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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I,
STATE OF NEW HAMPSHIRE
AND THE
UNITED STATES DEPARTMENT OF THE AIR FORCE

IN THE MATTER OF:

THE U.S. DEPARTMENT
OF THE AIR FORCE

PEASE AIR FORCE BASE
PORTSMOUTH, NH

FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120

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APPENDIX I I-1

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

I. PURPOSE

1.1 The general purposes of this Agreement are to:

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

(b) Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986 (collectively CERCLA), the National Contingency Plan (NCP), Superfund guidance and policy, Resource Conservation and Recovery Act (RCRA), RCRA guidance and policy, applicable state law; and,

(c) Facilitate cooperation, exchange of information and participation of the Parties in such actions.

1.2 Specifically, the purposes of this Agreement are to:

(a) Identify operable unit (OU) alternatives which are appropriate at the Site prior to the implementation of final remedial action(s) for the Areas of Concerns. OU alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of OUs to EPA and the State pursuant to CERCLA and applicable state law. This process is designed to promote cooperation among the Parties in identifying OU alternatives prior to final selection of OUs.

(b) Establish requirements for the performance of a Remedial Investigation (RI) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of a Feasibility Study (FS) for the Areas of Concern to identify, evaluate and select

alternatives for the appropriate remedial action(s) to prevent, mitigate or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Areas of Concern in accordance with CERCLA and applicable state law.

(c) Identify the nature, objective and schedule of response actions to be taken at the Areas of Concern. Response actions at the Areas of Concern shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA and applicable state law.

(d) Implement the selected OU alternatives and final remedial action(s) in accordance with CERCLA and applicable state law and meet the requirements of CERCLA Section 120(e)(2), 42 U.S.C. 9620(e)(2), for an interagency agreement among the Parties.

(e) Assure compliance, through this Agreement, with RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. 6961, 6928(h), 6924(u) and (v), and other Federal and State hazardous waste laws and regulations for matters covered herein.

(f) Coordinate response actions at the Areas of Concern with the mission and support activities at Pease Air Force Base.

(g) Expedite the cleanup process and the timely transfer and redevelopment of the Site to the extent consistent with CERCLA, the NCP, and the protection of human health and the environment.

(h) Provide for operation and maintenance by the Air Force of any remedial action selected and implemented pursuant to this Agreement.

(i) Provide for State involvement in the initiation, development, selection and enforcement of remedial actions to be undertaken at Pease Air Force Base (Pease AFB), 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 applicable and relevant or appropriate requirements (ARARs) into the remedial action process.

(j) Provide for continued Air Force involvement in completing all remedial actions after official base closure.

II. PARTIES AND SCOPE

2.1 The Parties to this Agreement are the United States Environmental Protection Agency (EPA), the United States Department of the Air Force (Air Force), and the State of New Hampshire (the State). The terms of the Agreement shall apply to and be binding upon EPA, the Air Force and the State.

2.2 Each Party shall be responsible for ensuring that its contractors comply with the terms and conditions of this Agreement. Failure of a Party to provide proper direction to its contractors and any resultant noncompliance with this Agreement by a contractor shall not be good cause for an extension under Section XVI, Extensions, unless the Parties so agree or as otherwise determined through Dispute Resolution. The Air Force will notify EPA and the State of the identity and the assigned tasks of each of its contractors performing work under this Agreement upon their selection.

2.3 This Agreement shall apply to and be binding upon the Air Force, EPA, and the State, their officers, successors in office, agents and employees. This Agreement shall not be binding on any municipality or other political subdivision of the State. The Air Force shall notify its agents, members, employees, lessees and response action contractors for the Areas of Concern, of the existence of this Agreement. The Air Force agrees to include notice of this Agreement in any document transferring ownership to any subsequent owners and operators of any portion of Pease AFB in accordance with CERCLA Section 120(h), 42 U.S.C. 9620(h), and 40 C.F.R. 264.119 and .120 and shall notify EPA and the State of any such change or transfer at least sixty (60) days prior to such transfer.

2.4 The Air Force agrees it shall develop, implement and report upon a Remedial Investigation or Investigations for the Areas of Concern. The RI documents shall be subject to the review and comment procedures described in Section VII, Consultation With EPA and the State, of this Agreement. The RI(s) shall be conducted in accordance with Section XV, Deadlines, of this Agreement, and shall meet the purposes set forth in Section I, Purpose, of this Agreement.

2.5 The Air Force agrees it shall develop, implement and report upon a Feasibility Study or Studies for the Areas of Concern. The FS documents shall be subject to the review and comment procedures described in Section VII, Consultation with EPA and the State, of this Agreement. The FS shall be conducted in accordance with Section XV,

Deadlines, of this Agreement, and shall meet the purposes set forth in Section I, Purpose, of this Agreement.

2.6 The Air Force agrees it shall perform Remedial Design(s), Remedial Action(s) and Operation and Maintenance to maintain the effectiveness of response actions at the Areas of Concern in accordance with CERCLA, RCRA and applicable regulations thereof for matters covered herein.

III. DEFINITIONS

3.1 The terms used in this Agreement shall have the same definition as the terms defined in CERCLA and the NCP. In addition, the following terms used in this Agreement are defined as follows:

(a) "Agreement" shall refer to this document and shall include all Appendices to this Agreement. All such Appendices shall be attached to and made an integral and enforceable part of this Agreement.

(b) "Air Force" shall mean the United States Department of the Air Force, its employees, members, agents, and authorized representatives as well as Department of Defense (DOD), to the extent necessary to effectuate the terms of this Agreement, including, but not limited to, appropriations and Congressional reporting requirements.

(c) "ARARs" shall mean Federal and State applicable or relevant and appropriate requirements, standards, criteria, or limitations, identified, pursuant to CERCLA Section 121, 42 U.S.C. 9621. ARARs shall apply in the same manner and to the same extent that such are applied to any non-governmental entity, facility, unit or site as defined in CERCLA and the NCP. See CERCLA Section 121(d), 42 U.S.C. 9621(d).

(d) "Area of Concern" shall mean an area at Pease AFB where hazardous substances are or may have been placed or may come to be located including any area to which a release of hazardous substances has migrated or threatens to migrate prior to completion of proposed remedial action(s). The term shall include locations of potential or suspected contamination as well as known or actual contamination. Such areas require further study or a determination of what if any remediation may be necessary, or both. Areas of Concern as of the effective date of this agreement are identified in Section 5.7. Areas of Concern which are identified by any Party subsequent to the effective date of this Agreement shall be added to such list pursuant to Section XXXVIII, Amendment or Modification of Agreement.

(e) "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, Pub. L. No. 96-510, 42 U.S.C. 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, and any subsequent amendment.

(f) "Days" means calendar days, unless business days are specified. Any submittal or written statement of dispute which under the terms of this Agreement would be due on Saturday, Sunday, or holiday shall be due on the following business day.

(g) "Deadline" shall be the time limitation applicable to issuance of a draft primary document which has been specifically established under the terms of this Agreement.

(h) "Documents" shall mean any records, reports, correspondence or retrievable information of any kind relating to treatment, storage, disposal, investigation, and remediation of hazardous substances, hazardous constituents, pollutants or contaminants at or migrating from Pease AFB for matters covered by this Agreement.

(i) "EPA" shall mean the United States Environmental Protection Agency, its employees, agents, and authorized representatives.

(j) "Federal Facility" shall mean Pease AFB as defined herein.

(k) "Feasibility Study" or "FS" means a study conducted pursuant to CERCLA and the NCP which fully develops, screens and evaluates in detail remedial action alternatives to prevent, mitigate, or abate the migration or the release of hazardous substances, pollutants or contaminants at and from the Areas of Concern. The Air Force shall conduct and prepare the FS in a manner to support the intent and objectives of Section XXI, Statutory Compliance/RCRA-CERCLA Integration.

(l) "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, as amended.

(m) "Operable Units" or "OUs" shall mean all discrete remedial actions, other than removal actions, implemented prior to a final remedial action which

are consistent with the final remedial action and which are taken to prevent or minimize the release of hazardous substances, pollutants or contaminants to prevent endangerment of the public health and welfare, or the environment. All OUs shall be undertaken in accordance with the NCP and the requirements of CERCLA, and applicable State laws. OU shall have the same meaning as defined in the NCP.

(n) "Parties" shall mean the Air Force, EPA and the State.

(o) "Pease Air Force Base" or "Pease AFB" shall mean the real property located in the towns of Newington and Greenland and the City of Portsmouth, Rockingham County, New Hampshire, known as Pease Air Force Base (as shown on the map in Appendix I of this Agreement) and comprising approximately 4,365 contiguous acres, and any area off of Pease AFB to or under which a release of hazardous substances has migrated, or threatens to migrate, from a source on or at said base. For purposes of this Agreement, "Pease Air Force Base" or "Pease AFB" shall mean such real property even if later transferred by the Air Force.

(p) "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616, and any subsequent amendments.

(q) "Record of Decision" shall be a public document or documents that explains which remedial alternative(s) (which may include a no-action alternative) will be implemented and includes the basis for the selection of the alternative(s) for one or more Areas of Concern. It is based on information and technical analysis generated during the RI/FS and consideration of public comments.

(r) "Remedial Investigation" or "RI" means that investigation conducted pursuant to CERCLA and the NCP. The RI serves as a mechanism for collecting data for the Areas of Concern and waste characterization and conducting treatability studies as necessary to evaluate performance and cost of the treatment technologies. The RI will include a delineation of the boundaries of the Areas of Concern. The data gathered during the RI

will also be used to conduct a baseline risk assessment, perform a feasibility study, and support the design of a selected remedy. The Air Force shall conduct and prepare the RI in a manner to support the intent and objectives of Section XXI, Statutory Compliance/RCRA-CERCLA Integration.

(s) "Remedy" or "Remedial Action" or "RA" shall have the same meaning as provided in Section 101(24) of CERCLA, 42, U.S.C. 9601(24), and the NCP, and may consist of Operable Units.

(t) "Remove or Removal" shall have the same meaning as provided in Section 101(23) of CERCLA, 42 U.S.C. 9601(23), and the NCP.

(u) "Schedule" shall mean the time limitations established for the completion of remedial designs and remedial actions (RDs/RAs) at the Site.

(v) "Site" shall mean Pease AFB. For purposes of obtaining permits, the terms "on-site" and "off-site" shall have the same meaning as provided in the NCP.

(w) "State" shall mean the State of New Hampshire as represented by the Department of Environmental Services and the Office of the Attorney General in consultation with the Pease Development Authority and other agencies.

(x) "Timetable" shall be the collective term for all the "Deadlines" established in Section XV, Deadlines.

IV. JURISDICTION

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

(a) EPA enters into those portions of this Agreement that relate to the RI/FS pursuant to CERCLA Section 120(e)(1), 42 U.S.C. 9620(e)(1), and RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. 6928(h) 6924(u) and (v) and Executive Order (E.O.) 12580;

(b) EPA enters into those portions of this Agreement that relate to operable units and final remedial actions pursuant to CERCLA Section 120(e)(2), 42 U.S.C. 9620(e)(2), RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. 6928(h), 6924(u) and (v), and E.O. 12580;

(c) The Air Force enters into those portions of this Agreement that relate to the RI/FS, operable units and the final remedial actions pursuant to CERCLA Sections 120(e)(1) and (2), 42 U.S.C. 9620(e)(1) and (2), RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. 6961, 6928(h), 6924(u) and (v), E.O. 12580, the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 and the Defense Environmental Restoration Program (DERP), 10 U.S.C. 2701 et. seq.;

(d) The State enters into this Agreement pursuant to CERCLA Sections 120(f) and 121(f), 42 U.S.C. 9620(f), and 9621(f), Section 3006 of RCRA, 42 U.S.C. 6926, and applicable State law.

V. FINDINGS OF FACT

5.1 Pease AFB was listed on the National Priorities List (NPL) update of February 21, 1990, 55 Fed. Reg. 6154 and is therefore subject to the special provisions for federal facility NPL sites in CERCLA Section 120, 42 U.S.C. 9620.

5.2 Pease AFB is located in the towns of Newington and Greenland and the City of Portsmouth, Rockingham County, New Hampshire. Pease AFB was established in 1951. The Base is owned and operated by the United States through the United States Department of the Air Force.

5.3 Pease AFB is a facility under the jurisdiction, custody, or control of the Department of Defense within the meaning of E.O. 12580, 52 Fed. Reg. 2923, 29 Jan. 87 and within the meaning of DERP, 10 USC 2701 et seq. 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.

5.4 The Air Force plans to close Pease AFB and transfer most of the property comprising Pease AFB. Closure must be initiated no later than September 30, 1991, and completed no later than September 30, 1995. Pub. L. No. 100-526, Section 201(3).

5.5 The Pease Development Authority (PDA) is the State agency established to develop and implement a plan for the reuse and redevelopment of Pease AFB following closure by the Air Force. RSA 12-G:1 et seq. The PDA is authorized to acquire the Base, RSA 12-G:1;7, IV; and with limited exceptions is the only State agency, municipality or political subdivision of the State authorized to acquire property at Pease AFB from the Air Force, RSA 12-G:9, III-IX. Following closure, the State through the PDA intends to acquire significant portions of the property comprising Pease AFB. The present condition of the Site and the requirements for cleanup will impact the manner and degree to which Pease AFB may be reused and developed following Base closure.

5.6 The New Hampshire Department of Environmental Services (DES) is the State agency responsible, in conjunction with the Office of the Attorney General, for enforcing State laws and rules relative to the management and cleanup of hazardous substances and hazardous waste in New Hampshire and under this Agreement.

5.7 There are locations within Pease AFB where hazardous substances have been deposited, stored, placed or otherwise come to be located in accordance with CERCLA Section 101(9) and (14), 42 U.S.C. 9601(9) and (14). Additionally, there have been or may be releases into the environment of hazardous substances, pollutants or contaminants at or from the Federal Facility within the meaning of CERCLA Section 101(22), 42 U.S.C. 9601(22), 9604, 9606, and 9607 and N.H. RSA 147-A:9 and 13 and N.H. RSA 147-B:10.

5.8 In 1984, the Air Force initiated the Installation Restoration Program (IRP) review of Pease AFB starting with a program records search conducted by CH2M Hill, Inc. Air Force studies by Roy F. Weston, Inc. in 1987-1989 identify various waste disposal areas on the base, including ones that received hazardous wastes, such as organic solvents, pesticides, paint strippers and other industrial wastes. For example, the reports indicated six landfills, two areas where waste oil and solvents were burned for fire fighting exercises, and additional areas where solvents and other liquids were discharged on the ground or possibly migrated to. These locations were identified as "sites" or "areas" in the report and other technical documents and are enumerated as:

site 1	Landfill 1
site 2	Landfill 2
site 3	Landfill 3
site 4	Landfill 4
site 5	Landfill 5
site 6	Landfill 6
site 7	Fire Department Training site No. 1
site 8	Fire Department Training site No. 2
site 9	Construction Rubble Dump No. 1
site 10	Leaded Fuel Tank Sludge Disposal Site
site 11	FMS Equipment Cleaning Site
site 12	Munitions Storage Site Solvent Disposal Site
site 13	Bulk Fuel Storage Area
site 14	Fuel Line Spill Site
site 15	Industrial Shop/Parking Apron*
site 16	PCB Spill Site
site 17	Construction Rubble Dump No. 2
site 18	Munitions Residue Burial Site
site 19	Newfields Ditch
site 20	Grafton Ditch
site 21	McIntyre Brook
site 22	Suspected Fire Training Area
site 23	Pauls Brook
site 24	Peverly Ponds/Brook
site 26	Flagstone Brook
site 37	Burn Area 2

* site 15 was further divided into the following sites:

site 31	Building 244
site 32	Building 113
site 33	Building 229
site 34	Building 222
site 35	Building 226
site 36	Building 119

There are no locations numbered 25 or 27-30.

5.9 Locations 1-11, 13, 15, 17, 19-20, 22 and 31-37 are Areas of Concern as defined in Section III, Definitions, within Pease AFB. The Air Force will be conducting a further review of Locations 12, 14, 16, 18, 21, 23-24 and 26, and a survey of the entire Pease AFB, to determine if these or other areas should be designated as additional Areas of Concern which require remedial work under this Agreement. New Areas of Concern may be added to this Agreement pursuant to Section 6.6 hereof.

5.10 Appendix I of this Agreement includes a map and a brief description of each Location referred to in Section 5.8 above.

5.11 The Air Force is the authorized delegate of the President under E.O. 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).

5.12 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.

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

5.14 For the purposes of this Agreement, the foregoing constitutes a summary of the findings upon which this Agreement is based. None of the facts related herein shall be considered admissions by any Party. This Section V 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 and enforcing the terms, of this Agreement.

VI. WORK TO BE PERFORMED

6.1 The Parties agree to perform the tasks, obligations and responsibilities described in this Section in accordance with CERCLA and CERCLA guidance and policy; the NCP; pertinent provisions of RCRA and RCRA guidance and policy; E.O. 12580; applicable State law and regulations; and all terms and conditions of this Agreement including documents prepared and incorporated in accordance with Section VII, Consultation with EPA and the State.

6.2 The Parties recognize that a significant amount of background information exists, and will be reviewed in developing the documents required by this Agreement. The Air Force need not halt currently ongoing work but may be obligated to modify or supplement work previously done to produce a final product which meets the requirements of this Agreement. It is the intent of the Parties to this Agreement that work done and data generated prior to the effective date of this agreement be utilized to the maximum extent feasible without violating ARARs or applicable guidance and policy guidelines and without risking significant technical errors.

6.3 The Air Force agrees to undertake, seek adequate funding for, fully implement and report on the following tasks, with participation of the Parties as set forth in this Agreement:

(a) Remedial Investigations of the Areas of Concern;

(b) Feasibility Studies for the Areas of Concern;

(c) All response actions, including Operable Units, for the Areas of Concern;

(d) Operation and maintenance of response actions at the Areas of Concern.

6.4 The Parties agree to:

(a) Make their best efforts to expedite the initiation of response actions for the Areas of Concern, particularly for Operable Units;

(b) Carry out all activities under this Agreement so as to protect the public health, welfare and the environment.

6.5 Following finalization of an RI/FS pursuant to Section VII, Consultation with EPA and the State, the Air Force

shall prepare and submit to EPA and the State proposed plans for Remedial Action alternatives and draft Records of Decision for Areas of Concern in accordance with Section 7.3. Notwithstanding the provisions of Section 7.9, if there is disagreement upon the final remedy to be selected, EPA retains authority, at its election, to make the final selection of the Remedial Actions for the Areas of Concern and to write the final Record of Decision to reflect that selection. Any final ROD written by EPA shall be submitted to the Air Force and the State for review and comment. Any comments shall be submitted to EPA within 30 days following receipt of EPA's final ROD. EPA shall consider such comments and may revise the final ROD at its sole discretion. Any decision to modify or not modify a ROD written by EPA shall not be subject to dispute resolution as set forth in Section XIV, Dispute Resolution.

6.6 It is understood and agreed by the Parties that any location on Pease AFB which is identified by any Party as an Area of Concern after the effective date of this Agreement will be added as an additional Area of Concern to this Agreement. Such Areas of Concern shall be added by Amendment to this Agreement pursuant to Section XXXVIII, Amendment or Modification of Agreement. Disputes relating to the addition of such an Area of Concern shall be subject to Section XIV, Dispute Resolution.

6.7 EPA and the State agree to provide the Air Force with guidance or reasonable assistance in gaining guidance relevant to the implementation of this Agreement.

VII. CONSULTATION WITH EPA AND THE STATE

Review and Comment Process for Draft and Final Documents

7.1 Applicability: The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate technical support, notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either primary or secondary documents. In accordance with CERCLA Section 120, 42 U.S.C. 9620, and 10 U.S.C. 2705, the Air Force will be responsible for issuing primary and secondary documents to EPA and the State unless otherwise agreed to by the Parties in writing. As of the effective date of this Agreement, all draft, draft final, and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with paragraphs 7.2 through 7.10 below. The designation of a document as "draft" or "final" is solely for purposes of consultation with EPA and the State 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.

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

(a) Primary documents include those reports, as specified in Section 7.3 below, that are major, discrete portions of RI/FS and/or RD/RA activities. Primary documents are initially issued by the Air Force in draft subject to review and comment by EPA and the State. 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 which will be subject to dispute resolution. The draft final primary document will become the final primary document thirty (30) days after issuance of a draft final if dispute resolution is not invoked, or as modified by decision of the dispute resolution process.

(b) Secondary documents include those reports that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by the Air Force in draft subject to review and comment by EPA and the State. 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 document is issued.

7.3 Primary Reports:

(a) The Air Force shall complete and transmit draft reports for the following primary documents to EPA and the State for review and comment for each RA or OU (Operable Unit) and final remedy in accordance with the provisions of this Section:

1) Scope(s) of Work

2) RI/FS Work Plans, including Pilot Testing, and Sampling and Analysis Plans; and

3) Quality Assurance Project Plans

4) Community Relations Plan (may be amended as appropriate to address RAs or OUs)

5) RI Reports (including Risk Assessments)

6) FS Reports (including Detailed Analysis of Alternatives)

7) Proposed Plans

8) Records of Decisions (RODs) (including no-action decisions)

9) Sixty Percent (60%) Preliminary Remedial Design

10) Final Remedial Designs (RDs)

11) Remedial Action Work Plans (to include schedules for RA, operation and maintenance plans, Construction Quality Assurance Plan, and Contingency Plan)

(b) Only the draft final reports for the 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 XV, Deadlines, of this Agreement. Primary documents may include target dates for subtasks as provided in Section 7.4. The purpose of target dates is to assist the Air Force in meeting deadlines, but target dates do not become

enforceable by their inclusion in the primary documents and are not subject to Section XV, Deadlines, Section XVI, Extensions and Section XXXV, Enforceability.

7.4 Secondary Documents:

(a) The Air Force shall complete and transmit draft reports of the following secondary documents to EPA and the State for review and comment for each RA or OU (operable unit) and final remedy in accordance with the provisions of this Section:

1) Initial Remedial Action/Data Quality Objectives

2) Site Characterization Summaries

3) Initial Screening of Alternatives

4) Sampling and Data Results

5) Treatability Studies

6) Thirty Percent (30%) Remedial Design

7) Post Screening Investigation Work Plans

(b) Although EPA and the State may comment on the draft reports for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Section 7.2 hereof. Target dates shall be established for the completion and transmission of draft secondary reports by the Project Managers. The Project Managers also may agree upon additional secondary documents that are within the scope of the listed primary reports.

7.5 Meetings of the Project Managers on Development of Reports:

The Project Managers shall meet approximately every thirty (30) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the site, including progress on the primary and secondary documents. Prior to preparing any draft report specified in Section 7.3 and 7.4 above, the Project Managers shall meet to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be prepared in the draft reports.

7.6 Identification and Determination of Potential ARARs:

(a) For those primary reports or secondary documents that consist of, or include ARAR determinations, prior to the issuance of a draft report, the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the report being addressed, including any permitting requirements which may be a source of ARARs. The State shall identify all potential state ARARs as early in the remedial process as possible consistent with the requirements of CERCLA Section 121, 42 U.S.C. 9621, and the NCP. The Air Force shall consider any written interpretation of ARARs provided by the State. Draft ARAR determinations shall be prepared by the Air Force in accordance with CERCLA Section 121(d)(2), 42 U.S.C. 9621(d)(2), the NCP and pertinent guidance issued by EPA that is consistent with CERCLA and the NCP.

(b) In identifying potential ARARs, the parties recognize that actual ARARS can be identified only on a site-specific basis and that actual ARARs depend on the specific hazardous substances, pollutants and contaminants at an Area of Concern, the particular actions proposed as a remedy and characteristics of an Area of Concern. 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.

7.7 Review and Comment on Draft Report:

(a) The Air Force shall complete and transmit each draft primary report to EPA and the State on or before the corresponding deadline established for the issuance of such reports. The Air Force shall complete and transmit each draft secondary document in accordance with the target dates established for the issuance of such reports.

(b) Unless the Parties mutually agree to another time period, all draft reports shall be subject to a forty-five (45) day period for review and comment. Review of any document by EPA and the State may concern all aspects of the report (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the

NCP, and any pertinent guidance or policy issued by EPA or the State, and with applicable State law. Comments submitted by the State may also include considerations relating to the reuse of Pease AFB property. The Parties recognize that all activities carried out under this Agreement must be protective of human health, welfare, and the environment, and be consistent with CERCLA, the NCP, and any pertinent guidance or policy issued by EPA or the State, and with applicable State and Federal law. Within these limitations the Air Force will consider all comments which may be relevant, as provided in section 7.7(e) below. At the request of any Project Manager, and to expedite the review process, the Air Force shall make an oral presentation of the report to the Parties at the next scheduled meeting of the Project Managers following transmittal of the draft report or within fourteen (14) days following the request, whichever is sooner. Comments by EPA and the State shall be provided with adequate specificity so that the Air Force may respond to the comment and, if appropriate, make changes to the draft report. 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 EPA and the State shall provide a copy of the cited authority or reference. EPA or the State may extend the forty-five (45) day comment period for an additional fifteen (15) days by providing written notice to the Air Force prior to the end of the forty-five (45) day period. On or before the close of the comment period, EPA and the State shall transmit the written comments to the Air Force by next day mail, hand delivery, facsimile, or certified letter.

(c) Representatives of the Air Force shall make themselves (and their contractor if appropriate) readily available to EPA and the State during the comment period for purposes of informally responding to questions and comments on draft reports. Oral comments made during such discussions need not be the subject of a written response by the Air Force on the close of the comment period.

(d) In commenting on a draft report which contains a proposed ARAR determination, EPA and the State shall include a reasoned statement of whether they object to any portion of the proposed ARAR

determination. To the extent that EPA or the State does object, it shall explain the basis for the objection(s) in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

(e) Following the close of the comment period for a draft report, the Air Force shall give full consideration to all written comments on the draft report submitted during the comment period. Within fifteen (15) days following the close of the comment period on a draft secondary report or draft primary report, the Parties shall hold a meeting to discuss all comments received. Within forty-five (45) days of the close of the comment period on a draft secondary report, the Air Force shall transmit to EPA and the State its written response to comments received within the comment period. Within forty-five (45) days of the close of the comment period on a draft primary report, the Air Force shall transmit to EPA and the State a draft final primary report which shall include the Air Force response to all written comments received within the comment period. While the resulting draft final report shall be the responsibility of the Air Force it shall be the product of consensus to the maximum extent possible.

(f) The Air Force may extend the forty-five (45) day period for either responding to comments on a draft report or for issuing the draft final primary report for an additional fifteen (15) days by providing written notice to EPA and the State. In appropriate circumstances, this time period may be further extended in accordance with Section XVI, Extensions, hereof.

(g) For purposes of this Section 7.7, time limitations shall commence upon receipt of the documents or comments.

7.8 Availability of Dispute Resolution for Draft Final Primary Documents:

(a) Dispute resolution shall be available to the Parties for draft final primary reports as set forth in Section XIV, Dispute Resolution.

(b) When dispute resolution is invoked on a draft final primary report, work may be stopped in accordance with the procedures set forth in

Section XIV, Dispute Resolution, regarding dispute resolution.

7.9 Finalization of Reports: The draft final primary report shall serve as the final primary report if no party invokes dispute resolution regarding the document or, if invoked, at the 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 forty-five (45) days, a revision of the draft final report 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 XVI, Extensions, hereof.

7.10 Subsequent Modifications of Final Reports and additional work: Following finalization of any primary report pursuant to 7.9 above, any Party to the Agreement may seek to modify the report, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in subparagraphs (a) and (b) below.

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

(b) 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 report shall be required only upon showing that:

(1) The requested modification is based on significant new information; and

(2) The requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial

alternatives, or in protecting human health and the environment.

(c) Nothing in this section shall alter EPA's or the State's ability to request the performance of additional work which 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 an amendment to this Agreement.

VIII. PROJECT MANAGERS

8.1 The Parties have each designated a Project Manager. The Project Managers shall be responsible for assuring implementation of the RI/FS and RD/RA in accordance with the terms of this Agreement. Communications among all Parties on all documents, including reports, comments, and other correspondence concerning the activities performed pursuant to this Agreement, to the extent practicable shall be directed through the Project Managers, or his/her designee.

8.2 The Project Managers shall meet to discuss progress as described in Section 7.5 and may bring such technical assistants as they deem appropriate. Although the Air Force has ultimate responsibility for meeting its respective timetable and deadlines or schedule, the Project Managers shall endeavor to assist in this effort by scheduling meetings to address documents, reviewing reports, overseeing the performance of environmental monitoring at Pease AFB, reviewing RI/FS or RD/RA progress, and attempting to resolve disputes informally. At least one week prior to each scheduled meeting, the Air Force will provide to the other Parties a draft agenda and summary of the status of the work subject to this Agreement. The minutes of each meeting, with the meeting agenda and all documents discussed during the meeting (which were not previously provided) as attachments, shall constitute a meeting report, which will be sent to all Project Managers within ten (10) business days after the meeting ends. If an extended period occurs between Project Manager meetings, the Project Managers may agree that the Air Force shall prepare an interim report and provide it to the other Parties. The report shall include the information that would normally be discussed in a meeting of the Project Managers.

8.3 A Project Manager may also recommend and request minor field modifications to the work performed pursuant to this Agreement, which are necessary to the completion of the project. The minor field modifications proposed under this Part must be approved orally by each Project Manager to be effective. No such work modifications can be so implemented if an increase in contract cost will result without the authorization of the Air Force Contracting Officer. If agreement cannot be reached on the proposed additional work or modification to work, the Party proposing such work or modification may request such work of modification pursuant to Section 7.10 hereof. Within five (5) business days following a

modification made pursuant to this Section, the Party requesting the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the Project Managers.

8.4 Each Project Manager shall be responsible for assuring that all communications received from the other Project Managers are appropriately disseminated to and processed by the Party which each represents.

8.5 When work is being done, the Project Manager for the Air Force shall be physically present on-site or reasonably available to supervise work performed at an Area of Concern. The Parties shall make their Project Manager reasonably available to the others for the pendency of this Agreement. The Air Force Project Manager shall have all the authority vested in the on-scene coordinator and Remedial Project Manager by the NCP. The absence of the State or EPA Project Managers from the Areas of Concern shall not be cause for work stoppage or delay.

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

8.7 The Parties shall transmit primary and secondary documents and all notices required herein by next day mail, hand delivery, facsimile or certified letter to the respective Project Managers. Time limitations shall commence upon receipt. The Air Force shall provide to EPA ten (10) copies and the State eight (8) copies each of primary and secondary documents.

8.8 The Project Manager under this Agreement are:

(a) For the Air Force:

Mr. Art Ditto, P.E.
509 CSG/DEEV
Building 149
Pease AFB, NH 03803

(b) For the EPA:

Ms. Johanna Hunter
U.S. Environmental Protection Agency
Region I, HAN-CAN1
J.F. Kennedy Federal Building
Boston, MA 02203-2211

(c) For the State:

Mr. Richard Pease
Waste Management Engineering Bureau
Department of Environmental Services
6 Hazen Drive
Concord, NH 03301

8.9 The Parties may change their respective Project Managers. Such change shall be accomplished by notifying the other Parties in writing within five (5) days of the change.

IX. QUARTERLY PROGRESS REPORTS

9.1 The Air Force shall provide quarterly written progress reports to EPA and the State unless otherwise agreed to by the Parties. At a minimum these progress reports shall:

(a) Describe actions taken pursuant to this Agreement.

(b) Include all results of sampling, tests, and all other data (or summary thereof) received or generated and verified by the Air Force during the reporting period:

(c) Include all activities completed pursuant to this Agreement during the past quarter as well as such actions and plans which are scheduled for the next quarter; and

(d) Describe any delays, the reasons for such delays, anticipated delays, concerns over possible schedule implementation or problems that arise in the execution of the work plan during the quarter and any steps that were taken to alleviate the delays or problems.

9.2 Each previous quarter's report shall be submitted to EPA and the State on January 20, April 20, July 20, October 20 of each year.

X. ACCESS

10.1 Without limiting any authority conferred on EPA or the State by statute or regulation, EPA and the State (and/or their authorized representatives) shall have authority, upon reasonable notice to enter Pease AFB or any Area of Concern at all reasonable times for purposes consistent with the provisions of the Agreement. Such access shall include, but not be limited to: (1) inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement; (2) inspecting field activities of the Air Force and its contractors relevant to this Agreement, to assure that the activities of the Air Force, its contractors and lessees in implementing this Agreement are carried out in compliance with the terms of this Agreement; (3) conducting such tests as EPA and the State Project Managers deem necessary; and (4) verifying the data submitted to EPA and the State by the Air Force. EPA and the State shall provide reasonable notice to the Air Force Project Manager and the Air Force shall honor all reasonable requests for such access by EPA and the State; however, such access shall be obtained in conformance with any statutory or Air Force regulatory requirements, and in a manner which minimizes interference with any military operations at Pease AFB.

10.2 Upon denying any aspect of access, the Air Force shall provide an explanation within seventy-two (72) hours of the reason for the denial and to the extent possible, provide a recommendation for accommodating the requested access in an alternate manner.

10.3 The Parties agree that this Agreement is subject to CERCLA Section 120(j), 42 U.S.C. 9620(j), regarding the issuance of Site Specific Presidential Orders as may be necessary to protect the national security.

10.4 If EPA or the State obtains any samples, before leaving Pease AFB or an Area of Concern, they shall give the Air Force Project Manager, or his/her designated representative, a receipt describing the sample obtained, and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be provided to all Parties.

10.5 To the extent that access is required to areas presently owned by or leased to persons or entities other than the Air Force, including other branches of the Department of Defense or the State in order to carry out activities under this Agreement, the Air Force agrees to exercise its best efforts and authorities to obtain access pursuant to Section 104(e) of CERCLA, 42 U.S.C. 9604(e),

from the present owners and/or lessees within a time period sufficient to meet any schedules established under this agreement for such activities, but in any event within sixty (60) calendar days after identification of the need for such access. The Air Force shall use its best efforts to obtain access agreements which shall provide reasonable access to EPA and the State and/or their authorized representatives. "Best efforts" for the purposes of this section shall include, but not be limited to, taking all reasonable steps to identify and locate such owners and lessees and making attempts to obtain access agreements from the owners and lessees of all areas onto which access is needed under this Agreement.

10.6 With respect to property referred to in Section 10.5 above, upon which monitoring wells, pumping wells, or treatment facilities are to be located, or other response actions are to be taken pursuant to this Agreement, any access obtained shall if practicable be conditioned upon (i) that no conveyance of title, easement, or other interest in the property shall be consummated without provisions for the continued operation of such wells, treatment facilities, or other response actions on the property, and (ii) that the owners of any such property shall notify the Air Force, EPA and the State by certified mail, at least thirty (30) days prior to any conveyance of an interest in the property, of the property owner's intent to convey and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other response actions pursuant to this Agreement.

10.7 In the event that access is not obtained within the sixty (60) day time period set forth in Section 10.5, within fifteen (15) days after the expiration of the sixty (60) day period, the Air Force shall notify EPA and the State regarding the lack of, and efforts to obtain, such access agreements. Within fifteen (15) days of such notice, the Air Force shall propose modifications (pursuant to Sections 7.10 and 8.3 of this Agreement) which are appropriate due to its inability to obtain access.

10.8 The Air Force shall take appropriate actions to ensure that all activities and response or remedial actions to be undertaken pursuant to this Agreement will not be impeded or impaired by any transaction involving an interest or right in real property relating to Pease AFB, including any fixtures located thereon owned by the United States. Such steps shall include but not be limited to providing the following in any deed, lease or other instrument evidencing such transaction:

(i) notification of the existence of this Agreement;

(ii) that the Parties shall have the rights of access to and over such property which are set forth in Section 10.1 above;

(iii) provisions for compliance with applicable health and safety plans, and for the operation of any response or remedial actions on such property (including, but not limited to, monitoring wells, pumping wells and treatment facilities);

(iv) that no subsequent transaction relating to such property shall be made without provisions in the documents evidencing such transaction for such rights of access, for compliance with applicable health and safety plans, and for the operation of any response or remedial actions on such property (including, but not limited to, monitoring wells, pumping wells and treatment facilities), and

(v) that those involved in subsequent transactions relating to such property shall provide copies of the instrument evidencing such transaction to each of the Parties by certified mail within fourteen (14) days after the effective date of such transaction.

The Air Force shall provide to EPA and the State a copy of the generic form of any deed, lease or other instrument that it will use in any transaction involving an interest or right in real property relating to Pease AFB at least thirty (30) days prior to the first use of such generic deed, lease or other instrument. In addition, in cases where the Air Force is a party to such transaction, it shall provide to EPA and the State copies of the executed deed, lease or other instrument evidencing such transaction within fourteen (14) days after the effective date of such transaction. Such generic form and such executed deed, lease, or other instrument shall include provisions which meet the requirements of Section 10.8 (i) through (v) above.

The State (including the Pease Development Authority) shall provide to EPA and the Air Force a copy of the generic form of any deed, lease or other instrument that it will use in any transaction involving an interest or right in real property relating to Pease AFB at least thirty (30) days prior to the first use of such generic deed, lease or other instrument. In addition, in cases where the State is a party to such transaction, it shall provide to EPA and the Air Force copies of the executed

deed, lease or other instrument evidencing such transaction within fourteen (14) days after the effective date of such transaction. Such generic form and such executed deed, lease, or other instrument shall include provisions which meet the requirements of Section 10.8 (i) through (v) above.

In the event of a dispute as to whether the provisions included in such generic form of deed, lease or other instrument meet the requirements of this Section 10.8, prior to the effective date of the first transaction relating to such generic form, the dispute may be referred directly to the SEC for dispute resolution pursuant to Section XIV of this Agreement. If dispute resolution is invoked in connection with such generic form of deed, lease or other instrument, the Air Force and the State will not execute the transaction instrument to which such generic form of deed, lease or other instrument relates until the completion of the dispute resolution process.

Any rights of access granted or other obligations imposed pursuant to this Section 10.8 shall expire with the termination of this Agreement pursuant to Section XX hereof.

10.9 All Parties with access to Pease AFB under this section shall comply with all applicable health and safety plans. Implementation of health and safety plans during activities under this Agreement shall be the responsibility of the Air Force and its contractors.

XI. DATA AND DOCUMENT AVAILABILITY

11.1 All Parties shall make available all sampling results, test results or other data generated through the implementation of this Agreement available to the other Parties. If data validation is not completed within sixty (60) days after the last sample is taken in the field, the Sampling Party shall request raw data or results and shall forward such data or results to the other Parties within five (5) working days after receipt by the Project Manager.

11.2 At the request of any Party, the other Parties shall allow, to extent practicable, split or duplicate samples to be taken in connection with any samples collected pursuant to the implementation of this Agreement. Each Party shall notify the other Parties not less than fourteen (14) days in advance of any scheduled sample collection activity.

11.3 If preliminary analysis indicates a potential imminent and substantial endangerment to the public health, all Project Managers shall be immediately notified.

XII. PERMITS

12.1 The Air Force shall be responsible for obtaining any Federal, State and local permits which may be necessary for the performance of work under this Agreement.

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

12.3 Section 12.2 above is not intended to relieve the Air Force from the requirement(s) of obtaining a permit whenever it proposes a response action involving either the shipment or movement of a hazardous substance, pollutants, or contaminants off-site, or the conduct of a response action off-site.

12.4 The Air Force shall notify EPA and the State in writing of any permits required for any activities it plans to undertake off-site as soon as it becomes aware of the requirement. The Air Force shall apply for any such permits and upon request provide EPA and the State copies of any such permits.

12.5 During any appeal by any Party of any permit required to implement this Agreement or during review of any proposed modification(s), the Air Force shall continue to implement those portions of this Agreement which can be reasonably implemented independent of final resolution of the permit issue(s) under appeal. However, as to work that cannot be so implemented, any corresponding timetable, deadlines, and schedule will be subject to Section XVI, Extensions, of this Agreement.

XIII. EMERGENCIES AND REMOVALS

13.1 Discovery and Notification: If any Party discovers or becomes aware of an emergency or other situation that may present an imminent and substantial endangerment to public health, welfare or the environment at or near Pease AFB, which is related to or may affect the work performed under this Agreement, that Party shall immediately orally notify all other Parties. If the emergency arises from activities conducted pursuant to this Agreement, the Air Force shall then take immediate action to notify the appropriate Federal, State and local agencies and affected members of the public.

13.2 Work Stoppage: In the event any Party determines that activities conducted pursuant to this Agreement will cause or otherwise be threatened by a situation described in Section 13.1, the Party may propose the termination of such activities. If the Parties mutually agree, the activities shall be stopped for such period of time as required to abate the danger. In the absence of mutual agreement, the activities shall be stopped in accordance with the proposal, and the matter shall be immediately referred to the EPA Region I Hazardous Waste Management Division Director for a work stoppage determination in accordance with Section 14.9.

13.3 Removal Actions:

(a) The provisions of this Section shall apply to all removal actions as defined in CERCLA Section 101(23), 42 U.S.C. 9601(23) including all modifications to, or extensions of, the ongoing removal actions, and all new removal actions proposed or commenced following the effective date of this Agreement.

(b) Any removal actions conducted at Pease AFB shall be conducted in a manner consistent with this Agreement, CERCLA, the NCP and E.O. 12580.

(c) Nothing in this Agreement shall alter the Air Force's authority with respect to removal actions conducted pursuant to CERCLA Section 104, 42 U.S.C. 9604.

(d) Nothing in this Agreement shall alter any authority the State or EPA may have with respect to removal actions conducted at Pease AFB.

(e) All reviews conducted by EPA and the State pursuant to 10 U.S.C. 2705(b)(2) will be expedited so as not to unduly jeopardize fiscal resources of the Air Force for funding the removal actions.

(f) If a Party determines that there may be an endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance, pollutant or contaminant at or from Pease AFB, including but not limited to discovery of contamination of a drinking water well at concentrations that exceed any State or federal drinking water action level or standards, the Party may request that the Air Force take such response actions as may be necessary to abate such danger or threat and to protect the public health or welfare or the environment. Such actions might include provision of alternative drinking water supplies or other removal actions listed in CERCLA Section 101(23) or (24), 42 U.S.C. 9601(23),(24), or such other relief as the public interest may require.

13.4 Notice and Opportunity to Comment:

(a) The Air Force shall provide the other Parties with timely notice and opportunity to review and comment upon any proposed removal action for Pease AFB, in accordance with 10 U.S.C. 2705(a) and (b). The Air Force agrees to provide the information described below pursuant to such obligation.

(b) For emergency removal actions, the Air Force shall provide EPA and the State with notice in accordance with Section 13.1. Such oral notification shall, except in the case of extreme emergencies, include adequate information concerning the background of the location of the proposed removal action, threat to the public health and welfare or the environment (including the need for response), proposed actions and costs (including a comparison of possible alternatives, means of transportation of any hazardous substances off-site, and proposed manner of disposal), expected change in the situation should no action be taken or should action be delayed (including associated environmental impacts), any important policy issues, and the Air Force On-Scene Coordinator recommendations. Within five (5) days of completion of the emergency action, the Air Force will furnish EPA and the State with an Action Memorandum addressing the information provided in the oral notification, and any other information required pursuant to CERCLA and the NCP, and in accordance with pertinent EPA guidance, for such actions.

(c) For other removal actions, the Air Force will provide EPA and the State with any information required by

CERCLA, the NCP, and in accordance with pertinent EPA guidance, such as the Action Memorandum, the Engineering Evaluation/Cost Analysis (in the case of non-time-critical removals) and, to the extent it is not otherwise included, all information required to be provided in accordance with paragraph (b) of this Section. Unless otherwise agreed to by the Project Managers such information shall be furnished at least forty-five (45) days before the removal action is to begin.

(d) All activities related to ongoing removal actions shall be reported by the Air Force in the progress reports as described in Section VIII, Project Managers.

13.5 Any dispute among the Parties as to whether a non-emergency action proposed under this Section is properly considered a removal action, as defined by CERCLA Section 101(23), 42 U.S.C. 9601(23), or as to the consistency of such a removal action with final remedial action, shall be resolved pursuant to Section XIV, Dispute Resolution. Such dispute may be brought directly to the Dispute Resolution Committee (DRC) or the Senior Executive Committee (SEC) at any Party's request.

XIV. DISPUTE RESOLUTION

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

14.2 Within thirty (30) days after: (1) the issuance of a draft final primary document pursuant to Section VII, Consultation with EPA and the State, or (2) any action which leads to or generates a dispute, the disputing Parties shall submit to the other Parties 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 technical, legal or factual information the disputing Party is relying upon to support its position.

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

14.4 The Dispute Resolution Committee (DRC) will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service Air Force [SES or equivalent]) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on the DRC is the Waste Management Division Director of EPA's Region I (EPA Division Director). The State representative on the DRC is the Director, Division of Waste Management, DES, or his/her designated representative. The Air Force representative on the DRC is the Director, Base Closure and Integration Division, Headquarters, United States Air Force. Written notice of any delegation of authority from the Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section VIII, Project Managers.

14.5 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.

14.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA representative on the SEC is the Regional Administrator of EPA Region I or his/her designated representative. The State representative on the SEC is the Assistant Commissioner, DES, or his/her designated representative. The Air Force representative on the SEC is the Deputy Assistant Secretary of the Air Force for Environment, Safety and Occupational Health or his/her designated representative. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision signed by all Parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days, the EPA Regional Administrator shall issue a written position on the dispute. The Air Force or the State may, within twenty-one (21) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event that a Party elects not to elevate the dispute to the Administrator within the designated twenty-one (21) day escalation period, the Party shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

14.7 A. Upon escalation of a dispute to the Administrator of EPA pursuant to Section 14.6 above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Air Force Secretariat Representative and the Commissioner of the New Hampshire DES 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 and a statement of the information upon which the decision is based. The duties of the Administrator set forth in this section shall not be delegated.

B. The State reserves its right to maintain an action under CERCLA Section 121(f)(3)(b), 42 U.S.C.

9621(f)(3)(B) to challenge the selection of a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria or limitation.

14.8 The pendency of any dispute under this section shall not affect the Air Force responsibility for timely performance of the work required by this Agreement, except that the time period for completion of work affected by such dispute shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this Agreement, which are not affected by the dispute, shall continue and be completed in accordance with the applicable schedule.

14.9 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the EPA Region I Waste Management Division Director requests, in writing, that work related to the dispute be stopped because, in EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. The State may request the EPA Division Director to order work stopped for the reasons set forth above. To the extent possible, the Parties 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 the work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the Party ordering the work stoppage to discuss the work stoppage. Following this meeting, and further consideration of the issues, the EPA Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the EPA Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

14.10 Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this part, 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.

14.11 Resolution of a dispute pursuant to this section of the Agreement constitutes a final resolution of any dispute

arising under this Agreement. The parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this Agreement.

XV. DEADLINES

15.1 The Parties have agreed to the deadlines set forth in Appendix II of this Agreement for completion of drafts of the primary documents listed therein.

15.2 For any AOC not identified as of the effective date of this Agreement the Air Force shall propose deadlines for completion of the drafts of the following primary documents within twenty-one (21) days of agreement by all Parties on the addition of the proposed AOC:

(a) Scope(s) of Work (as appropriate to address the added AOC(s))

(b) RI/FS Work Plans, including Pilot Testing, Sampling and Analysis Plans; and

(c) Quality Assurance Project Plans (QAPPs)

(d) RI Reports (including Risk Assessments)

(e) FS Reports (including initial screening of alternatives)

(f) Proposed Plans

(g) Records of Decisions (RODs) (including no-action decisions)

15.3 Within fifteen (15) days of receipt, EPA and the State shall review and provide comments to the Air Force regarding the proposed deadlines. Within fifteen (15) days following receipt of comments, the Air Force shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. If the Parties agree on proposed deadlines, the finalized deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree within thirty (30) days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Section XIV, Dispute Resolution, of this Agreement. The final deadlines established pursuant to this paragraph shall be published by EPA and the State and shall become an appendix to this agreement.

15.4 Within twenty-one (21) days of issuance of each Record of Decision issued pursuant to this Agreement, the Air Force shall propose deadlines for completion of the following draft primary documents:

(a) Sixty Percent (60%) Preliminary Remedial Design (RD)

(b) Final Remedial Designs (RDs)

(c) Remedial Action Work Plans (to include schedules for RA, operation and maintenance plans, Construction Quality Assurance Plan, and Contingency Plan)

These deadlines shall be proposed, finalized and published utilizing the same procedure set forth in Section 15.3 above.

15.5 The deadlines set forth in this Part, or to be established as set forth in this Part, may be extended pursuant to Section XVI, Extensions, of this Agreement. The Parties recognize that one possible basis for extension of the deadlines for completion of the RI/FS Reports is the identification of significant new conditions during the performance of the remedial investigation.

XVI. EXTENSIONS

16.1 Either a timetable and deadline 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:

(a) The timetable and deadlines or the schedule that is sought to be extended;

(b) The length of the extension sought;

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

(d) Any related timetable and deadlines or schedule that would be affected if the extension were granted.

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

(a) An event of Force Majeure;

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

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

(d) A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadlines or schedule; and

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

16.3 Absent agreement of the Parties with respect to the existence of good cause pursuant to Section 16.2 above, the Air Force may seek and obtain determination through the dispute resolution process that good cause exists.

16.4 Within seven (7) days of receipt of a request for an extension of a timetable and deadlines or a schedule, EPA and the State shall advise the Air Force in writing of their respective positions on the request. Any failure by EPA and the State to respond within the seven (7) day period shall be deemed to constitute concurrence in the request for extension. If EPA or the State does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

16.5 If there is a consensus among the Parties that the requested extension is warranted, the Air Force shall extend the affected timetable and deadlines 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 deadlines or schedule shall not be extended except in accordance with the determination resulting from the dispute resolution process.

16.6 Within seven (7) days of receipt of a statement of nonconcurrence with the requested extension, the Air Force may invoke dispute resolution.

16.7 A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected timetable and deadlines 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, deadlines or schedule as most recently extended. 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.

XVII. FORCE MAJEURE

17.1 A Force Majeure shall mean any event arising from causes beyond the control of the Party that causes a delay in or prevents the performance of any obligation under this Agreement, including but not limited to, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; 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 a timely request for such funds as a part of the budgetary process as set forth in Section XXIV, Funding, of this Agreement. Force Majeure shall also include any strike or other labor dispute, whether or not within control of the parties affected thereby. Force Majeure shall not include increased costs or expenses of response actions, whether or not anticipated at the time such response actions were initiated.

XVIII. EXEMPTIONS

18.1 The obligation of the Air Force to comply with the provisions of this Agreement may be relieved by a Presidential order of exemption issued pursuant to the provisions of CERCLA Section 120(j)(1), 42 U.S.C. 9620(j)(1), or RCRA Section 6001, 42 U.S.C. 6961; or the order of an appropriate court.

The State reserves any statutory right it may have to challenge any Presidential Order relieving the Air Force of its obligations to comply with this Agreement.

XIX. EPA CERTIFICATION

19.1 When the Air Force determines that any final remedial action, including any groundwater remediation, has been completed in accordance with the requirements of this Agreement for an OU and/or Area(s) of Concern, it shall so advise EPA and the State in writing in a Project Closeout Report, and shall request from EPA certification that the remedial action(s) have been completed in accordance with the requirements of this Agreement. Within ninety (90) days of the receipt of the request for EPA certification, EPA in consultation with the State shall advise the Air Force in writing that:

(a) EPA certifies that the remedial action has been completed in accordance with this Agreement based on conditions known at the time of certification; or

(b) EPA denies the Air Force's request for certification, stating in full the basis of the denial and describing the additional work needed to bring the remedial action into compliance with the terms and requirements of the primary documents relating to such remedial action.

19.2 If EPA denies the Air Force request for certification that a remedial action has been completed in accordance with this Agreement, the Air Force or the State may invoke dispute resolution to review EPA's determination on certification and/or the additional work needed. If EPA fails to respond within ninety (90) days of the Air Force's request for certification, such failure shall be treated as a denial of certification subject to dispute resolution pursuant to Section XIV of this Agreement.

XX. TERMINATION AND SATISFACTION

20.1 The provisions of this Agreement shall be deemed satisfied upon a consensus of the Parties that the Air Force has completed its obligations under the terms of this Agreement. Following EPA Certification of all remedial actions at Pease AFB pursuant to Section XIX, EPA Certification, any Party may propose in writing the termination of this Agreement upon showing that the objectives of this Agreement have been satisfied. A Party opposing termination of this Agreement shall serve its objections upon the proposing Party within thirty (30) days of receipt of the proposal and if the Parties fail to agree within thirty (30) days, the dispute will be resolved pursuant to the provisions of Section XIV, Dispute Resolution; at the option of any Party, the dispute may be submitted directly to the DRC or the SEC.

20.2 Upon termination of this Agreement, the Party which proposed termination shall place a public notice announcing termination in two local newspapers of general circulation.

XXI. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

21.1 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, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. 9601 et seq.; satisfy the corrective action requirements of RCRA Section 3004(u) and (v), 42 U.S.C. 6924(u) and (v), for RCRA permit, and RCRA Section 3008(h), 42 U.S.C. 6928(h) for interim status facilities; and to meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations to the extent required by CERCLA Section 121, 42 U.S.C. 9621 and applicable state law.

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

21.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at Pease AFB may require the issuance of permits under Federal and State law. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to the Air Force for on-going hazardous waste management activities at Pease AFB, EPA and the State shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. With respect to those portions of this Agreement incorporated by reference into permits, the Parties intend that judicial review of the incorporated portions shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

21.4 **Nothing in this agreement shall alter the Air Force authority with respect to removal actions conducted pursuant to CERCLA Section 104, 42 U.S.C. 9604.**

XXII. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

22.1 In consideration for 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.

22.2 This covenant not to sue does not affect any claims for natural resources damage assessments or for damage to natural resources.

22.3 Nothing in this Agreement shall restrict the Parties from taking any action under CERCLA, RCRA, state law, or other environmental statutes for any matter not covered by this Agreement.

22.4 Notwithstanding this section, or any other section of this Agreement, the State shall retain any statutory right it may have to obtain judicial review of any final decision of the EPA on selection of remedial actions pursuant to any authority the state may have under CERCLA, including Sections 113, 121(e)(2), 121(f) [including 121(f)(3)(B)(iii)], and 310 , 42 U.S.C. 9613, 9621(e)(2), 9621(f) [including 9621(f)(3)(B)(iii)], and 9659.

22.5(a) Notwithstanding this Section, or any other Section of this Agreement, the State may withdraw from this Agreement and terminate its rights and obligations under this Agreement upon sixty (60) days prior written notice to the other Parties, if, due to the inadequacy of funds appropriated to the Department of Defense "Base Closure Account" for environmental restoration activities, Pub. L. No. 101-510, §2923, to meet Air Force obligations under this Agreement, the Air Force either:

(1) requests and is granted an extension of a deadline of three hundred and sixty-five (365) days or more pursuant to Section XVI, Extensions, or

(2) fails to meet a deadline which had previously been extended on at least one occasion, pursuant to Section XVI, Extensions, due to the inadequacy of

funds appropriated to the Base Closure Account for environmental restoration activities.

(b) If, after the effective date of this Agreement, Acts of Congress expressly authorize the use of funds other than the Base Closure Account to fulfill Air Force obligations under this Agreement, then the State will be precluded from exercising its right under this Section 22.5 to withdraw from this Agreement unless such alternate source of funds, in combination with funds from the Base Closure Account, is insufficient to meet Air Force obligations under this Agreement and either of the conditions in Section 22.5(a)(1) or (2) occurs.

XXIII. OTHER CLAIMS

23.1 Nothing in this Agreement shall constitute or be construed as a bar or release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation, or any municipality, county, State or Agency or authority thereof not a signatory to this Agreement for any liability it may have arising out of or relating to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from the Pease AFB. Unless specifically agreed to in writing by the Party to be bound, EPA and the State shall not be held as a party to any contract entered into by the Air Force to implement the requirements of this Agreement.

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

XXIV. FUNDING

24.1 It is the expectation of 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 obligation under this Agreement.

24.2 In accordance with CERCLA 120(e)(5)(B), 42 U.S.C. 9620(e)(5)(B), the Air Force shall include in its annual report to Congress the specific cost estimates and budgetary proposals associated with the implementation of this Agreement.

24.3 The source of funds for activities required by this Agreement will be the Department of Defense "Base Closure Account," Pub. L. No. 101-510, §2923, or other accounts subsequently authorized and appropriated by Congress to be used for these purposes, and allocated by the Department of Defense to the Air Force according to standards then pertaining. Should the Base Closure Account appropriation for these activities be inadequate in any year to meet the total Air Force Base Closure Account environmental restoration requirements, the Department of Defense shall employ a standardized prioritization process which allocates that year's appropriations in a manner which maximizes the protection of human health and the environment at the military facilities which are then scheduled for closure. The standardized prioritization model shall be developed and utilized with the assistance of EPA and the States, based on the example of the prioritization model which is utilized for the "Environmental Restoration, Defense" ("DERA") appropriation for CERCLA activities at other, non-closing military facilities. In the event that the DERA is ever an authorized and appropriated source of funds for activities required by this Agreement, its standardized prioritization model shall be followed in allocating funding for these activities.

24.4 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. 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.

24.5 If appropriated funds are not available to fulfill the Air Force obligations under this Agreement, EPA and the State reserve the right to initiate an action against any other person, or to take any response action, which would be appropriate absent this Agreement. If the State incurs response costs pursuant to this Section because of the unavailability of appropriated funds necessary to fulfill Air Force obligations under this Agreement, the State retains any rights it may have to recover such costs from the Air Force.

XXV. COMMUNITY RELATIONS

25.1 The Parties agree to comply with all EPA and State public participation requirements in accordance with CERCLA, and consistent with the NCP and other applicable guidance. Community relations activities shall be conducted by the Air Force in consultation with EPA and the State during activities conducted at Pease AFB, as outlined in Section VII, Consultation with EPA and the State.

25.2 The Air Force shall develop a community relations plan (CRP) pursuant to Section VII, Consultation with EPA and the State. The Air Force shall have primary responsibility for implementation of the CRP, subject to oversight by EPA and the State.

25.3 In accordance with requirements of CERCLA Section 117(d), 42 U.S.C. 9617(d), a public information repository shall be established at or near Pease AFB for public inspection. The Air Force shall place all primary documents as listed in Section XV, Deadlines, in the information repository upon finalization and release for comment. This repository may be maintained at the same location as the Administrative Record which will be located at or near Pease AFB pursuant to Section 25.4.

25.4 The Air Force shall establish and maintain an Administrative Record at two locations. The first location shall be at or near Pease AFB and the second location shall be at the EPA Records Center, 90 Canal Street, Boston, MA.

The Administrative Record developed by the Air Force shall be updated and supplied to EPA and the State, and an index of documents shall accompany each update to the Administrative Record. EPA may furnish documents to the Air Force which the Air Force shall place in the Administrative Record file to ensure that the Administrative Record includes all documents that form the basis for the selection of the response action.

25.5 Except in cases of an emergency requiring the release of public information and except in cases of enforcement actions, any Party issuing any form of written public information with reference to any of the work required by this Agreement shall ensure that the other Parties have the opportunity to review and comment on the contents thereof, at least seventy-two (72) hours prior to finalization for issuance.

XXVI. PUBLIC COMMENT ON THIS AGREEMENT

26.1 Within 15 days after the date that all Parties have executed this Agreement, the Air Force shall announce the availability of this Agreement to the public for a forty-five (45) day period to review and comment, including publication in two (2) local newspapers of general circulation. The procedures of 40 CFR Part 124.10(c) and Part 124.10(d) shall apply. Comments received shall be transmitted promptly to the other Parties after the end of the comment period. The Parties shall review such comments within thirty (30) days after the end of the comment period to determine whether or not modifications should be made in the Agreement.

26.2 If the Parties agree that the Agreement shall be made effective without any modifications, within fifteen (15) days after the end of the thirty (30) day comment review period EPA shall transmit a copy of the signed Agreement to the Air Force and the State and shall notify the Air Force and the State in writing that the Agreement is effective as of the date of the notification.

26.3 If the Parties agree that modifications are needed, they shall, within thirty (30) days after the end of the thirty (30) day comment review period, modify the Agreement and determine whether the modified Agreement requires additional public notice and comment. If the Parties determine that no additional notice and comment are required, EPA shall transmit a copy of the amendments or the modified Agreement to the Air Force and the State, and shall notify them in writing that the modified Agreement is effective as of the date of the notification. If the Parties determine that additional notice and comment are required, such additional notice and comment and review of any new comments shall be provided consistent with the provisions of this Section.

26.4 If, the Parties do not reach agreement on:

(a) whether modifications to the Agreement are needed; or

(b) what modifications are needed; or

(c) whether additional public notice and comment are required,

the matters which are in dispute shall be resolved by the dispute resolution procedures of Section XIV, Dispute Resolution, except as otherwise provided in this Section

26.4. For the purpose of this Section, the SEC shall be the final level of the dispute resolution process. The Agreement shall not be effective while the dispute resolution proceedings are underway. Each Party reserves the right to withdraw from the Agreement by providing written notice to the other Parties within twenty (20) days after receiving notice of the results of the dispute resolution proceedings. Failure by a Party to provide such a written notice of withdrawal within this twenty (20) day period shall act as a waiver of the right of the Party to withdraw from the Agreement. If no Party withdraws from the Agreement within this twenty (20) day period, EPA shall thereafter send a copy of the final Agreement to the Air Force and the State and notify them that the Agreement is effective as of the date of the notification.

26.5 This Section shall apply to amendments or modifications to this Agreement which are deemed significant pursuant to Section 38.3 hereof.

26.6 After finalization of the Agreement pursuant to this Section, EPA shall publish notice thereof in two (2) local newspapers of general circulation.

XXVII. PRESERVATION OF RECORDS

27.1 Not withstanding any document retention policy to the contrary, the Parties shall preserve, during the pendency of this Agreement and for a minimum of ten (10) years after its termination, all records and documents in the Administrative Record and any additional records and documents retained in the ordinary course of business which relate to the actions carried out pursuant to this Agreement. After this ten (10) year period, each Party shall notify the other Party at least sixty (60) days prior to destruction of any such documents. Upon request by any Party, the requested Party shall make available such records or copies of such records, unless withholding is authorized and determined appropriate by law.

27.2 All such records and documents shall be preserved for a period of ten (10) years following the termination of any judicial action regarding the work performed under this Agreement.

XXVIII. FIVE YEAR REVIEW

28.1 Consistent with CERCLA Section 121(c), 42 U.S.C. 9621(c) and in accordance with this Agreement, if a selected remedial action(s) results in any hazardous substance, pollutants or contaminants remaining at Pease AFB, the Parties shall review the remedial action program for Pease AFB at least every five (5) years after the initiation of the final remedial action to assure that human health and the environment are being protected by the remedial action being implemented.

28.2 If, upon such review, it is the conclusion of the Parties that additional action or modification of remedial action is appropriate at an Operable Unit and/or an Area of Concern in accordance with CERCLA Section 104 or 106, 42 U.S.C. 9604 or 9606, the Air Force shall implement such additional or modified action as agreed upon by the Parties.

28.3 Any dispute by the Parties regarding need for or the scope of additional action or modification to a remedial action shall be resolved under Section XIV, Dispute Resolution, of this Agreement.

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

XXIX. RESERVATION OF RIGHTS FOR RECOVERY OF EPA EXPENSES

29.1 The Parties agree to amend this Agreement at a later date in accordance with any subsequent national resolution of the issue of EPA cost reimbursement. Pending such resolution, EPA reserves any rights it may have with respect to cost reimbursement.

XXX. RECOVERY OF STATE OVERSIGHT COSTS OR STATE SUPPORT SERVICES

30.1 The Air Force agrees to request funding and reimburse the State, subject to the conditions and limitations set forth in this Section, and subject to Section XXIV, Funding, for all reasonable costs it incurs in providing services in direct support of the Air Force's environmental restoration activities pursuant to this Agreement at the Site. For purposes of this Section, "State" shall include any agency of New Hampshire state government, including but not limited to the Department of Environmental Services, the Attorney General's Office, the Pease Development Authority, and the Division of Public Health Services.

30.2 Reimbursable expenses shall consist only of actual expenditures required to be made and actually made by the State in providing the following assistance to Pease AFB:

(a) Timely technical review and substantive comment on reports or studies which the Air Force prepares in support of its response actions and submits to the State.

(b) Identification and explanation of unique State requirements applicable to military installations in performing response actions, especially State applicable or relevant and appropriate requirements (ARARs).

(c) Field visits to ensure investigations and cleanup activities are implemented in accordance with appropriate State requirements, or in accordance with agreed upon conditions between the State and the Air Force that are established in the framework of this Agreement.

(d) Support and assistance to the Air Force in the conduct of public participation activities in accordance with federal and State requirements for public involvement.

(e) Participation in the review and comment functions of Air Force Technical Review Committees.

(f) Other services specified in this Agreement.

30.3 Within ninety (90) days after the end of each quarter of the Federal fiscal year, the State Project Manager shall submit to the Air Force an accounting of all State costs actually incurred during that quarter in providing direct

support services under this Section. Such accounting shall be accompanied by cost summaries and be supported by documentation which meets federal auditing requirements. The summaries will set forth employee-hours and other expenses by major type of support service. All costs submitted must be for work directly related to implementation of this Agreement and not inconsistent with either the National Contingency Plan (NCP) or the requirements described in OMB Circulars A-87 (Cost Principles for State and Local Governments) and A-128 (Audits for State and Local Cooperative Agreements with State and Local Governments) and Standard Forms 424 and 270. The Air Force has the right to audit cost reports used by the State to develop the cost summaries. Before the beginning of each fiscal year, the State shall supply a budget estimate of what it plans to do in the next year in the same level of detail as the billing documents.

30.4 Except as allowed pursuant to Sections 30.5 or 30.6 below, within ninety (90) days of receipt of the accounting provided pursuant to Section 30.3 above, the Air Force shall reimburse the State in the amount set forth in the accounting.

30.5 In the event the Air Force contends that any of the costs set forth in the accounting provided pursuant to Section 30.3 above are not properly payable, the matter shall be resolved through a bilateral dispute resolution process set forth at Section 30.9 below.

30.6 The Air Force shall not be responsible for reimbursing the State for any costs actually incurred in the implementation of this Agreement in excess of one percent (1%) of the Air Force total lifetime project costs incurred through construction of the remedial action(s). This total reimbursement limit is currently estimated to be a sum of $800,000.00 over the life of the Agreement. Circumstances could arise whereby fluctuations in the Air Force estimates or actual final costs through the construction of the final remedial action creates a situation where the State receives reimbursement in excess of one percent of these costs. Under these circumstances, the State remains entitled to payment for services rendered prior to the completion of a new estimate if the services are within the ceiling applicable under the previous estimate.

(a) Funding of support services must be constrained so as to avoid unnecessary diversion of the limited Department of Defense funds available for the overall cleanup, and

(b) Support services should not be disproportionate to overall project costs and budget.

30.7 Either the Air Force or the State may request, on the basis of significant upward or downward revisions in the Air Force's estimate of its total lifetime costs through construction used in Section 30.6 above, a renegotiation of the cap. Failing an agreement, either the Air Force or the State may initiate dispute resolution in accordance with Section 30.9 below.

30.8 Except as provided in Section 30.11, the State agrees to seek reimbursement for its expenses solely through the mechanism established in this Section, and reimbursement provided under this Section shall be in settlement of any claims for State response costs relative to the Air Force's environmental restoration activities at the Site.

30.9 Section XIV Dispute Resolution notwithstanding, this Subsection shall govern any dispute between the Air Force and the State regarding the application of this Section or any matter controlled by this Section including, but not limited to, allowability of expenses and limits on reimbursement. While it is the intent of the Air Force and the State that these procedures shall govern resolution of disputes concerning State reimbursement, informal dispute resolution is encouraged.

(a) The Air Force and State Project Managers shall be the initial points of contact for coordination of dispute resolution under this Section.

(b) If the Air Force and State Project Managers are unable to resolve a dispute, the matter shall be referred to the Director of Engineering and Services, Headquarters, U.S. Air Force, or his/her designated representative, and the Director, Waste Management Division, DES, as soon as practicable, but in any event within five (5) working days after the dispute is elevated by the Project Managers.

(c) If the Director of Engineering and Services and the Division Director are unable to resolve the dispute within ten (10) working days, the matter shall be elevated to the Commissioner, DES, and the Deputy Assistant Secretary of the Air Force for Environment, Safety, and Occupational Health.

(d) In the event the Commissioner and the Deputy Assistant Secretary of the Air Force are unable to

resolve a dispute, the State retains any legal and equitable remedies it may have to recover its expenses. In addition, the State may withdraw from this Agreement by giving sixty (60) days notice to the other Parties.

30.10 Nothing herein shall be construed to limit the ability of the Air Force to contract with the State for technical services that could otherwise be provided by a private contractor including, but not limited to:

(a) Identification, investigation, and cleanup of any contamination beyond the boundaries of Pease AFB;

(b) Laboratory analysis; or

(c) Data collection for field studies.

30.11 Nothing in this Agreement shall be construed to constitute a waiver of any claims by the State for any expenses incurred prior to the effective date of this Agreement.

30.12 The Air Force and the State agree that the terms and conditions of this Section shall become null and void when the State enters into a Defense/State Memorandum of Agreement (DSMOA) with the Department of Defense (DOD) which addresses State reimbursement.

XXXI. STATE PARTICIPATION CONTINGENCY

31.1 If the State fails to sign this Agreement within thirty (30) days of notification of the signature by both EPA and the Air Force, this Agreement will be interpreted as if the State were not a Party and any references to the State in this Agreement will have no effect. In addition, all other provisions of this Agreement notwithstanding, if the State does not sign this Agreement within the said thirty (30) days, Air Force shall only have to comply with any State requirements, conditions, or standards, including those specifically listed in this Agreement, with which the Air Force would otherwise have to comply absent this Agreement.

31.2 In the event that the State does not sign this Agreement, (a) the Air Force agrees to transmit all primary and secondary documents to the State at the same time such documents are transmitted to EPA; and (b) EPA intends to consult with the State with respect to the above documents and during implementation of this Agreement.

XXXII. QUALITY ASSURANCE

32.1 In order to provide quality assurance and maintain quality control regarding all field work and sample collection performed pursuant to this Agreement, the Air Force agrees to designate a Quality Assurance Officer (QAO) who will ensure that all work is performed in accordance with approved work plans, sampling plans and QAPPs. The QAO shall maintain for inspection a log of quality assurance field activities and provide a copy to the Parties upon request.

32.2 To ensure compliance with the QAPP, the Air Force shall arrange for access, upon request by EPA or the State to all laboratories performing analysis on behalf of the Air Force pursuant to this Agreement.

XXXIII. RELEASE OF RECORDS

33.1 The Parties may request of one another access to or a copy of any record or document. If the Party that is the subject of the request (the originating Party) has the record or document, that Party shall provide access to or a copy of the record or document; provided, however, that no access to or copies of records or documents need be provided if they are subject to claims of attorney-client privilege, attorney work product, or properly classified for national security under law or Executive Order.

33.2 Records or documents identified by the originating Party as confidential pursuant to other non-disclosure provisions of the Freedom of Information Act, 5 U.S.C. 552, shall be released to the requesting Party, provided the requesting Party states in writing that it will not release the record or document to the public without prior approval of the originating Party or order of court. Records or documents which are provided to the requesting Party and which are not identified as confidential may be made available to the public without further notice to the originating Party.

33.3 The Parties will not assert one of the above exemptions, including any available under the Freedom of Information Act, if no governmental interest would be jeopardized by access or release as determined solely by that Party.

33.4 Subject to Section 120(j)(2) of CERCLA, 42 U.S.C. 9620(j)(2), any documents required to be provided by Section VII, Consultation with EPA and State, and analytical data showing test results will always be releasable and no exemption shall be asserted by any Party other than reasons of national security under law or Executive Order.

33.5 A determination not to release a document for one of the reasons specified above shall not be subject to Section XIV, Dispute Resolution. Any Party objecting to another Party's determination may pursue the objection through the determining Party's appeal procedures.

XXXIV. TRANSFER OF REAL PROPERTY

34.1 It is understood that the Air Force is required to close Pease AFB under the Base Closure and Realignment Act, Pub.L. 100-526, Section 201(3), and in connection therewith will be transferring real property at the Base.

34.2 (a) The Air Force shall not enter into any contract for the sale or other transfer of real property owned by the United States at Pease AFB unless:

(i) such transaction is completed in accordance with the requirements of Section 120(h) of CERCLA, 42 U.S.C. 9620(h), and regulations thereunder, to the extent applicable, and

(ii) the Air Force complies with the requirements of Section 10.8 in connection with such transaction.

(b) In cases where the Air Force enters into a contract for the sale of real property owned by the United States at Pease AFB, the Air Force recognizes and acknowledges a continuing obligation under CERCLA and this Agreement to ensure that all remedial action necessary to protect human health and the environment due to past or future releases of hazardous substances, contaminants, or pollutants resulting from Air Force activities on Pease AFB will be taken on such property at Air Force expense. Such obligations exist where:

(i) the transaction involves a sale of real property completed in accordance with CERCLA Section 120(h), 42 U.S.C. 9620(h), where such property includes all or a portion of an Area of Concern; or

(ii) the transaction involves a sale of real property which does not include an Area of Concern at the time of the transaction, if such property or any portion of it later becomes an Area of Concern under this Agreement.

(c) The Air Force recognizes and acknowledges that where it has the obligation to take remedial action pursuant to its obligations under CERCLA and this Agreement, as provided in Section 34.2(b) above, the party to whom the Air Force transfers

an interest, including successors in interest and lessees and sublessees, will not assume, as between the parties to such transfer, any liability or responsibility for remedial actions which are necessary due to releases of hazardous substances, pollutants, or contaminants resulting from Air Force activities at Pease AFB. Furthermore, the Air Force recognizes and acknowledges its obligation to indemnify such transferees, successors in interest, lessees and sublessees to the extent required by the provisions of Public Law No. 101-519, Section 8056.

XXXV. ENFORCEABILITY

35.1 The Parties agree that:

(a) 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 (including the State) pursuant to CERCLA Section 310, 42 U.S.C. 9659, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under CERCLA Section 310 (c) and 109, 42 U.S.C. 9659(c) and 9609, and

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

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

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

35.2 Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any action or work where review is barred by any provision of CERCLA, including CERCLA Section 113(h), 42 U.S.C. 9613(h).

35.3 Nothing in this agreement shall be construed as a restriction or waiver of any rights EPA or the State may

have under CERCLA, including but not limited to any rights under Sections 113 and 310, 42 U.S.C. 9613 and 9659. The Air Force does not waive any rights it may have under CERCLA Section 120, 42 U.S.C. 9620, DERP, 10 USC 2701 et seq. and E.O. 12580.

35.4 The Parties agree to exhaust their rights under Section XIV, Dispute Resolution, prior to exercising any rights to judicial review that they may have.

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

XXXVI. STIPULATED PENALTIES

36.1 In the event that the Air Force fails to submit a primary document set forth in Section VII, Consultation with EPA and the State, in this Agreement to EPA and the State pursuant to the appropriate timetable or deadlines in accordance with the requirements of this Agreement or fails to comply with a term or condition of this Agreement which relates to an OU or final remedial action, EPA may assess and the State may demand the assessment of 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 paragraph occurs. In the event EPA does not assess a stipulated penalty pursuant to a State demand, the matter may be referred to Dispute Resolution, pursuant to Section XIV, Dispute Resolution.

36.2 Upon determining that the Air Force has failed in a manner set forth in Section 36.1, EPA 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 the EPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

36.3 The annual report required by CERCLA section 120(e)(5), 42 U.S.C. 9620(e)(5), shall include, with respect to each final assessment of a stipulated penalty against the Air Force under this Agreement, each of the following:

(a) The Federal facility responsible for the failure;

(b) A statement of the facts and circumstances giving rise to the failure;

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

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

(e) The total dollar amount of the stipulated penalty assessed for the particular failure.

36.4 Stipulated penalties assessed pursuant to this Section shall be payable only in the manner and to the extent expressly provided for in Acts of Congress authorizing funds for, and appropriations to, the DOD. EPA and the State agree to share equally any stipulated penalties paid by the Air Force to the extent permitted by law.

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

36.6 This section shall not affect the Air Force ability to obtain an extension of a timetable, deadline or schedule pursuant to Section XVI, Extensions, of this Agreement.

36.7 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.

XXXVII. BASE CLOSURE

37.1 Closure of Pease AFB will not affect the Air Force's obligation to comply with the terms of this Agreement and specifically to ensure the following:

(a) Continuing rights of access for EPA and the State in accordance with the terms and conditions of Section X, Access;

(b) Availability of a Project Manager to fulfill the terms and conditions of this Agreement;

(c) Designation of alternate DRC members as appropriate for the purposes of implementing Section XIV, Dispute Resolution; and

(d) Adequate resolution of any other problems identified by the Project Managers regarding the effect of base closure on the implementation of this Agreement.

37.2 Closure of Pease AFB will not constitute a Force Majeure under Section XVII Force Majeure, nor will it constitute good cause for extensions under Section XVI Extensions, unless mutually agreed by the Parties, or decided pursuant to Section XIV, Dispute Resolution, of this Agreement.

XXXVIII. AMENDMENT OR MODIFICATION OF AGREEMENT

38.1 Except as provided in Sections 7.10 and 8.3, this Agreement can be amended or modified solely upon written consent of the Parties. Such amendments or modifications shall be signed by the signatories to this Agreement or their successors or their designees, and shall have as the effective date that date on which they are signed by all Parties. Notice thereof shall be provided by the last signatory pursuant to Section VIII, Project Managers.

38.2 The Party initiating the amendment or modification of this Agreement shall propose in writing the amendment or modification for distribution and signature of the other Parties.

38.3 Any amendments or modifications after the effective date of this Agreement which the Parties mutually agree are minor changes in this Agreement shall be published in a local newspaper of general circulation. Any such amendments or modifications which the parties mutually agree are significant changes in this Agreement shall be published in a newspaper and the public shall be given an opportunity to comment in a manner consistent with Section XXVI, Public Comment on this Agreement, of this Agreement. In the event that the Parties cannot mutually agree, the changes shall be treated as significant changes.

XXXIX. EFFECTIVE DATE

39.1 This Agreement shall become effective in accordance with Section XXVI, Public Comment on this Agreement.

39.2 Any timetable and deadlines, schedules, or RODs required by this Agreement are effective upon finalization and incorporation into this Agreement.

Each undersigned representative of a Party certifies that he/she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

UNITED STATES AIR FORCE

BY: _____ _____
Joseph A. Ahearn DATE
Major General, USAF
Director of Engineering and Services
Headquarters, United States Air Force

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY: _____ _____
James M. Strock DATE
Assistant Administrator
Office of Enforcement

BY: _____ _____
Julie Belaga DATE
Regional Administrator

STATE OF NEW HAMPSHIRE

BY: _____ _____
Robert Varney DATE
Commissioner, Department of
Environmental Services

BY: _____ _____
John P. Arnold DATE
Attorney General

Each undersigned representative of a Party certifies that he/she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

UNITED STATES AIR FORCE

BY: Joseph A. Ahearn December 17, 1990
Joseph A. Ahearn DATE
Major General, USAF
Director of Engineering and Services
Headquarters, United States Air Force

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY: Julie Belaga Dec. 21, 1990
Julie Belaga DATE
Regional Administrator

STATE OF NEW HAMPSHIRE

BY: Robert W Varney 12/21/90
Robert Varney DATE
Commissioner, Department of
Environmental Services

BY: John P. Arnold 12/21/90
John P. Arnold DATE
Attorney General

APPENDIX I

SITE LOCATOR INDEX

SITE NUMBER	NAME/ABBREVIATION	PLATE NUMBER
Site 1,	Landfill 1, LF-1	3
Site 2,	Landfill 2, LF-2	1
Site 3,	Landfill 3, LF-3	1
Site 4,	Landfill 4, LF-4	1
Site 5,	Landfill 5, LF-5	1
Site 6,	Landfill 6, LF-6	6
Site 7,	Fire Department Training Area 1, FDTA-1	2
Site 8,	Fire Department Training Area 2, FDTA-2	2
Site 9,	Construction Rubble Dump 1, CRD-1	2
Site 10,	Leaded Fuel Tank Sludge Disposal Site, LFTS	2
Site 11,	FMS Equipment Cleaning Site, FMS	2
Site 12,	Munitions Storage Site Solvent Disposal Site, MSA	3
Site 13,	Bulk Fuel Storage Area, BFSA	1
Site 14,	Fuel Line Spill Site, FLS	2
Site 15,	Industrial Shop/Parking Apron, IS/PA	4
Site 16,	PCB Spill Site	5
Site 17,	Construction Rubble Dump 2, CRD-2	6
Site 18,	Munitions Residue Burial Site	3
Site 19,	Newfields Ditch	4
Site 20,	Grafton Ditch	6
Site 21,	McIntyre Brook	5
Site 22,	Suspected Fire Training Area(Burn Area-1), BA-1	3
Site 23,	Pauls Brook	1
Site 24,	Peverly Ponds/Brook	2
Site 26,	Flagstone Brook	1
Site 31,	Building 244	4
Site 32,	Building 113	4
Site 33,	Building 229	4
Site 34,	Building 222	4
Site 35,	Building 226	4
Site 36,	Building 119	4
Site 37,	Burn Area 2, BA-2	5

APPENDIX I. SITE DESCRIPTIONS[1]

Landfill 1, LF-1 (site 1)

Landfill 1, the original base landfill, was operated from 1953 to 1963 and is estimated to be approximately seven acres in size. The landfill originally received construction rubble and debris during base construction. Types of materials received during subsequent base operation included domestic solid waste and shop wastes with some sporadic disposal of waste oils and solvents, paint strippers, outdated paints, paint thinners, pesticide containers, and various empty cans and drums.

Landfill 2, LF-2 (site 2)

Landfill 2 was a minor landfill operated from 1960 to 1962. This site is approximately three acres in size. Typical use of the landfill involved cutting of long trenches to a depth of six to eight feet (or to bedrock) and covering disposed material with fill. Materials received at Landfill 2 were similar to those reported for Landfill 1.

Landfill 3, LF-3 (site 3)

Initial investigation report indicated Landfill 3 to be a small landfill of approximately two acres. The site, located southeast of Landfill 2 and northwest of the bulk fuel storage area, was operated from 1962 to 1963 following the closing of Landfill 2. Mode of operation and materials received were essentially the same as for Landfill 2. Subsequent field work, i.e., excavation test pits, indicated no evidence of source area.

Landfill 4, LF-4 (site 4)

Initial investigation report indicated Landfill 4 was operated subsequent to Landfill 3, from 1963 to 1964. However, the results of aerial photograph review show the landfill was in use prior to 1960 and at least to 1976. The site is approximately seven acres in size. Mode of operation and materials received were essentially the same as for Landfills 2 and 3.

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[1] Information source is CH2M Hill Installation Restoration Program Records Search Report dated January, 1984 and Roy F. Weston, Inc. Stage 2 Draft Final Report dated December, 1989.

Landfill 5, LF-5 (site 5)

Landfill 5 was the major base landfill used from 1964 to 1972 and 1974 to 1975. It is approximately 23 acres in size. Its mode of operation was cut and fill. Materials received during the earlier years were similar to Landfills 1 through 4. In addition, the landfill received an estimated 20,000-gallons of sludge from the industrial waste treatment plant (Building 226). An Interim Remedial Measure (IRM) was initiated in the fall of 1989 to excavate, remove, and dispose of buried drums at this site. Excavation and drum removal work was completed in December, 1989.

Landfill 6, LF-6 (site 6)

While in use LF-6 was operated as the main repository for all base solid waste including construction rubble and domestic refuse. Some spent thinners and solvents also have been disposed at this location. Refuse was buried using trench and fill methods. The landfill was reported to have been in operation between 1972 and 1974. However, a review of historical aerial photographs showed that the landfill area was cleared in 1952 and was an active landfill in 1960.

Fire Department Training Area 1, FDTA-1 (site 7)

This was the original fire department training area and was operated from 1955 to 1961. Its present state includes a circular gravel area marked by a large patch of charred sand and gravel, surrounded by a large cleared area with sparse vegetation with no indication of oil residues. No evidence of recent use was found. Waste oils, waste fuels, and spent solvents were burned at this site, with waste fuels accounting for the bulk of the material burned. The volume of material burned over the 6-year life of the training area is estimated to be between 120,000 and 200,000 gallons.

Fire Department Training Area 2, FDTA-2 (site 8)

Use of this fire department training area followed the discontinued use of the original training area. Operation began in 1961 and continued through late 1988. Prior to 1975, the site was similar to Fire Department Training Area 1, with no improvements except clearing of vegetation and installation of a gravel bed burn pit area. In 1975, the site was refurbished by construction of a clay-lined burn area and installation of a drainage system. However, subsequent subsurface investigations have not confirmed evidence of a clay liner. From 1961 to 1971, burning exercises conducted at this fire training area were the main method of disposal for various Petroleum, Oil and Lubricant

(POL) wastes generated on base. Products burned included recovered fuels, waste oils, and spent solvents. Since about 1971, only recovered JP-4 has been used for fire training exercises at this site. An Interim Remedial Measure (IRM) was initiated in the fall of 1989 to remove contaminated soil from a drainage ditch and install, operate, and maintain a pilot groundwater treatment system.

Construction Rubble Dump 1, CRD-1 (site 9)

Construction Rubble Dump 1 was operated from the late 1950s until 1989. This site was used primarily for disposal of inert construction rubble such as concrete, bituminous pavement, tree stumps, brush, and similar materials. One interviewee stated that waste solvents containing TCE were disposed of at this site during 1958 and 1959. The waste solvent was reportedly disposed of in 5-gallon cans at a rate of approximately 20-gallons per month.

Leaded Fuel Tank Sludge Disposal Site, LFTS (site 10)

The leaded fuel disposal site was used from the late 50s to 1978 for disposal of sludges cleaned from the Aviation Gasoline (AVGAS) tanks located in the bulk fuels storage area. Except for a small area of reduced vegetative cover (approximately 50 square feet), no evidence of the site's former use was found. The leaded AVGAS tanks were routinely inspected every three years and cleaned as necessary until the use of AVGAS was discontinued in 1978. Sludge cleaned from tanks consisted of rust, water, residual fuel sludge, and material from sandblasting tank interiors.

Field Maintenance Squadron (FMS) Equipment Cleaning Site, FMS (site 11)

his site was used intermittently prior to 1971 for disposal of waste solvent used to clean new equipment of their protective cosmolene coating. Except for a 100-square foot area with sparse vegetative cover, there is no evidence of the site's former use.

Munitions Storage Site Solvent Disposal Site, MSA (site 12)

This site was used as a dumping point for small quantities of waste thinners and solvents used in servicing and maintaining munitions at Building 466. The site was used for an undetermined number of years prior to 1980. Waste solvents were dumped at an estimated rate of 6 gallons/year onto the ground surface, resulting in the elimination of vegetative growth in a 10-foot square area.

Bulk Fuel Storage Area, BFSA (site 13)

The Bulk Fuel Storage Area is the main fuel storage area at the base. Minor spills have probably occurred throughout the life of the facility with only a few major spills having been reported. In 1963, a ruptured drain line resulted in the loss of thousands of gallons of fuel from bulk storage Tank 3 into the diked area surrounding the tank. Most of the spilled fuel was recovered. This same tank subsequently developed a small pinhole leak in 1980. Some minor fuel loss occurred (estimated at less than 1,000 gallons) before the leak was found and repaired. Also at the bulk storage area, a corroded vent on the fuel transfer line at Building 160 resulted in an estimated loss of several thousand gallons of fuel in 1975.

Fuel Line Spill Site, FLS (site 14)

In 1959 snow removal equipment ruptured a protruding vent line from the main underground fuel line, near the northern perimeter of the aircraft parking apron. This fuel loss was estimated to be at least 10,000 gallons. Most of the fuel either evaporated or was flushed with water into the storm drainage system.

Industrial Shop/Parking Apron, IS/PA (site 15)

This area contains the flightline shops, hangars, and aircraft parking apron refueling areas. As a result of initial investigation work, this site was subdivided into six specific areas for further investigations. These areas were designated sites 31, 32, 33, 34, 35, and 36. Description of these sites is provided further on in this Appendix.

PCB Spill Site (site 16)

In 1983, a blown transformer at Building 410 resulted in the release of approximately 35 gallons of transformer oil containing 500,000 ppm PCB. Most of the spill was contained indoors on the concrete floor, although some oil did reach the ground outside of the building. The contaminated soil, as well as the transformer oil cleanup material were collected in 18 55 gallon drums. The remaining soil was analyzed and found not to contain residual PCBs.

Construction Rubble Dump 2, CRD-2 (site 17)

Construction Rubble Dump 2 received construction debris consisting of asphalt, concrete, and gravel borrow. During the Stage 2 presurvey site visit, drums were visible in the debris. No reports of hazardous waste disposal at CRD-2 have been identified. A review of aerial photographs shows that the area has been cleared since at least 1952, and CRD-2 probably received debris from construction of the runway.

Munitions Residue Burial Site (site 18)

This site has received the inert residue from deactivated small arms ammunition, egress items, smoke grenades, and starter cartridges. Initial investigations found no evidence of hazardous waste disposal or contamination.

Newfields Ditch (site 19)

Newfields Ditch is an intermittent storm water drainage channel. It drains the IS/PA (site 15) and eventually runs into the Piscataqua River. Newfields Ditch is not known to support a sport fishery and is not authorized for recreational use.

Grafton Ditch (site 20)

Grafton Ditch, also referred to as Harveys Creek, receives storm drainage from the IS/PA (site 15) and surface runoff from LF-6 (site 6) and CRD-2 (site 17). Although it exhibits perennial flow, no sport fishing has been documented. Grafton Ditch flows into Harveys Creek which then flows northward to North Mill Pond and eventually to the Piscataqua River.

McIntyre Brook (site 21)

McIntyre Brook originates within the IS/PA (site 15) and receives storm water runoff from the runway, flightline, shop, and parking apron. Water flowing into McIntyre Brook passes through an oil/water separator before flowing off base and into Great Bay. During dry periods flow is intermittent. Although no biological data are available, the New Hampshire Fish Division speculates that McIntyre Brook may serve as a spawning ground for rainbow smelt (Rogers, 1989).

Suspected Fire Training Area (Burn Area 1), BA-1 (site 22)

Initially, site 22 was designated as "Suspected Fire Training Area", in later documents the designation was changed to "Burn Area 1." Burn Area 1 was identified in aerial photographs as an area of stressed vegetation and stained soil. Historical aerial photograph review places the period of use between 1960 and 1976.

Pauls Brook (site 23)

Pauls Brook collects runoff from BFSA (site 13) and possibly some runoff from LF-3 (site 3). This brook eventually flows to the Piscataqua River, after crossing under the Spaulding Turnpike north of the main entrance to the base. It exhibits perennial flow and is not known to support a sport fishery.

Peverly Ponds/Brook (site 24)

Peverly Brook receives surface runoff and potential ground water discharge from CRD-1(site 8) and then flows to Upper Peverly Pond. Upper Peverly Pond receives additional runoff and potential groundwater discharge from LF-1 (site 1) and FDTA-1 (site 7). The water in upper Peverly Pond drains into Lower Peverly Pond and from there to Bass Pond before entering Great Bay. Both Upper and Lower Peverly Ponds are designated by the State of New Hampshire as sport fisheries. Pease AFB annually stocks these ponds with rainbow, brook, and brown trout. Bass Pond, although not a state-designated fishery, does support recreational fishing activity. In addition to providing a recreational warm water fishery, Lower Peverly Pond is also authorized for swimming.

Flagstone Brook (site 26)

Flagstone Brook receives surface water from the north ramp portion of the parking apron, from FDTA No 2 (site 8) via Pickering Brook and runoff from Landfills 2, 3, 4, 5 and the BFSA (site 13) before entering Little Bay. Flow in Flagstone Brook is intermittent in its upper reaches and does not support a sport fishery.

Building 244 (site 31)

An Underground Storage Tank (UST) beside Building 244 was used from 1955 to 1965 to store waste Trichloroethene (TCE) generated from degreasing aircraft parts. This tank has been suspected as a contamination source.

Building 113 (site 32)

Building 113 is the Munitions Maintenance Squadron (MSS) building. An underground storage tank adjacent to the building had been used from 1955 to 1965 to store waste TCE generated from degreasing aircraft parts. The tank was removed in 1988.

Building 229 (site 33)

Building 229 was investigated because of possible fuel/oil spills and reported past TCE use. Waste fuel and oil were pumped from this building by a large pump located behind the building.

Building 222 (site 34)

Building 222 is the Jet Engine Test Cell (JETC). Drainage from the building went to a swale located southeast of the building until the fall of 1989, when it was piped to holding tanks. Potential contaminants are JP-4 fuel, exhaust residues, and to a lesser extent, TCE.

Building 226, (site 35)

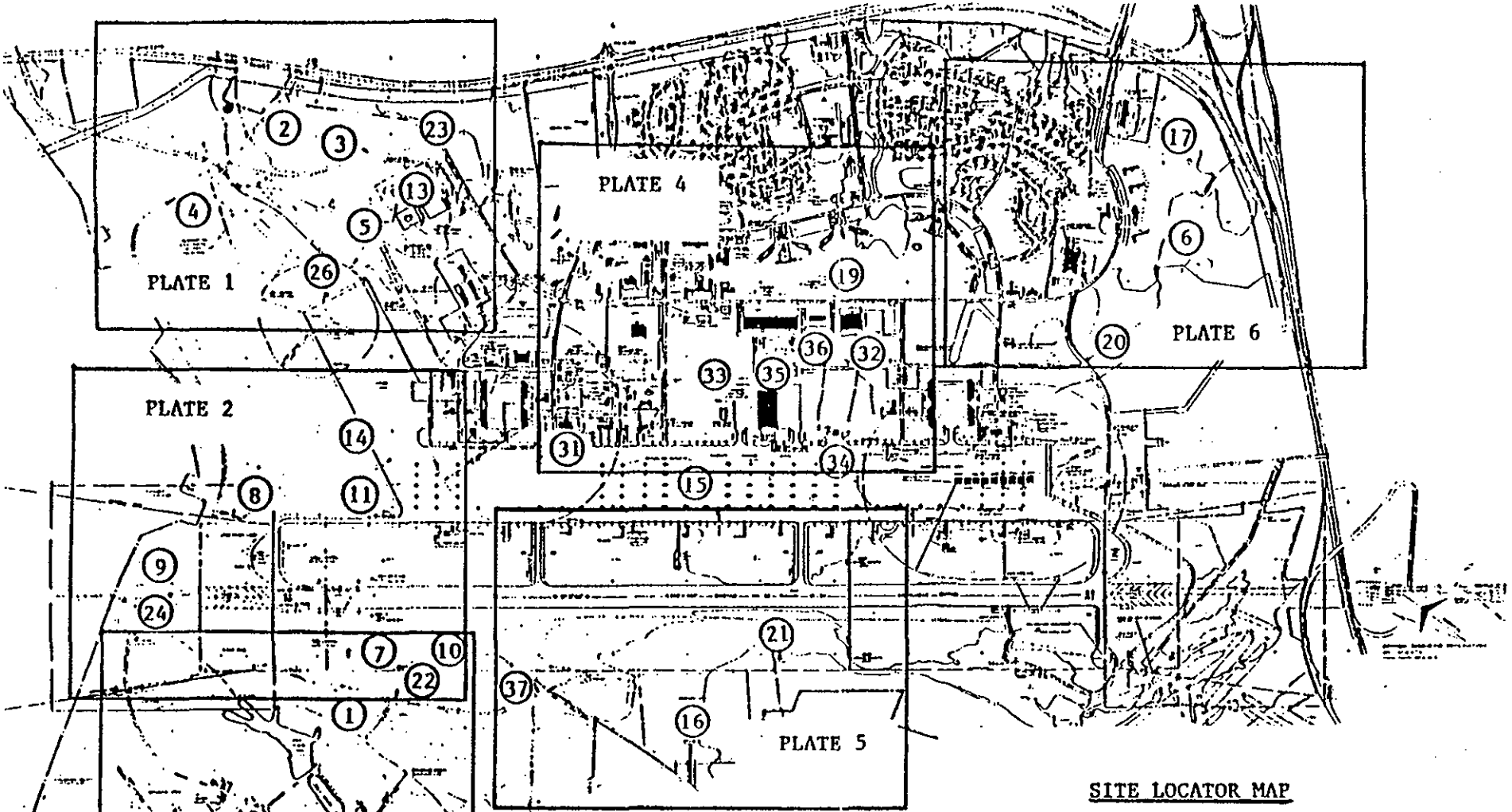
The former Industrial Waste Treatment Plant (IWTP) operated for at least 10 years (until the 1960s) in Building 226. The exact nature of wastes and treatment processes are not known. An oil/water separator is located west of the building.

Building 119 (site 36)

Building 119 is the Jet Engine Maintenance building. The drum storage and oil rack are of concern at this site because soil is visibly stained on the slope behind the drum storage area and around the oil rack. Wastes generated from this building, including fuel and waste TCE, were disposed at the fire department training areas in the past. They are currently contained in drums, stored behind Building 119, and removed by a contractor.

Burn Area 2, BA-2 (site 37)

This area was discovered during the early part of investigative work conducted between September, 1987 and December, 1989. BA-2 was identified in review of 1960 aerial photographs, which showed stained soil and about 3.4 acres of cleared land. Initial investigations of this area were conducted in conjunction with work done at LFTS, site 10. In December of 1989 it was recommended to treat BA-2 as a separate site.



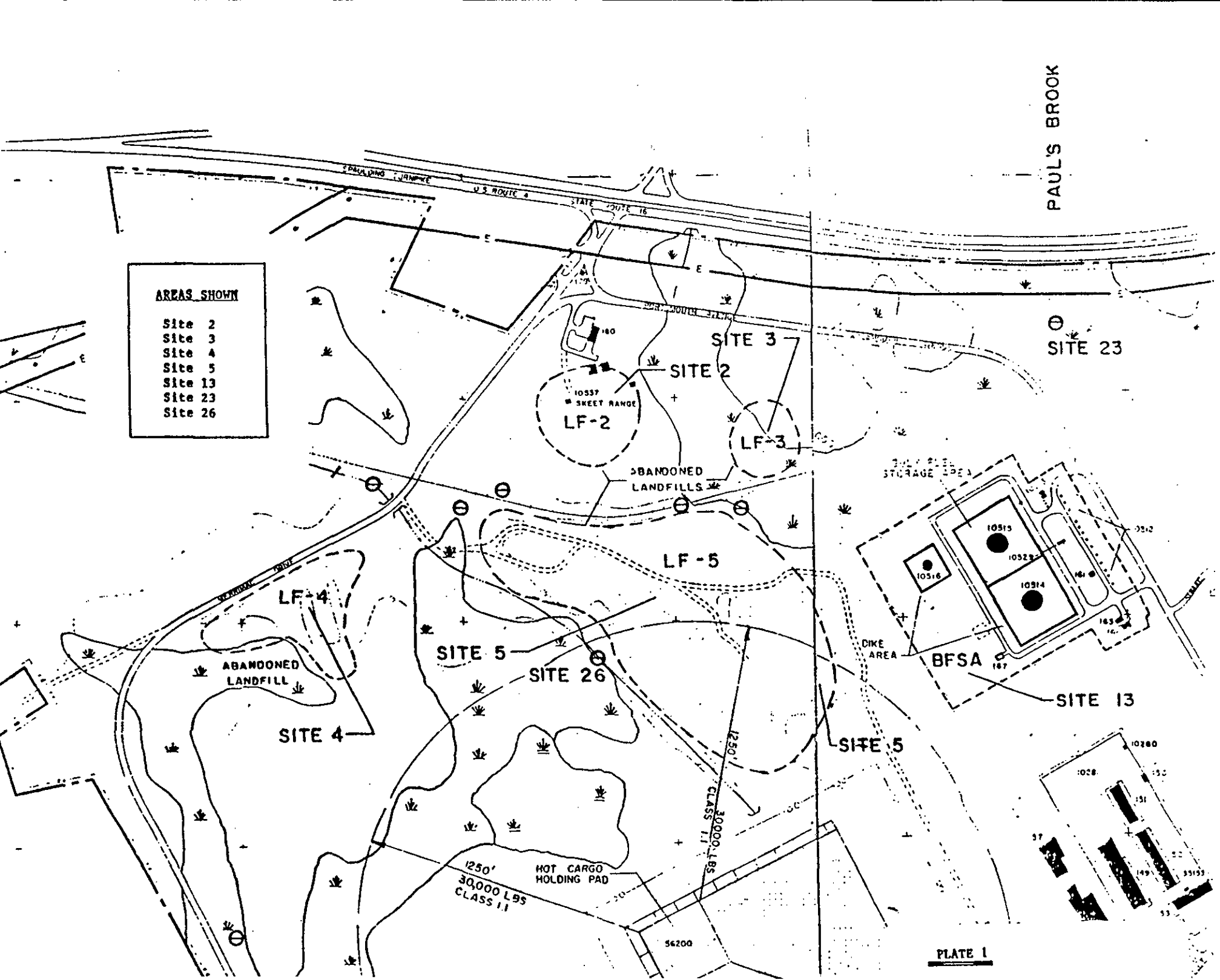
SITE LOCATOR MAP

LEGEND

NUMBER	NAME/ABBREVIATION
1	Landfill 1, LF-1
2	Landfill 2, LF-2
3	Landfill 3, LF-3
4	Landfill 4, LF-4
5	Landfill 5, LF-5
6	Landfill 6, LF-6
7	Fire Department Training Area 1, FDTA-1
8	Fire Department Training Area 2, FDTA-2
9	Construction Rubble Dump 1, CRD-1
10	Leaded Fuel Tank Sludge Disposal Site, LFTS
11	FMS Equipment Cleaning Site, FMS
12	Munitions Storage Site Solvent Disposal Site, MSA
13	Bulk Fuel Storage Area, BFSA
14	Fuel Line Spill Site, FLS
15	Industrial Shop/Parking Apron, IS/PA
16	PCB Spill Site
17	Construction Rubble Dump 4, CRD-4

NUMBER	NAME/ABBREVATION
19	Newfields Ditch
20	Grafton Ditch
21	McIntyre Brook
22	Burn Area-1, BA-1
23	Pauls Brook
24	Peverly Ponds/Brook
26	Flagstone Brook
31	Building 244
32	Building 113
33	Building 229
34	Building 222
35	Building 226
36	Building 119
37	Burn Area 2, BA-2

Note: There are no locations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SITE 2
SITE 23
10537
SKEET RANGE
LF-2
LF-3
ABANDONED
LANDFILLS
LF-5
LF-4
SITE 5
SITE 26
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SITE 4
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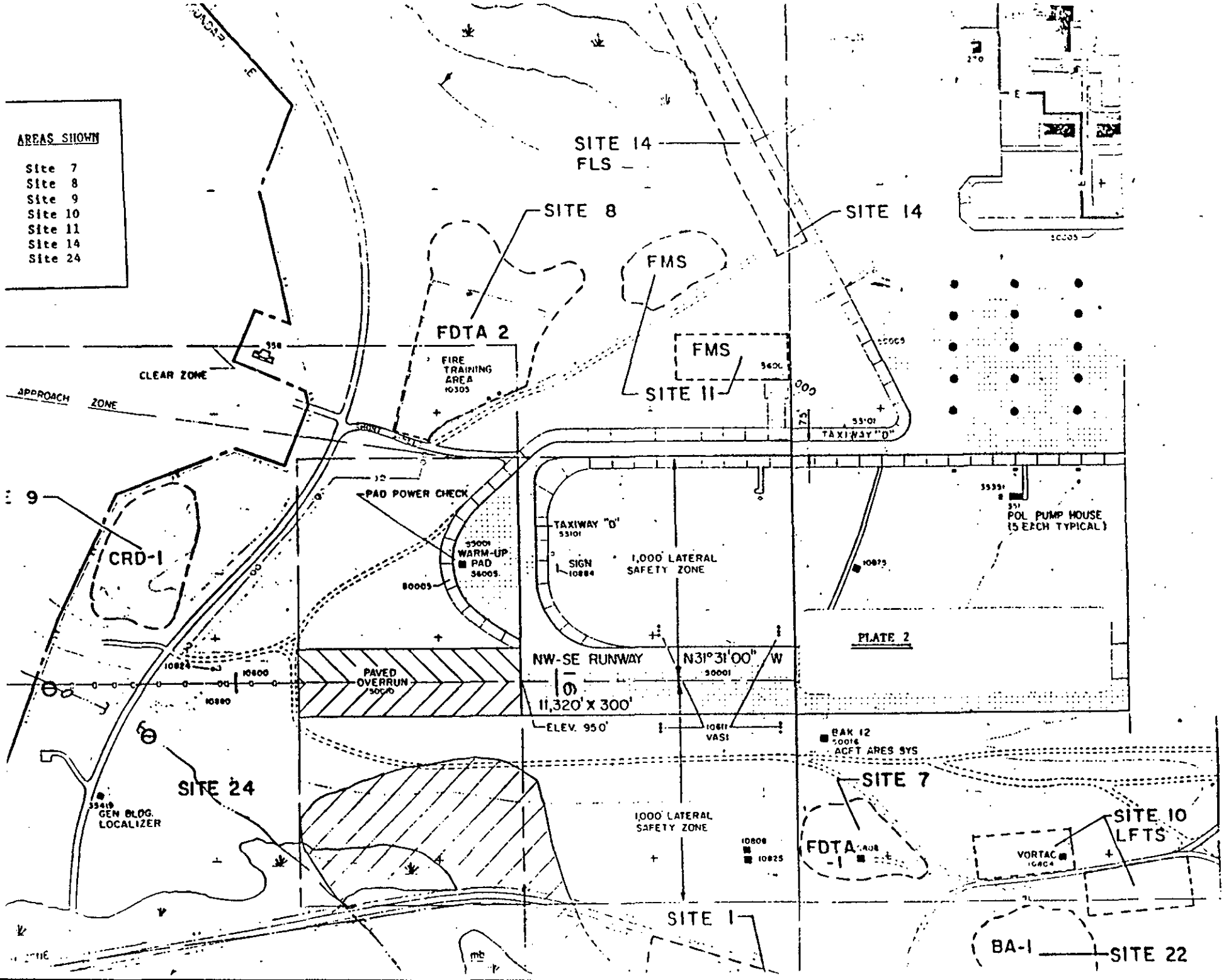
PLATE 1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Site 14
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FMS
SITE 11
CLEAR ZONE
APPROACH ZONE
TAXIWAY "D"
PAD POWER CHECK
CRD-1
WARM-UP PAD
TAXIWAY "B"
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POL PUMP HOUSE (5 EACH TYPICAL)
PLATE 2
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PAVED OVERRUN
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ELEV. 950'
VASI
BAK 12
ACFT ARES SYS
SITE 24
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LFTS
VORTAC
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BA-1
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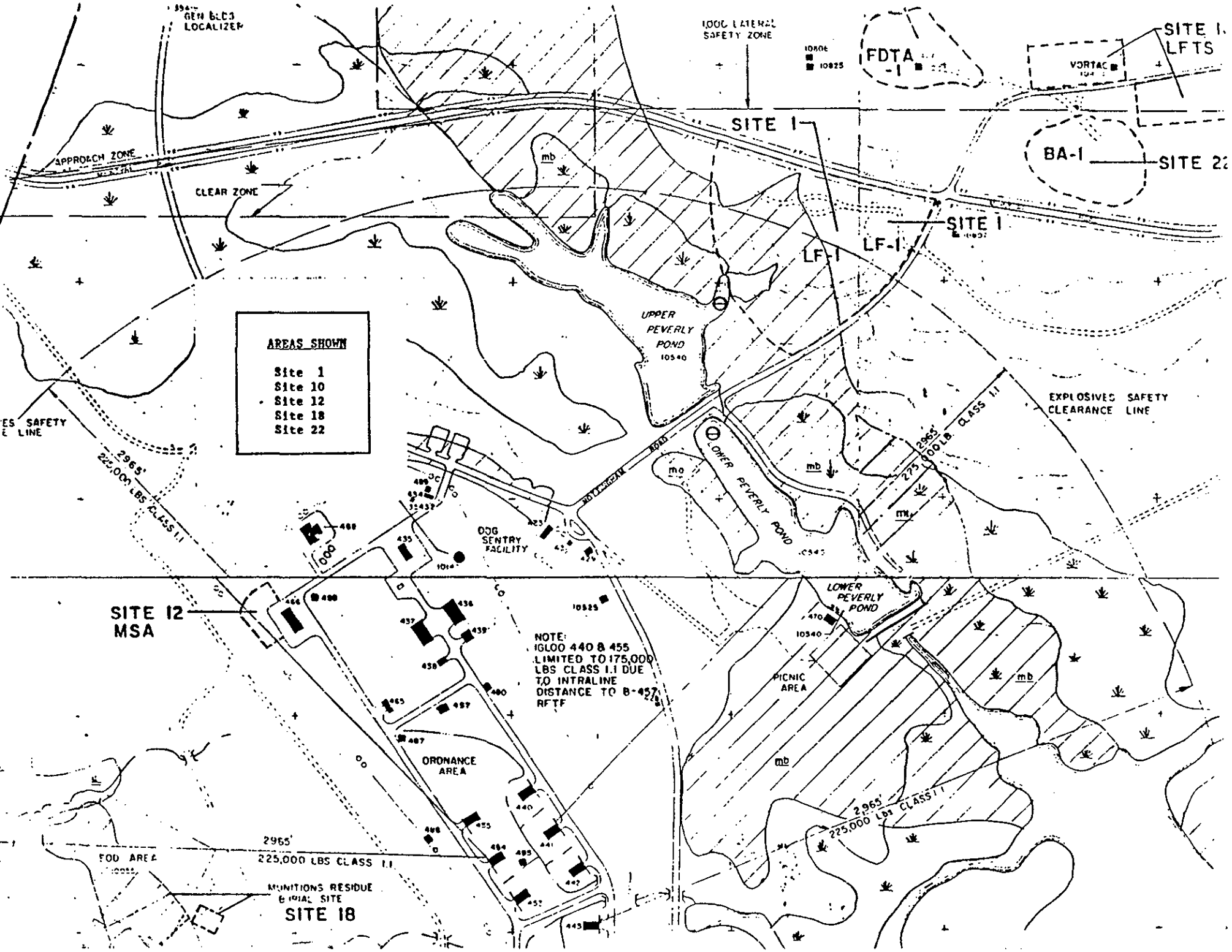
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SITE 1
LF-1
LF-1
AREAS SHOWN
Site 1
Site 10
Site 12
Site 18
Site 22
UPPER PEVERLY POND
10540
LOWER PEVERLY POND
EXPLOSIVES SAFETY CLEARANCE LINE
2965' 225,000 LBS CLASS 1.1
DOG SENTRY FACILITY
SITE 12 MSA
NOTE: IGLOO 440 & 455 LIMITED TO 175,000 LBS CLASS 1.1 DUE TO INTRALINE DISTANCE TO B-457 RFTF
ORDNANCE AREA
PICNIC AREA
FOD AREA
MUNITIONS RESIDUE BURIAL SITE
SITE 18

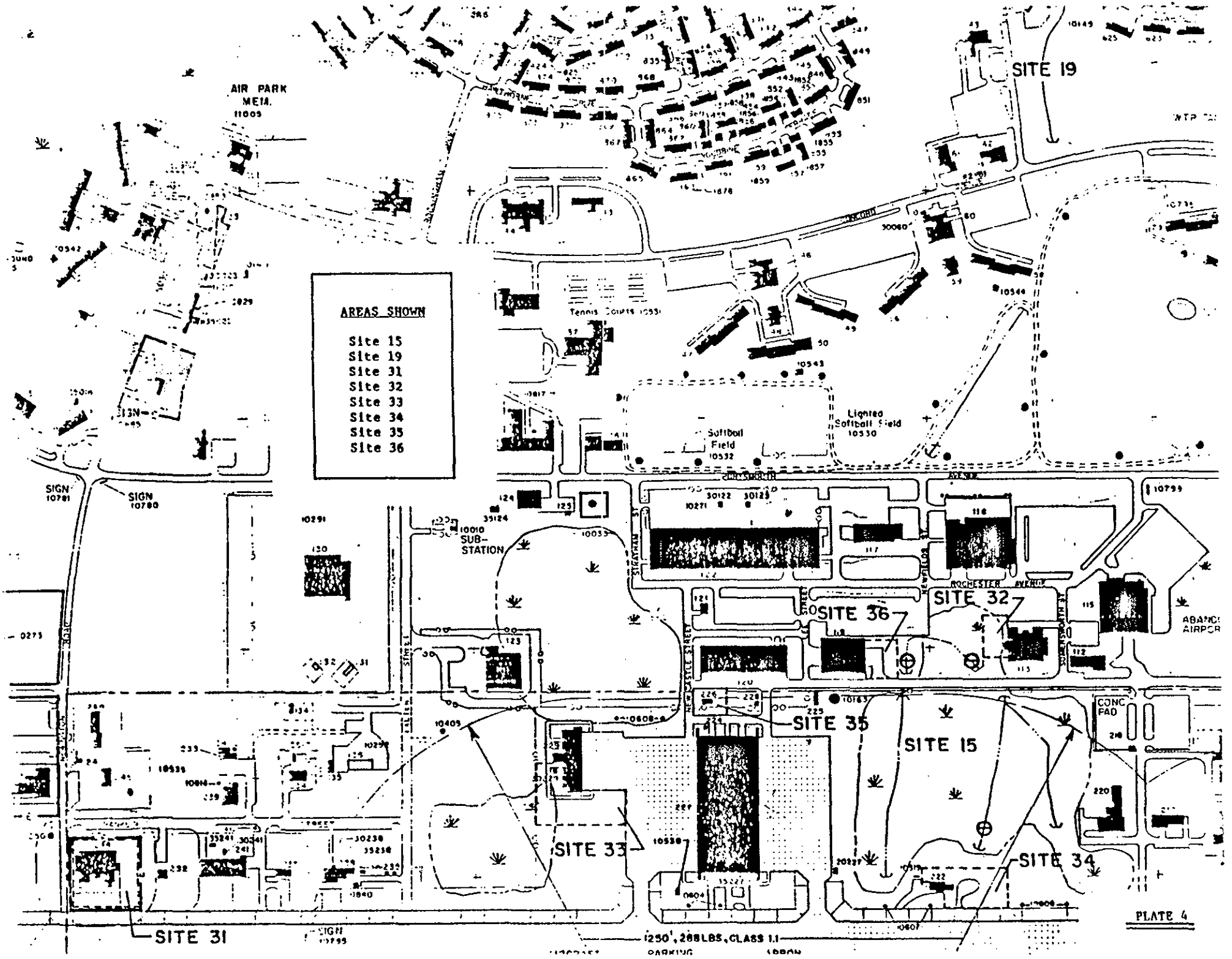

AIR PARK MEM.
11009
SITE 19
AREAS SHOWN
Site 15
Site 19
Site 31
Site 32
Site 33
Site 34
Site 35
Site 36
Tennis Courts 10551
Softball Field 10532
Lighted Softball Field 10530
SIGN 10781
SIGN 10780
10010 SUB-STATION
SITE 36
SITE 32
SITE 35
SITE 15
SITE 33
SITE 34
SITE 31
CONC PAD
1250', 288LBS, CLASS 1.1

PLATE 4

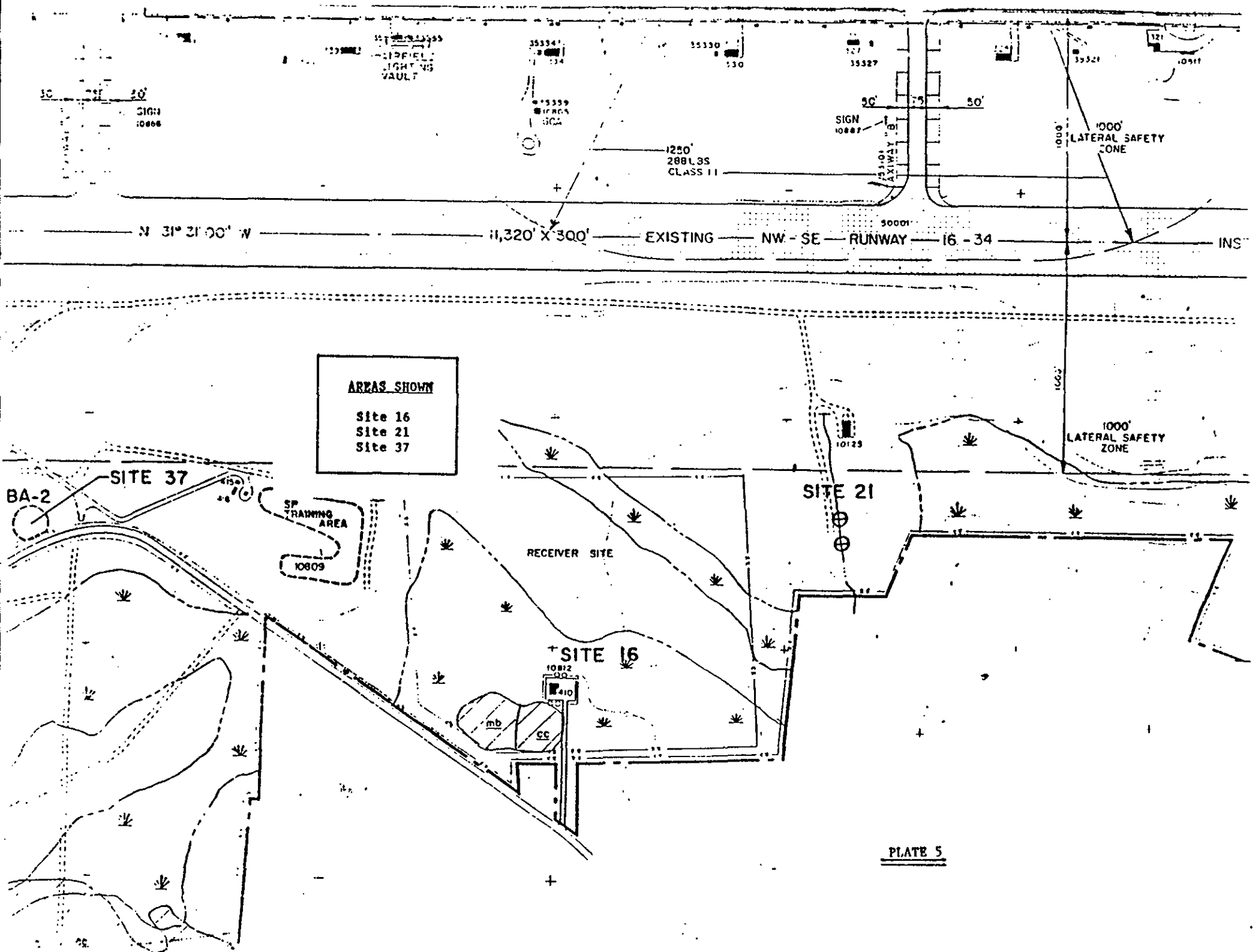
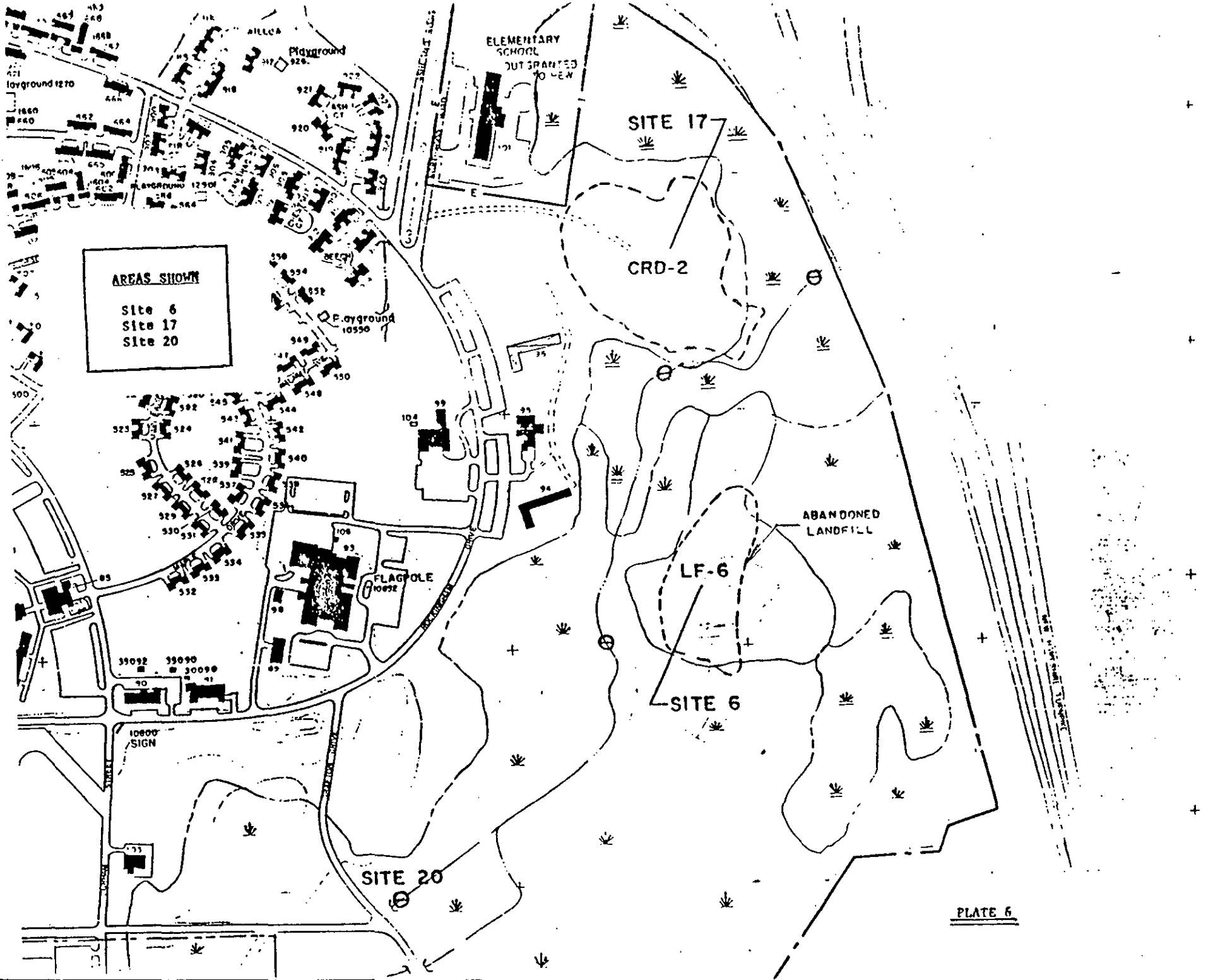

AREAS SHOWN
Site 16
Site 21
Site 37
SITE 37
BA-2
SP TRAINING AREA
10809
RECEIVER SITE
SITE 16
SITE 21
10812
410
mb
cc
10125
1250' 288 LBS CLASS II
1000' LATERAL SAFETY ZONE
SIGN 10887
SIGN 10886
N 31° 31' 00" W
11,320' X 300'
EXISTING
NW - SE
RUNWAY
16 - 34
INS

PLATE 5


AREAS SHOWN
Site 6
Site 17
Site 20
ELEMENTARY SCHOOL
SITE 17
CRD-2
ABANDONED LANDFILL
LF-6
SITE 6
SITE 20
FLAGPOLE
10692
10600 SIGN
Playground
PLATE 6

APPENDIX II

DEADLINES

The following deadlines have been established for the draft primary documents pursuant to this Agreement.

A. Landfill 5, (site 5);

RI Report	15 Dec 1991
FS Report	15 Mar 1992
Proposed Plan	15 Nov 1992
Record of Decision	1 Oct 1993

B. Fire Department Training Area 2, (site 8);

RI Report	30 Jul 1992
FS Report	30 Oct 1992
Proposed Plan	30 Jun 1993
Record of Decision	15 May 1994

C. Jet Engine Test Cell, (site 34);

RI Report	15 Jan 1992
FS Report	15 Apr 1992
Proposed Plan	15 Dec 1992
Record of Decision	30 Oct 1993

D. Buildings 113 & 119, (sites 32 & 36);

RI Report	16 Feb 1992
FS Report	16 May 1992
Proposed Plan	16 Jan 1993
Record of Decision	30 Nov 1993

E. Stage 4 Work Effort, (sites 1,2,4,6,9,10,13,17, 22,31,33,35,37, and ditch sites 19 and 20)

RI/FS Work Plan *	1 Sep 1990
Quality Assurance Project Plan	1 Sep 1990
RI Report **	1 Feb 1993
FS Report **	1 May 1993

Proposed Plan **	31 Dec 1993
Record of Decision **	15 Nov 1994

* The Air Force shall conduct additional sampling at site 31 (Building 244), site 33 (Building 229), and site 35 (Building 226), and conduct a health assessment in order to evaluate the potential health threat posed by existing conditions. The Air Force shall submit a Sampling and Analysis Plan to EPA and the State for approval prior to the initiation of field work. All analyses and health assessments shall be undertaken in accordance with the provisions of this Agreement (including Section 6.4) and shall be submitted for review no later than September 1, 1991. The Project Managers shall subsequently meet to discuss and mutually agree upon appropriate response actions. Any disagreement by the Project Managers shall be subject to Section XIV, Dispute Resolution.

** These dates will be adjusted on a day for day basis for each day that the finalization of the RI/FS Work Plan and Quality Assurance Project Plan exceeds the time period established in Section VII of this Agreement for review comment and finalization, including any delays in finalization of the RI/FS Work Plan and Quality Assurance Project Plan due to Dispute Resolution invocation.

F. No Action Decisions (sites 3,7, and 11)

Proposed Plan	15 Oct 1990
Record of Decision	30 Aug 1991

G. Scope of Work — 30 Oct 1990

H. Community Relations Plan (May be amended at later dates to address new AOCs, RAs, or OUs) — 25 Oct 1990

These Deadlines are based upon the following parameters:

1. In many respects the IAG process is sequential, consisting of a series of steps. Specifically, as to the deadlines for the primary documents established in A through F above, the Air Force must prepare and transmit documents to the EPA and the State for their

review of the document to insure consistency with CERCLA, the NCP, pertinent EPA and State guidance, and applicable state law. It is not possible to complete preparation of subsequent documents until this process is complete for earlier documents.

2. Draft RI report date is predicated on the following assumptions: a) the apparent acceptance by EPA and the State of the Site Characterization Summary Report (a secondary document) and b) only single tier sampling for Ecological Risk Assessment data.

3. Draft ROD date is predicated on the following assumption: the Proposed Plan, having been finalized pursuant to Section VII, will not require a change of selected remedy as a result of comments received during the public comment period.

If these parameters are not met with respect to a particular deadline, the Air Force may seek an extension pursuant to Section XVI of this Agreement; the appropriateness of any such extension request shall be determined in accordance with requirements and procedures set forth in Section XVI.