas Leak at the BX Service Station (SP-6)
2. Leaks in the Flightline Fuel System (SP-9)
3. Leak at Pump Station No. 9 on the Flightline Apron (SP-5)
4. The Building 207 Suspected Tank Leak (SP-10)
5. Leak at the POL Bulk Fuel Storage Tank Farm (SP-4)