

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

NEW ENGLAND REGION

AND THE

UNITED STATES DEPARTMENT OF THE NAVY

IN THE MATTER OF:

U.S. Department of the Navy
Portsmouth Naval Shipyard
Kittery, Maine

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FEDERAL FACILITY AGREEMENT
Under CERCLA Section 120

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

I. JURISDICTION

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

A. The U.S. Environmental Protection Agency (EPA), New England Region, enters into those portions of this Agreement that relate to the Site Screening Process and Remedial Investigation/Feasibility Study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. No. 99-499 (hereinafter jointly referred to as CERCLA), 42 U.S.C. Section 9620(e)(1), and Sections 6001, 3008(h) and 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. Sections 6961, 6928(h) and 6924(u) and (v) (hereinafter jointly referred to as RCRA), and Executive Order 12580;

B. EPA enters into those portions of this Agreement that relate to Areas of Concern, Operable Units, interim Remedial Actions and final Remedial Actions pursuant to CERCLA Section

120(e)(2), 42 U.S.C. Section 9620(e)(2), RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), and Executive Order 12580;

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

D. The Navy enters into those portions of this Agreement that relate to Areas of Concern, Operable Units, interim Remedial Actions and final Remedial Actions pursuant to CERCLA Section 120(e)(2), 42 U.S.C. Section 9620(e)(2); RCRA Sections 6001, 3008(h), 3004(u) and (v), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), Executive Order 12580 and the DERP.

II. DEFINITIONS

2.1 Except as noted below or otherwise explicitly stated, the definitions provided in CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, shall control the meaning of terms used in this Agreement.

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

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

C. "Area of Concern" or "AOC" shall mean an area at the Site where Hazardous Substances, pollutants or contaminants are, or may have been placed or otherwise come to be located, or may come to be located, including any area to which a Release of Hazardous Substances, pollutants or contaminants has migrated or threatens to migrate prior to completion of the proposed Remedial Action(s). The term shall include locations of potential or suspected contamination as well as known or actual contamination, including Solid Waste Management Units that have been identified.

as requiring further investigation pursuant to the RCRA Corrective Action Permit, to the extent that contaminants detected at such SWMUs fall within the purview of CERCLA response authority. Areas of Concern require further study through RI/FS. Areas of Concern identified as of the effective date of this Agreement are listed in Appendix B to this Agreement and included in the Site Management Plan. Areas of Concern that are identified by the Parties after the effective date of this Agreement in accordance with Subsection 9.7 of this Agreement shall be included in the Site Management Plan in accordance with Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN and Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN of this Agreement.

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

E. "Community Relations" shall mean the program to inform and involve the public in the installation restoration, Superfund, and RCRA process and to respond to community concerns.

F. "Corrective Action Permit" shall mean the corrective action portion of the existing RCRA Permit dated March 10, 1989, and issued to the Portsmouth Naval Shipyard by EPA pursuant to HSWA.

G. "Days" shall mean calendar days, unless business days are specified. Any submittal, written statement of position, or written statement of dispute that, under the terms of this Agreement, would be due on a Saturday, Sunday, or Federal or State holiday shall be due on the following business day.

H. "Deadline" or "Milestone" shall mean a time limitation specifically established or provided for under the terms of this Agreement or the Site Management Plan for performance of Work and submittal of Primary Documents and shall not include Target Dates. Deadlines shall include "Near Term Milestones", "Out Year Milestones" and "Project End Dates", as such terms are defined herein.

I. "DERP" shall mean the Defense Environmental Restoration Program as authorized by 10 U.S.C. Section 2701 et seq. and any amendments thereto.

J. "Dispute Resolution" shall mean dispute resolution in

accordance with Section XX - DISPUTE RESOLUTION of this Agreement.

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

L. "Facility" shall mean that property owned by the United States and operated by the Navy in Kittery, Maine known as the Portsmouth Naval Shipyard, consisting of an approximately 278-acre island in the Piscataqua River and including all areas identified in the map attached as Appendix A to this Agreement.

M. "Feasibility Study" or "FS" means a study conducted in accordance with CERCLA, the NCP and relevant Guidance that 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 Navy shall conduct and prepare all FS(s) in a manner to support the intent and objectives of Section VIII - STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION of this Agreement.

N. "Guidance" shall mean any requirements or policy directives published by EPA or that may be published by the State that are of general application to environmental matters and that are otherwise applicable to the Navy's Work under this Agreement.

O. "Hazardous Substance(s)" shall mean all those substances that are included under CERCLA Section 101(14), 42 U.S.C. Section 9601(14), which include any hazardous waste having the characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act, 42 U.S.C. Section 6921.

P. "Interim Remedial Action" or "IRA" shall mean all discrete Remedial Actions implemented prior to a final Remedial Action that are taken to prevent or minimize the Release of Hazardous Substances, pollutants, or contaminants so that it does not migrate or endanger human health or the environment.

Q. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and any amendments thereto.

R. "Navy" or "Department of the Navy" shall mean the United States Department of the Navy, including its officers, employees, members, successors and authorized representatives,

and assigns. The Navy shall also include the United States 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.

S. "Near Term Milestones" shall mean the dates established by the Parties in the Site Management Plan, in consultation with Public Stakeholders, for the submittal of Primary Documents and performance of Work within the current fiscal year (FY), the next fiscal year or "budget year" (FY+1) and the year for which the budget is being developed or "planning year" (FY+2). The Parties recognize that Milestones in the current fiscal year are enforceable in accordance with Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN and Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN of this Agreement.

T. "On-site" shall have the same meaning as provided in the NCP.

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

V. "Out Year Milestones" shall mean the dates established by the Parties in the Site Management Plan, in consultation with Public Stakeholders, for the submittal of Primary Documents within those years occurring after the "planning year" until the completion of the cleanup or phase of the cleanup (FY+3 through Project End Date, as defined below).

W. "Parties" shall mean the Navy and EPA.

X. "Performance Standards" shall mean the criteria representing the degree and method of cleanup to be achieved at an AOC, including all chemical-, location- and action-specific

ARARs identified in the ROD(s), or identified by EPA, prior to certification of completion of the Work; and all other health or environmentally related numerical standards identified in the ROD(s).

Y. "Portsmouth Naval Shipyard" or "PNS" shall mean that property owned by the United States and operated by the Navy in Kittery, Maine consisting of an approximately 278-acre island in the Piscataqua River and including all areas identified in the map attached as Appendix A to this Agreement.

Z. "Primary Document" shall mean any document listed in Subsection 10.2 of this Agreement.

AA. "Project End Dates" shall mean the dates established by the Parties in the Site Management Plan, in consultation with Public Stakeholders, for the completion of major portions of the cleanup or completion of the cleanup of the entire Site.

BB. "Project Manager" shall mean the person designated by each Party to represent that Party's interests and manage all Response Actions undertaken at the Site.

CC. "Public Stakeholders" shall mean members of the public, including residents, environmentalists, community leaders, public officials, citizens action groups, and any other interested parties, and the State.

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

EE. "Record(s) of Decision" or "ROD(s)" shall be the public document(s), prepared in accordance with CERCLA, the NCP and relevant Guidance, that select(s) and explain(s) which Remedial Action alternative(s) will be implemented at each Operable Unit at the Site, and includes the bases for the selection of such Remedy(ies). These bases include, but are not limited to, information and technical analyses generated during the RI/FS and consideration of public comments and community concerns.

FF. "Release" shall have the same meaning as provided in CERCLA Section 101(22), 42 U.S.C. Section 9601(22), and the NCP.

GG. "Remedial Design" or "RD" shall mean the technical analysis and procedures that follow the selection of a Remedy for

an Operable Unit and result in a detailed set of plans, specifications or other suitable documentation for implementation of the Remedial Action.

HH. "Remedial Investigation" or "RI" shall mean that investigation conducted in accordance with CERCLA, the NCP and relevant Guidance, as supplemented by the substantive provisions of the EPA RCRA Facilities Assessment guidance. The RI serves as a mechanism for collecting data for site and waste characterization and conducting treatability studies as necessary to evaluate performance and cost of the treatment technologies. The data gathered during the RI will also be used to conduct a baseline risk assessment, including characterization of risk of harm to human health and the environment; to perform a FS(s); to evaluate the natural resources damaged by the Release(s) or threatened Release(s) of Hazardous Substances; and to support the design of a selected Remedy. The Navy shall conduct and prepare all RIs in a manner to support the intent and objectives of Section VIII - STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION of this Agreement.

II. "Remedy" or "Remedial Action" or "RA" shall have the same meaning as provided in CERCLA Section 101(24), 42 U.S.C. Section 9601(24), and the NCP, and may include one or more OUs.

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

KK. "Response Action(s)" shall mean all Removal Actions and Remedial Actions undertaken at the Site, including all enforcement activities related to the Site.

LL. "Schedule" shall mean a timetable or plan that indicates the timing and sequence of Work to be performed, including the completion of RI/FS, RD and RA activities at the Site.

MM. "Secondary Document" shall mean any document listed in Subsection 10.3 of this Agreement.

NN. "Site" shall include PNS and any other areas where a Hazardous Substance, pollutant, or contaminant from PNS has been deposited, stored, disposed of, or placed, or has migrated or otherwise come to be located. The Site is a "facility" within the meaning of CERCLA Section 101(9), 42 U.S.C. Section 9601(9), and the NCP. This definition of "Site" is not intended to include any off-Site facility to which Hazardous Substances or

wastes are or were intentionally transported from the Site by motor vehicle or vessel.

OO. "Site Management Plan" or "SMP" shall mean the planning document, prepared specifically under Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN and amended in accordance with Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN, that contains the Timetable and all Schedules that indicate the timing and sequence of Work to be performed. The SMP will be used as a management tool in planning, reviewing and setting priorities for all response activities at the Site. Deadlines and Target Dates developed under the terms of this Agreement are listed in the SMP. Deadlines or Milestones listed in the SMP for the current fiscal year are enforceable and are subject to stipulated penalties in accordance with Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN and Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN of this Agreement. The SMP is attached as Appendix D to this Agreement.

PP. "Site Screening Areas" or "SSAs" shall mean those geographical areas that require preliminary screening under the Site Screening Process to determine whether they are Areas of Concern that require further study through RI/FS. SSAs identified as of the effective date of this Agreement are listed in Appendix C to this Agreement and included in the Site Management Plan. SSAs that are agreed to by the Parties after the effective date of this Agreement in accordance with Subsection 9.6 of this Agreement shall be included in the Site Management Plan in accordance with Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN and Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN of this Agreement. When the Parties agree, SSAs may expand or contract in size as information becomes available indicating the extent of contamination and the geographical area needed to be studied.

QQ. "Site Screening Process" or "SSP" refers to the mechanism described in Subsections 9.4 through 9.7 of this Agreement for evaluating whether identified SSAs are Areas of Concern that require further study through RI/FS.

RR. "Solid Waste Management Unit" or "SWMU", as defined pursuant to RCRA, shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid and/or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released. SWMUs identified as requiring investigation under the Corrective Action

Permit and falling within the scope of CERCLA response authority are listed in Appendix B of this Agreement and in the Site Management Plan and are considered AOCs for purposes of this Agreement.

SS. "State" shall mean the State of Maine, its employees, agents, authorized representatives, successors and assigns. The State of Maine is not a Party to this Agreement.

TT. "Target Dates" shall mean proposed time limitations specifically established or provided for under the terms of this Agreement for submittal of Secondary Documents. Target Dates shall not be subject to stipulated penalties.

UU. "Timetable" shall be the collective term for all the Deadlines or Milestones established in accordance with Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN and Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN of this Agreement.

VV. "To Be Considered" or "TBC" is any advisory, criteria or guidance developed by EPA, other federal agency or the State that may be useful in developing CERCLA Remedies. TBCs shall be timely identified and provided as required by the NCP.

WW. "Work" shall mean all activities or obligations the Navy is required to perform under this Agreement and any amendments hereto, except those activities or obligations required by Section XXX - RECORD PRESERVATION of this Agreement.

III. PARTIES BOUND

3.1 The parties to this Agreement are EPA and the Navy, and this Agreement shall apply to and be binding upon EPA and the Navy. The State and the United States Department of Defense have entered into a Department of Defense and State Memorandum of Agreement dated January 22, 1993. That Memorandum of Agreement has subsequently been modified. The State elected not to be a Party to this Agreement at the time the Agreement was negotiated and executed. However, consistent with CERCLA and the NCP, EPA and the Navy have agreed to allow the State a participatory role in the Site remediation as described in this Agreement, and an opportunity to enter into the Agreement, should the State choose to, at a later date. Accordingly, the Parties intend that provisions in this Agreement that provide that the State "should", "shall" or "will" perform a certain task to mean that the State may, at its option, perform the task. It is also

recognized that since the State is not a Party to this Agreement, it has no rights or responsibilities that are established under this Agreement. Similarly, this Agreement does not establish in the State any rights as a third-party beneficiary. Failure by the Navy to provide a Primary or Secondary Document in a timely manner to the State shall not in and of itself constitute a basis for assessing stipulated penalties against the Navy, unless such failure substantially delays or otherwise substantially compromises the Response Action(s) that is/are the subject of this Agreement. It is also recognized by the Parties that the State has rights and responsibilities under CERCLA that are separate and distinct from this Agreement.

3.2 The Navy agrees to include the notices required by CERCLA Section 120(h), 42 U.S.C. Section 9620(h), and 40 C.F.R. Part 373 in any contract for the sale or transfer of real property affected by this Agreement and shall notify EPA and the State at least sixty (60) days prior to any such transfer. Transfer (sale or lease) of property affected by this Subsection shall not relieve the Navy of its applicable obligations under this Agreement.

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

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

IV. PURPOSE

4.1 The general purposes of this Agreement are to:

A. Ensure that the environmental impacts associated with the past and present activities at the Site are thoroughly investigated under CERCLA and the appropriate Response Action(s) are taken as necessary to protect the public health and welfare and the environment;

B. Establish a procedural framework and schedule for developing, implementing and monitoring appropriate Response Actions at the Site pursuant to CERCLA, the NCP, CERCLA Guidance, RCRA, RCRA Guidance;

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

4.2 Specifically, the purposes of this Agreement are to:

A. Provide for the identification of the nature, objective and schedule of Response Actions to be taken at the Site. Response Actions at the Site shall attain all Performance Standards as mandated by CERCLA and the NCP.

B. Establish requirements for the performance of the Site Screening Process and Remedial Investigations (RIs) 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 establish requirements for the performance of Feasibility Studies (FSS) for the Site to identify, evaluate and select alternatives for the appropriate Remedial Action(s) to prevent, mitigate, or abate the Release or threatened Release of Hazardous Substances, pollutants or contaminants at the Site pursuant to CERCLA and the NCP.

C. Provide for the identification of interim and final Remedial Action alternatives that are appropriate to address the Release or threatened Release of Hazardous Substances, pollutants or contaminants at the Site. The interim Remedial Action alternatives shall be identified and proposed to EPA and the State as early as possible prior to formal proposal of interim Remedial Action(s) pursuant to CERCLA. This process is designed to promote cooperation among the Parties and the State in identifying Remedial Action alternatives for Operable Units prior to selection of final Remedial Actions.

D. Provide for the implementation of the selected interim Remedial Action(s) and final Remedial Action(s) at the Site in accordance with CERCLA and the NCP.

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

F. Assure compliance, through this Agreement, with RCRA and other federal and State hazardous waste statutes and regulations promulgated thereunder for matters covered herein.

G. Coordinate Response Actions at the Site with the mission and support activities at PNS.

H. Expedite Response Actions at the Site to the extent consistent with protection of human health and the environment.

I. Provide, in accordance with CERCLA and the NCP, for State involvement in the initiation, development and selection of Remedial Actions to be undertaken at the Site, including the review of all applicable data as it becomes available, and the development of studies, reports, and action plans; and for the identification and integration of State ARARs into the Remedial Action process.

J. Provide for the operation and maintenance of any Remedial Action selected and implemented pursuant to this Agreement.

V. SCOPE OF AGREEMENT

5.1 This Agreement is entered into by the Parties to enable the Navy to meet the provisions of CERCLA, 42 U.S.C. Section 9601 et seq., and Sections 3004(u) and (v) and 3008(h) of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. Sections 6924(u) and (v) and 6928(h).

5.2 This Agreement is intended to cover the investigation, development, selection, and implementation of Response Actions for all Releases or threatened Releases of Hazardous Substances, contaminants, or pollutants at or from the Site. This Agreement covers all phases of remediation for these Releases, bringing together into one agreement the requirements for remediation as well as the system the Parties will use to determine and accomplish remediation, ensuring the necessary and proper level of participation by each Party. Although all such Releases at the Site may not be known as of the effective date of this Agreement, this Agreement establishes the system for dealing with undiscovered Releases. To accomplish remediation of such undiscovered Releases, the Parties will establish Schedules and Deadlines or Milestones as necessary and as information becomes available, and shall, if required, amend this Agreement as needed.

5.3 This Agreement is intended to address and satisfy PNS's RCRA corrective action obligations under the RCRA Corrective Action Permit that relate to the Release(s) of Hazardous Substances, pollutants, or contaminants at or from the Site. When this Agreement becomes effective, it shall supersede the Corrective Action Permit. This Agreement is not intended to limit any requirements under RCRA or any other law or regulation to obtain

permits, and is not intended to affect the treatment, storage, or disposal by PNS of hazardous wastes. This Agreement is not intended to encompass responses to Releases of Hazardous Substances from ongoing operations unless those Releases occur in conjunction with CERCLA Removal Actions or Remedial Actions pursuant to this Agreement.

5.4 The scope of this Agreement extends to the entire Site. The Site cannot be removed from the National Priorities List (NPL) unless it is determined, in accordance with CERCLA, the NCP, and this Agreement, that the Navy has implemented all appropriate Response Actions and the Site no longer poses a threat to human health or the environment. All Response Actions at the Site shall occur in discrete locations called Site Screening Areas, Areas of Concern or Operable Units identified at the Site pursuant to this Agreement.

5.5 Any Response Action in progress on the effective date of this Agreement shall become subject to the obligations and procedures of this Agreement.

5.6 The Parties agree to use their best efforts to expedite the initiation of Response Actions at the Site and to carry out all activities under this Agreement so as to protect the public health and welfare and the environment. Upon request, the Parties agree to provide applicable Guidance or reasonable assistance in obtaining such Guidance relevant to the implementation of this Agreement.

5.7 The Navy agrees that it shall develop, implement and report upon a Remedial Investigation (RI) or Remedial Investigations (RIs) for the Areas of Concern or Operable Units at the Site where required in accordance with Section IX - WORK TO BE PERFORMED of this Agreement, CERCLA, the NCP, and applicable EPA Guidance. The RI documents shall be subject to the review and comment procedures described in Section X - CONSULTATION of this Agreement. The RI(s) shall be conducted in accordance with the requirements and Schedules set forth in the Site Management Plan and shall meet the purposes set forth in Section IV - PURPOSE of this Agreement.

5.8 The Navy agrees that it shall develop, implement and report upon a Feasibility Study (FS) or Feasibility Studies (FSS) for the Areas of Concern or Operable Units at the Site where required in accordance with Section IX - WORK TO BE PERFORMED of this Agreement, CERCLA, the NCP, and applicable EPA Guidance. The FS documents shall be subject to the review and comment procedures described in Section X - CONSULTATION of this Agreement. The

FS(s) shall be conducted in accordance with the requirements and Schedules set forth in the Site Management Plan and shall meet the purposes set forth in Section IV - PURPOSE of this Agreement.

5.9 The Navy agrees that 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 or Operable Units at the Site in accordance with CERCLA, RCRA and applicable regulations thereof for matters covered herein.

VI. FINDINGS OF FACT

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

6.2 PNS was listed on the National Priorities List (NPL) update on May 31, 1994, 59 Fed. Reg. 27989.

6.3. PNS is currently a 278-acre (approximately 90 acres of which is filled land) operating installation located on an island in the Piscataqua River in Kittery, Maine. The Piscataqua River is a tidal estuary that forms the southern boundary between Maine and New Hampshire. PNS is located at the mouth of the Great Bay Estuary (commonly referred to as Portsmouth Harbor).

6.4. The Portsmouth Naval Shipyard was founded in 1800 in an area that had long been used for the shipbuilding industry. It was originally established on 58-acre Seavey's Island, the largest of a group of small islands close to the northern shore of the Piscataqua River. Its primary activity from the 1860's to the early 1900's was the construction of new wood and iron-clad vessels and limited repair work.

After 1910, the Navy chose PNS for development and construction of submarines. Over the course of the next forty years, PNS expanded its facilities by filling and covering the tidal flats that connected Seavey's Island to Dennett's Island. The first government-built submarine was designed and constructed at PNS during World War I. A large number of submarines have been designed, constructed, and repaired at this facility from 1917 to the present.

6.5 In 1980, the Navy initiated the Navy Assessment and Control of Installation Pollutants Program (NACIP) and began an Initial Assessment Study that was finalized in June 1983. The Navy then conducted a Confirmation Study on Hazardous Waste Sites and a RCRA Facility Assessment Study that focused on the Solid Waste Management Units (SWMUs). The studies established which SWMUs needed further investigation and/or cleanup. These studies also documented contamination in the sediments around the island on which PNS is located.

6.6 In April 1988, EPA issued a draft RCRA Hazardous and Solid Waste Amendment (HSWA) Corrective Action Permit to the Navy for PNS. This draft permit was released for public comment. The final Corrective Action Permit was issued on March 10, 1989 and became effective on April 10, 1989. The Corrective Action Permit was prepared after a RCRA Facility Assessment (RFA) of the PNS was conducted by EPA. The RFA identified specific SWMUs where known or potential releases of hazardous wastes or hazardous constituents had occurred or may have occurred.

6.7 As required by the Corrective Action Permit, a RCRA Facility Investigation (RFI) Report was prepared for PNS. The RFI Report was based on four phases of investigation intended to ascertain the nature and extent of hazardous materials or hazardous constituents released from SWMUs identified in the RFA and specified as requiring investigation under the Corrective Action Permit. A draft RFI Report was submitted by the Navy in July 1992 and EPA issued an "Approval with Conditions" on the RFI Report in March 1993. Subsequently, in June 1993, the Navy submitted an Addendum to the RFI Report. EPA also required the Navy to perform additional investigatory work in the "Approval with Conditions" letter. The findings of this work were presented in the RFI Data Gap Report, which was submitted in January 1995.

6.8 Prior to the effective date of this Agreement, the Navy submitted a draft FS to EPA and the State for review and comment. EPA and the State have reviewed the draft FS and provided comments to the Navy. It is not the Navy's intention to finalize this draft FS. Individual FSSs for each AOC or Operable Unit will be issued in accordance with Subsection 9.9 of this Agreement.

6.9 Prior to the effective date of this Agreement, the Parties and the State agreed that no further action was required at SWMUs 12, 13, 16 and 23. This decision was based on the fact that the tanks at each of these SWMUs had been removed and no additional action was deemed necessary following tank removal. This decision was documented in the July 1997 report entitled

"Decision Document, No Further Action, SWMUs 12, 13, 16 and 23".

6.10 Prior to the effective date of this Agreement, the Parties and the State agreed that no further action for soils was required at SWMU 21. This decision was based on the fact that the tank at SWMU 21 had been removed and no additional action for soils at the SWMU was deemed necessary. The Parties and the State agreed that groundwater in the vicinity of SWMU 21 will be addressed as part of an area-wide groundwater investigation. This decision was documented in the October 1996 report entitled "Consensus Document, No Further Action for Soil, SWMU 21".

6.11 AOCs identified as of the effective date of this Agreement are listed in Appendix B to this Agreement and included in the Site Management Plan. AOCs that are identified by the Parties after the effective date of this Agreement in accordance with Subsection 9.7 of this Agreement shall be included in the Site Management Plan in accordance with Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN and Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN of this Agreement.

6.12 SSAs identified as of the effective date of this Agreement are listed in Appendix C to this Agreement. These areas will be evaluated under the Site Screening Process set forth in Subsections 9.4 through 9.7 of this Agreement to determine whether they are AOCs requiring additional study through the RI/FS process. SSAs that are agreed to by the Parties after the effective date of this Agreement in accordance with Subsection 9.6 of this Agreement shall be included in the Site Management Plan in accordance with Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN and Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN of this Agreement.

6.13 Numerous studies and investigations have been carried out in order to detect and characterize the extent and effects of contamination at the Site. These studies include the following (for documents submitted/completed under the RCRA/HSWA corrective action program, the CERCLA equivalent document is provided in parentheses):

Initial Assessment Study, June 1983;

Final Confirmation Study Report on Hazardous Waste Sites, June 1986;

RCRA Facility Assessment, July 1986;

Addendum to RCRA Facility Investigation Proposal, February 1991;

Interim Human Health Risk Assessment for Quarters S, N, and 68, April 1991;

Interim Human Health Assessment for the Day Care Center, October 1991;

Revised Ambient Air Quality Monitoring Report, April 1992;

On-Shore Ecological Risk Assessment of Portsmouth Naval Shipyard, August 1992;

Final Hazard Ranking System Package, May 1993;

Draft RCRA Facility Investigation Report for Onshore SWMUs (Remedial Investigation), July 1992;

Addendum to RCRA Facility Investigation Report, June 1993;

Public Health and Environmental Risk Evaluation Part A: Human Health Risk Assessment Report, March 1994;

Final On-Shore Media Protection Standards Proposal, April 1994;

Final Human Health Risk Assessment Report for Offshore Media for Portsmouth Naval Shipyard, May 1994;

Chapter 3: Media Protection Standards for Off-Shore Media; Sediment and Surface Water, June 1994;

Estuarine Ecological Risk Assessment -Case Study for Portsmouth Naval Shipyard, December 1994;

Phase II Ambient Air Quality and Meteorologic Monitoring Report, March 1995;

Draft On-Shore Feasibility Study Report, March 1995;

Draft Interim Ground Water Monitoring Plan, May 1995;

Chapter 2: Media Protection Standards for Off-Shore Media Based on Human Health Risks, June 1995;

Draft Final Estuarine Ecological Risk Assessment, July 1995;

RCRA Facility Investigation Data Gap Report, November 1995;

Community Relations Plan for Portsmouth Naval Shipyard, October 1996;

Technical Memorandum on Seep Sampling for Portsmouth Naval Shipyard, November 1996;

Draft On-Shore/Off-Shore Contaminant Fate and Transport Modeling Phase I Report, February 1997;

Technical Memorandum on Risk Evaluation of Surface Soils from Jamaica Island Landfill Site, May 1997;

MEDEP Evaluation of Heavy Metal Migration at Portsmouth Naval Shipyard with Geochemical Modeling, December 1997;

On-Shore/Off-Shore Contaminant Fate and Transport Modeling Phase I Report Addendum, December 1997; and

Phase I/Phase II Data Comparative Analysis Report, October 1998.

6.14 In 1979 and 1991, EPA's National Air and Radiation and Environmental Laboratory issued reports of independent surveys for radioactivity associated with the nuclear-powered warships at PNS. The EPA monitoring included analysis of samples taken from Portsmouth Harbor and direct radiation level measurements using sensitive detection equipment. These reports concluded that the levels and locations of radioactivity identified and the limited media in which it was found showed that operations related to nuclear-powered warship activities had not resulted in a release of radionuclides having adverse effects on public health or the environment. These EPA survey results--confirmed--those of separate Navy monitoring, reported annually (e.g., Naval Nuclear Propulsion Program Report NT-98-1). EPA, after reviewing these reports, and the Historical Radiological Assessment dated July 1998 specifically prepared for the Site, considers that further site screening for radionuclides is unnecessary.

VII. EPA DETERMINATIONS

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

Agreement or establishing the jurisdiction and authority of the Parties to enter into this Agreement.

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

B. PNS is a "facility" as defined by CERCLA Section 101(9), 42 U.S.C. Section 9601(9), and 10 U.S.C. Section 2707, and is subject to the special provisions for federal facility NPL sites in CERCLA Section 120, 42 U.S.C. Section 9620, and to the Defense Environmental Restoration Program (DERP), 10 U.S.C. § 2701 et seq.

C. PNS is a facility under the jurisdiction, custody, or control of the United States Department of Defense within the meaning of Executive Order 12580, 52 Fed. Reg. 2923, January 29, 1987, and within the meaning of DERP, 10 U.S.C. § 2701 et seq. The Navy is authorized to act on behalf of the Secretary of Defense for all functions delegated by the President through Executive Order 12580 that are relevant to this Agreement.

D. The United States is the owner and operator of PNS as defined in CERCLA Sections 101(20) and 107(a)(1), 42 U.S.C. Sections 9601(20) and 9607(a)(1). The Navy is the Department of Defense component charged with fulfilling the obligations of the owner and operator under CERCLA at PNS.

E. There has been a Release or a substantial threat of a Release of Hazardous Substances, pollutants or contaminants at or from PNS. As a result of the various activities carried out at PNS since 1800, there are locations within and adjacent to PNS where Hazardous Substances have been deposited, stored, disposed of or placed, or otherwise have come to be located within the meaning of CERCLA Section 101(9) and (14), 42 U.S.C. Section 9601(9) and (14). As a result of the same activities, there are locations within and adjacent to PNS where there have been or may have been Releases into the environment of Hazardous Substances, pollutants, or contaminants at or from PNS within the meaning of CERCLA Sections 101(22), 104, 106 and 107, 42 U.S.C. Sections 9601(22), 9604, 9606 and 9607, and RCRA Section 7003, 42 U.S.C. Section 6973. These locations include the AOCs listed in Appendix B to this Agreement and in the SMP, and the SSAs listed in Appendix C to this Agreement and in the SMP.

F. The actions provided for in this Agreement are consistent with the NCP.

G. The actions provided for in this Agreement are necessary

to protect the public health and welfare and the environment.

H. This Agreement provides for the expeditious completion of all necessary Response Actions.

I. The Navy is the authorized delegatee of the President under Executive Order 12580 for receipt of notification of State ARARs required by CERCLA Section 121(d)(2)(A)(ii), 42 U.S.C. Section 9621(d)(2)(A)(ii).

VIII. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

8.1 The Parties recognize that the State has received final authorization under RCRA to implement its hazardous waste program (including corrective action) and as a result implements almost all components of the RCRA hazardous waste program (including corrective action) under 42 U.S.C. Section 6901 et seq. in lieu of EPA. The Parties intend (i) that this Agreement will integrate the Navy's CERCLA response obligations and RCRA corrective action obligations that relate to the Release(s) of Hazardous Substances, pollutants, or contaminants covered by this Agreement; and (ii) that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. Section 9601 et seq.; satisfy the corrective action requirements of RCRA Sections 3004(u) and (v), 42 U.S.C. Sections 6924(u) and (v), for a RCRA permit, and RCRA Section 3008(h), 42 U.S.C. Section 6928(h), for interim status facilities; and meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations, to the extent required by CERCLA Section 121, 42 U.S.C. Section 9621.

8.2 Based upon the foregoing, the Parties intend that any Remedial Action selected, implemented and completed under this Agreement will be protective of human health and the environment such that remediation of Releases covered by this Agreement shall obviate the need for further corrective action under RCRA for those same Releases (i.e., no further corrective action shall be required for those Releases). When this Agreement becomes effective, it shall supersede the Corrective Action Permit for PNS. The Parties agree that, with respect to Releases of Hazardous Substances covered by this Agreement, RCRA shall be considered an ARAR pursuant to CERCLA Section 121, 42 U.S.C. Section 9621. Releases of hazardous waste or other hazardous waste activities not covered by this Agreement remain subject to all applicable State and federal environmental requirements.

8.3 The Parties recognize that the requirement to obtain permits

for Response Actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at PNS may require the issuance of permits under Federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits.

8.4 Nothing in this Agreement shall alter the Navy's authority with respect to Removal Actions conducted pursuant to CERCLA Section 104, 42 U.S.C. Section 9604.

IX. WORK TO BE PERFORMED

9.1 The Parties recognize that the Navy has already identified certain AOCs at the Site and has conducted RI/FS Work for some of these AOCs. The Navy need not halt currently ongoing Work but may be obligated to modify or supplement Work previously done to meet the requirements of this Agreement. It is the intent of the Parties to this Agreement that Work done and data generated prior to the effective date of this Agreement be retained and utilized as elements of the RI/FS to the maximum extent feasible. Further, the Parties recognize that the substantive requirements of the RCRA Corrective Action program under RCRA Sections 3004(u) and (v) and 3008(h), 42 U.S.C. Sections 6924(u) and (v) and 6928(h), and the CERCLA program under 42 U.S.C. Section 9601 et seq. are equivalent. Based on this, the Parties agree that the RFI Report, the RFI Addendum and the RFI Data Gap Report shall be considered to satisfy the major requirements of a Remedial Investigation for the AOCs listed in Appendix B (with the exception of the DRMO/Incinerator AOC) to this Agreement. For purposes of the Offshore Area-Piscataqua River Estuarine Area AOC, the Estuarine Ecological Risk Assessment shall be considered to satisfy the major requirements of a Remedial Investigation.

9.2 Either Party may propose that a portion of the Site be designated as a distinct Operable Unit. This proposal must be in writing to the other Party, and must stipulate the reasons for the proposed designation. The proposal shall be discussed by both Project Managers within forty-five (45) days from the date of receipt of such written notice. Dispute Resolution may be invoked if the Parties are not in agreement on the proposal of designating a specific Operable Unit. If Dispute Resolution is not invoked by the Parties within thirty (30) days after the date of the Project Managers' discussion concerning the proposal, or if the need for an Operable Unit is established through Dispute Resolution, the portion of the Site proposed shall become an Operable Unit as that term is defined in Section II - DEFINITIONS

of this Agreement.

9.3 Either Party may propose that an established Operable Unit be modified. The proposal must be in writing to the other Party, and must state the reasons for the proposed modification. Dispute Resolution may be invoked if the Parties are not in agreement on the proposal of modifying a specific Operable Unit. If Dispute Resolution is not invoked within thirty (30) days from the date of the receipt of such a proposal by the nonproposing Party, or if the need for modifying an Operable Unit is established through Dispute Resolution, the Operable Unit shall be modified.

Site Screening Areas/Site Screening Process

9.4 The Navy shall develop, implement and report upon Site Screening Areas (SSAs) as defined herein in order to satisfy its obligations under RCRA/CERCLA integration. The Site Screening Process (SSP), outlined in Subsections 9.4 through 9.7 of this Agreement, is intended to provide a simplified investigative method whereby identified SSAs can be evaluated to determine whether they are Areas of Concern that require further study pursuant to the RI/FS process. The SSP investigation(s) shall be conducted in accordance with a SSP Work Plan(s) developed by the Parties in accordance with Subsections 9.4 through 9.7 of this Agreement.

9.5 The SSP Reports(s) shall be subject to the review and comment procedures described in Section X - CONSULTATION of this Agreement. The SSP investigation(s) shall be conducted in accordance with the requirements set forth in this Section.

9.6 A. Appendix C contains a list of SSAs that the Parties agree may pose a threat, or potential threat, to public health or welfare or the environment. As outlined in the SMP, the Navy shall submit to EPA and the State SSP Work Plan(s) that shall outline the activities necessary to determine if there have been Releases of Hazardous Substances, pollutants or contaminants to the environment in, at or from these SSAs. The scope of the SSP(s) shall be determined by the Parties.

B. When a Party to this Agreement determines that an area on the Site that has not previously been identified may pose a threat, or potential threat, to public health or welfare or the environment, such Party shall notify in writing the other Party of such determination. Notification of the other Party under this Subsection shall at a minimum include the location of such area on the Site and the reason(s) the Party believes such an

area poses a threat, or potential threat, to public health or welfare or the environment. The Parties shall have forty-five (45) days from the date of receipt of such notification to discuss the proposal and agree whether such area shall be addressed under this Agreement as an SSA. If the Parties cannot agree on whether or not to address such an area under this Agreement within that 45-day period, either Party can invoke Dispute Resolution. If Dispute Resolution is not invoked within that 45-day period, or if an SSA is established through Dispute Resolution, the proposed SSA will be addressed as an SSA in accordance with this Section.

C. Any area at the Site that is established as an SSA in accordance with Subsection 9.6B after the effective date of this Agreement shall be added to the list of SSAs in the SMP as an additional SSA to be investigated and possibly remediated in accordance with this Agreement. For any SSAs established in accordance with Subsection 9.6B after the effective date of this Agreement, the Navy shall within thirty (30) days of establishment of such SSA submit to EPA and the State a Schedule for Work to be performed at the SSA. The Navy's proposed SSA Schedule shall include: a submittal date for submission of a SSP Work Plan; regulatory/RAB review periods on the SSP Work Plan; a Schedule for completion of associated field Work; and a submittal date for the SSP Report. Within fourteen (14) days of receipt of the Navy's proposed Schedule, EPA shall notify the Navy in writing as to whether the proposed Schedule is approved or disapproved. If EPA approves the proposed SSA Schedule, the Schedule shall be incorporated in the SMP. If EPA does not approve the proposed SSA Schedule, the Parties shall have fourteen (14) days from the close of the initial 14-day review and comment period to attempt to revise the proposed Schedule. If, after this additional 14-day period, EPA still does not approve of the revised proposed Schedule, either Party can invoke Dispute Resolution.

In submitting the Navy's proposed Schedule to the State, the Navy shall notify the State of the duration of the 14-day review and comment period corresponding to such Schedule as established in this Subsection. If comments on the proposed Schedule are received from the State within that 14-day period, the Navy shall address those comments to the extent practicable prior to EPA's approval of such Schedule. If comments are not received from the State within that 14-day period, the Parties shall proceed either (i) to incorporate the proposed Schedule into the SMP if EPA has approved such Schedule in accordance with this Subsection, or (ii) to attempt to revise the proposed Schedule if EPA has not

approved such Schedule in accordance with this Subsection.

9.7 A. In planning the SSPs, the Navy shall consider current CERCLA and RCRA Guidance to determine if there have been Releases of Hazardous Substances, pollutants or contaminants to the environment in, at or from the SSAs. Upon conclusion of a SSP investigation, the Navy shall submit to EPA and the State a draft SSP Report that shall include a recommendation as to whether: (1) an RI/FS should be performed on the SSA addressed by the SSP investigation, or (2) such SSA does not pose a threat or potential threat to public health or welfare or the environment and therefore should be removed from further study under this Agreement. In commenting on a draft SSP Report, EPA and the State each shall specifically state whether it concurs with the Navy's recommendation regarding whether a SSA should proceed into the RI/FS process.

B. Those SSAs that will require an RI/FS shall become AOCs and shall be added to the list of AOCs in the SMP and evaluated in accordance with Subsections 9.8 and 9.9 of this Agreement. If the Parties cannot agree on the determination of whether an SSA(s) shall proceed to an RI/FS, Dispute Resolution may be invoked on the draft final SSP Report.

C. For those SSAs that the Parties agree do not warrant an RI/FS, the Navy shall prepare, with EPA's assistance, a brief decision document reflecting that agreement. This agreement must be signed by both Parties' Project Managers.

D. The Parties shall designate Operable Units for those SSAs that are designated as AOCs and are to proceed with an RI/FS. For each such AOC, the Navy shall, within ninety (90) days of submittal of the final SSP Report, submit to EPA and the State a proposed Schedule, including a Deadline, for the submission of the draft RI/FS Work Plan for each such Operable Unit.

Within fourteen (14) days of receipt of such proposed Schedule, EPA shall notify the Navy in writing as to whether the proposed Schedule is approved or disapproved. If EPA approves the proposed Schedule, such Schedule shall be incorporated into the SMP. If EPA does not approve the proposed Schedule, the Parties shall have an additional fourteen (14) days from the close of the initial 14-day review and comment period to attempt to revise such proposed Schedule. If, after this additional 14-day period, EPA does not approve the revised proposed Schedule, either Party can invoke Dispute Resolution.

In submitting the Navy's proposed Schedule to the State, the Navy shall notify the State of the duration of the 14-day review and comment period corresponding to such Schedule as established in this Subsection. If comments on the proposed Schedule are received from the State within that 14-day period, the Navy shall address those comments to the extent practicable prior to EPA's approval of such Schedule. If comments are not received from the State within that 14-day period, the Parties shall proceed either (i) to incorporate the proposed Schedule into the SMP if EPA has approved such Schedule in accordance with this Subsection, or (ii) to attempt to revise the proposed Schedule if EPA has not approved such Schedule in accordance with this Subsection.

E. Upon submittal of the final RI/FS Work Plan(s), the Navy shall submit a proposed Schedule that includes: a date for initiation of associated field Work; a submittal date for the draft Remedial Investigation Report; and a submittal date for the draft Feasibility Study.

Within fourteen (14) days of receipt of such proposed Schedule, EPA shall notify the Navy in writing as to whether the proposed Schedule is approved or disapproved. If EPA approves the proposed Schedule, such Schedule shall be incorporated into the SMP. If EPA does not approve the proposed Schedule, the Parties shall have an additional fourteen (14) days from the close of the initial 14-day review and comment period to attempt to revise such proposed Schedule. If, after this additional 14-day period, EPA does not approve the revised proposed Schedule, either Party can invoke Dispute Resolution.

In submitting the Navy's proposed Schedule to the State, the Navy shall notify the State of the duration of the 14-day review and comment period corresponding to such Schedule as established in this Subsection. If comments on the proposed Schedule are received from the State within that 14-day period, the Navy shall address those comments to the extent practicable prior to EPA's approval of such Schedule. If comments are not received from the State within that 14-day period, the Parties shall proceed either (i) to incorporate the proposed Schedule into the SMP if EPA has approved such Schedule in accordance with this Subsection, or (ii) to attempt to revise the proposed Schedule if EPA has not approved such Schedule in accordance with this Subsection.

Remedial Investigation and Feasibility Study

9.8 The Navy agrees it shall develop, implement and report upon

a Remedial Investigation (RI) for each Operable Unit that is designated for each AOC that is listed in Appendix B to this Agreement or that is identified after the effective date of this Agreement in accordance with Subsections 9.6 and 9.7 and included in the Site Management Plan in accordance with Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN and Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN of this Agreement. RIs shall be conducted in accordance with the requirements and Schedules set forth in the approved RI/FS Work Plan and Site Management Plan. RIs shall meet the purposes set forth in Section IV - PURPOSE of this Agreement. A Baseline Risk Assessment shall be a component of the RIs. Final Site cleanup level criteria cannot be determined before the completion of a Baseline Risk Assessment.

9.9 The Navy agrees it shall develop, implement and report upon a Feasibility Study (FS) for each such Operable Unit where, based on the outcome of the RI, an unacceptable risk to human health or the environment exists. FSS shall be conducted in accordance with the requirements and Schedules set forth in the approved RI/FS Work Plan and Site Management Plan. The FS shall meet the purposes set forth in Section IV - PURPOSE of this Agreement.

Interim Remedial Actions

9.10 A. The Navy shall implement those Interim Remedial Actions (IRAs) necessary to prevent, minimize or eliminate risks to human health and the environment caused by the Release of Hazardous Substances, pollutants, or contaminants at or from the Site. An IRA is identified, proposed, and implemented prior to a final Remedial Action. Each IRA shall attain ARARs to the extent required by CERCLA or the NCP, and be consistent with and contribute to the efficient performance of a final Remedial Action(s) taken at an AOC or OU at the Site. Each IRA must be protective of human health and the environment and comply with CERCLA and the NCP and with State laws to the extent they are legally applicable or relevant and appropriate requirements in accordance with CERCLA Section 121, 42 U.S.C. Section 9621, and this Agreement.

B. When a Party to this Agreement determines that an IRA is necessary for an area(s) at the Site, that Party shall notify the other Party, in writing, of such determination. This notification shall at a minimum include the location of such area(s) at the Site and the reason(s) the Party believes an IRA is required. Either Party may propose an IRA for any SSA, AOC, or Operable Unit at the Site deemed suitable for an IRA.

Within thirty (30) days of notification, either Party may request a meeting of the Parties to assist in expediting the decision of whether to proceed with an IRA. If a dispute arises over whether to proceed with an IRA under this Agreement and cannot be settled between the Parties within thirty (30) days from receipt of notification, or thirty (30) days after the meeting provided for in this Subsection, the dispute shall immediately be brought to the Dispute Resolution Committee (DRC) in accordance with Section XX - DISPUTE RESOLUTION of this Agreement.

C. After a determination that an IRA is required under this Agreement, the Navy shall, within forty-five (45) days from such determination, submit to EPA and the State a proposed Schedule to support the selection of an IRA. At a minimum, such proposed Schedule shall include submittal dates for a Proposed Plan(s) and Interim Record of Decision(s).

Within fourteen (14) days of receipt of such proposed Schedule, EPA shall notify the Navy in writing as to whether the proposed Schedule is approved or disapproved. If EPA approves the proposed Schedule, such Schedule shall be incorporated into the SMP. If EPA does not approve the proposed Schedule, the Parties shall have an additional fourteen (14) days from the close of the initial 14-day review and comment period to attempt to revise such proposed Schedule. If, after this additional 14-day period, EPA does not approve the revised proposed Schedule, either Party can invoke Dispute Resolution.

In submitting the Navy's proposed Schedule to the State, the Navy shall notify the State of the duration of the 14-day review and comment period corresponding to such Schedule as established in this Subsection. If comments on the proposed Schedule are received from the State within that 14-day period, the Navy shall address those comments to the extent practicable prior to EPA's approval of such Schedule. If comments are not received from the State within that 14-day period, the Parties shall proceed either (i) to incorporate the proposed Schedule into the SMP if EPA has approved such Schedule in accordance with this Subsection, or (ii) to attempt to revise the proposed Schedule if EPA has not approved such Schedule in accordance with this Subsection.

Records of Decision and Plans for Remedial Action

9.11 A. This Subsection shall apply to selection of Remedial Actions and any disputes relating thereto.

B. Within ninety (90) days after submission of a draft

final FS, the Navy shall submit a draft Proposed Plan for each Operable Unit addressed by such FS to EPA and the State for review and comment. EPA and the State shall, within thirty (30) days from receipt of such draft Proposed Plan, each submit written comments on the draft Proposed Plan to the Navy. This 30-day review and comment period may be extended by EPA for an additional fifteen (15) days.

If EPA or the State submits comments on the draft Proposed Plan in a timely manner, the Navy shall submit to EPA and the State a written response to each comment, together with a draft final Proposed Plan, within twenty-one (21) days from the close of the 30-day review and comment period (or from the close of any 15-day extension of such period granted by EPA). In submitting the draft Proposed Plan to the State, the Navy shall notify the State of the duration of the 30-day review and comment period corresponding to such document as established in this Subsection. If comments are not received from the State within that 30-day period, the Navy shall proceed to issue the draft final Proposed Plan and written responses to any EPA comments within 21 days from the close of such period (or from the close of any 15-day extension of such period granted by EPA).

The Navy and EPA shall have twenty-one (21) days from receipt by EPA and the State of the draft final Proposed Plan to reach agreement on the final Proposed Plan. If the Navy and EPA cannot agree on the final Proposed Plan within twenty-one (21) days, the matter shall be referred to Dispute Resolution.

Within fourteen (14) days after finalization of the Proposed Plan in accordance with this Subsection, the Navy shall publish its Proposed Plan for thirty (30) days of public review and comment. During the public comment period, the Navy shall make the Administrative Record available to the public and distribute the Proposed Plan. The Navy shall hold a public information meeting during the public comment period to discuss the preferred alternative for each Operable Unit. Copies of all written and oral public comments received will be provided to EPA. Public review and comment shall be conducted in accordance with CERCLA Section 117(a), 42 U.S.C. Section 9617(a), and applicable EPA and State Guidance.

C. Following public comment, the Navy, in consultation with EPA, will determine if the Proposed Plan should be modified based on the comments received. These modifications will be made by the Navy, and the modified documents will be reviewed by EPA. EPA and the Navy shall determine whether additional public comment must be solicited where modifications to the Proposed

Plan substantially change the remedy originally proposed to the public. If within fourteen (14) days following the close of the public comment period EPA and the Navy cannot agree on the determination concerning whether a Proposed Plan should be modified or whether additional public comment is necessary, the matter shall be referred to Dispute Resolution.

D. The Navy shall submit its draft ROD to EPA and the State within thirty (30) days following the close of the public comment period, including any extensions, on the Proposed Plan. The draft ROD will include a Responsiveness Summary, in accordance with applicable EPA Guidance. Pursuant to CERCLA Section 120(e)(4)(A), 42 U.S.C. Section 9620(e)(4)(A), EPA and the Navy shall make the final selection of the Remedial Action(s) for each Operable Unit.

E. EPA and the State shall, within thirty (30) days from receipt of the draft ROD, each submit to the Navy either (i) written comments on the draft ROD or (ii) a letter indicating that it will concur in the draft ROD.

If EPA or the State submits comments on the draft ROD in a timely manner, the Navy shall submit to EPA and the State a written response to each comment, together with a draft final ROD, within thirty (30) days from the close of the 30-day review and comment period. In submitting the draft ROD to the State, the Navy shall notify the State of the duration of the 30-day review and comment period corresponding to such document as established in this Subsection. If comments are not received from the State within that 30-day period, the Navy shall proceed to issue the draft final ROD and written responses to any EPA comments within 30 days from the close of such period.

F. EPA and the State shall, within twenty-one (21) days from receipt of the draft final ROD, each submit written comments on the draft final ROD to the Navy. In issuing the draft final ROD to the State, the Navy shall notify the State of the duration of the 21-day review period corresponding to that document and shall specifically request in writing that the State submit, by the close of that 21-day period, a letter to the Navy indicating whether or not the State concurs with the draft final ROD.

If comments or a letter indicating State concurrence or nonconcurrence with the draft final ROD are not received from the State by the close of that 21-day period, the Navy shall consult with EPA within three days from the close of that 21-day period

regarding whether or not to execute the final ROD and submit it to EPA for signature within 21 days from the date of such consultation. If EPA and the Navy agree to proceed with execution and submission of the final ROD, the Navy shall submit the executed final ROD to EPA for signature within 21 days from the date of such consultation. If EPA and the Navy agree that the draft final ROD should not be executed within 21 days from the date of such consultation, the Parties shall establish an alternative time frame for execution of the ROD.

If EPA submits comments on the draft final ROD in a timely manner and the State submits comments or a letter indicating State concurrence or nonconcurrence with the draft final ROD in a timely manner, the Navy shall revise the draft final ROD as appropriate and submit the executed final ROD to EPA for signature within twenty-one (21) days from receipt of such comments and/or letter.

G. If the Parties are unable to reach agreement on the selection of the Remedy, the Administrator shall select the Remedy in accordance with all applicable laws and procedures. EPA shall then prepare and issue the final ROD. EPA shall comply with the public participation requirements of the NCP. RODs shall not be subject to Dispute Resolution under this Agreement.

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

Remedial Design and Remedial Action

9.12 A. Upon submittal of a draft ROD for each Operable Unit, the Navy shall submit to EPA and the State a Remedial Design Schedule, a list of design deliverables for each anticipated Remedial Action, and a submittal date for the Remedial Action Work Plan. The Remedial Design Schedule shall include proposed regulatory/RAB review periods for each of the design submittals and the Remedial Action Work Plan.

Within fourteen (14) days from receipt of the Navy's proposed Schedule and list of design deliverables, EPA shall notify the Navy in writing as to whether such proposed Schedule and list are approved or disapproved. If EPA approves the proposed Schedule

and list, such Schedule shall be incorporated into the SMP at such time that the ROD is finalized. If EPA does not approve the proposed Schedule and list, the Parties shall have an additional fourteen (14) days from the close of the initial 14-day review and comment period to attempt to revise such proposed Schedule and list. If, after this additional 14-day period, EPA does not approve the revised proposed Schedule, either Party can invoke Dispute Resolution.

In submitting the Navy's proposed Remedial Design Schedule and list of design deliverables to the State, the Navy shall notify the State of the duration of the 14-day review and comment period corresponding to such documents as established in this Agreement. If comments on such proposed Schedule and list of deliverables are received from the State within that 14-day period, the Navy shall address those comments to the extent practicable prior to EPA's approval of such Schedule or list of deliverables. If comments are not received from the State within that 14-day period, the Parties shall proceed either (i) to incorporate the proposed Schedule into the SMP if EPA has approved such Schedule and list in accordance with this Subsection, or (ii) to attempt to revise the proposed Schedule if EPA has not approved such Schedule and list in accordance with this Subsection.

The Remedial Design Schedule agreed to by the Parties shall result in commencement of substantial continuous physical on-site activity at the Operable Unit within fifteen (15) months after completion of the ROD. All design documents shall be prepared in accordance with this Agreement and applicable EPA Guidance. The Remedial Design shall provide the appropriate plans and specifications describing the intended remedial construction and shall include provisions necessary to ensure that the Remedial Action will achieve Performance Standards.

B. The RA Work Plan(s) shall at a minimum contain a Schedule for the completion of the Remedial Action, a Health and Safety Plan, a Sampling and Analysis Plan, and a Quality Assurance Project Plan, if necessary. The Schedule contained in the final RA Work Plan(s) will be immediately incorporated in the Site Management Plan.

C. After the final design document is approved in accordance with Section X - CONSULTATION of this Agreement, the Navy shall begin performance of the Remedial Action in accordance with the final Remedial Design and the RA Work Plan. The Remedial Action shall be completed in accordance with the

approved final Remedial Design and RA Work Plan and all applicable EPA and State Guidance.

Finalization of Remedial Actions

9.13 A. The Navy agrees that it shall submit to EPA and the State a Remedial Action Report in accordance with the Schedule in the Site Management Plan following the completion of the Remedial Action for each OU. The Remedial Action Report shall document the cleanup activities that took place at the OU, and that Performance Standards specified in the ROD have been met. For each Long Term Response Action (LTRA), an interim Remedial Action Report shall be prepared when the physical construction of the system is complete and the unit is operating as designed. Such Interim Remedial Action Report shall be amended and finalized when the LTRA Performance Standards specified in the ROD are achieved.

B. The Remedial Action Report shall outline in detail, and provide an explanation for, any activities that were not conducted in accordance with the final RD and/or RA Work Plan(s). In addition, in accordance with the Schedule provided in the Site Management Plan, after the completion of the Remedial Action for each OU, the Navy shall submit a Long-Term Monitoring Plan and an Operations and Maintenance Plan (if necessary) to EPA and the State for review. Draft Long-Term Monitoring Plan(s) and draft Operation and Maintenance Plan(s) shall be submitted prior to finalization of the Remedial Action Report for each OU. Long-Term Monitoring Plan(s) and Operation and Maintenance Plan(s) finalized under this Agreement shall contain Schedules for completion of the Work described therein. These Schedules shall be incorporated in the Site Management Plan and become enforceable pursuant to the terms of this Agreement.

Supplemental Response Action

9.14 The Parties recognize that subsequent to finalization of a ROD, a need may arise for one or more supplemental Response Actions to remedy continuing or additional Releases or threats of Releases of Hazardous Substances, pollutants or contaminants at or from the Site. If such Release or threat of Release may present an immediate threat to public health or welfare or the environment, it shall be addressed in accordance with Section XVIII - REMOVAL AND EMERGENCY ACTIONS of this Agreement. If such Release or threat of Release does not present an immediate threat to public health or welfare or the environment, it shall be addressed in accordance with Subsections 9.15 through 9.18 of this Agreement.

9.15 A supplemental Response Action shall be undertaken only when:

A. A determination is made that as a result of the Release or threat of Release of a Hazardous Substance, pollutant or contaminant at or from the Site, an additional Response Action is necessary and appropriate to assure the protection of human health or the environment; and

B. Either of the following conditions is met for any determination made in accordance with Subsection 9.15A, above:

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

(2) For supplemental Response Actions proposed after EPA Certification, the determination must be based upon conditions at the Site that were unknown at the time of EPA Certification or based upon new information received in whole or in part by EPA following EPA Certification.

9.16 If, subsequent to ROD signature, either Party concludes that a supplemental Response Action is necessary based on the criteria set forth in Subsection 9.15, such Party shall promptly notify the other Party of its conclusion in writing. The notification shall specify the nature of the supplemental Response Action needed and the new information on which it is based. The Project Managers shall confer and attempt to reach consensus on the need for such an action within thirty (30) days from receipt of such notification. If after this 30-day period the Project Managers cannot reach consensus, either Party may notify the other Party in writing within ten (10) days from the close of the 30-day period that it intends to invoke Dispute Resolution. If the Project Managers are still unable to reach consensus within fourteen (14) days from the issuance of such notice, the question of the need for the supplemental Response Action shall be resolved through Dispute Resolution.

9.17 If the Project Managers agree, or if it is determined through Dispute Resolution, that a Supplemental Response Action is necessary based on the criteria set forth in Subsection 9.15, the Navy shall propose a Deadline for submittal of the Supplemental Work Plan(s), if such a plan is necessary, and a

Schedule for performance of the Work for the Supplemental Response Action to EPA and the State within ninety (90) days following such agreement or determination.

9.18 The Navy shall conduct a Supplemental Response Action RI and/or FS, to the extent determined necessary by the Project Managers, in accordance with Subsections 9.8 and 9.9 of this Agreement. Following finalization of the Supplemental Response Action RI/FS, the procedures described in Subsections 9.11 through 9.13 of this Agreement shall be followed.

Construction Completion/Site Completion/EPA Certification

9.19 The Navy agrees that it shall submit to EPA and the State a Preliminary Close Out Report (PCOR) in accordance with the Schedule in the Site Management Plan following the completion of physical construction of the Remedial Action for the last OU at the Site. The PCOR shall demonstrate and document that physical construction at all OUs at the Site has been completed. The PCOR must contain a Schedule for the Site to satisfy the NCP and other procedural requirements necessary to issue a Final Close Out Report (FCOR). The PCOR shall focus on construction at the Site, including the releases at the Site, Site conditions, construction activities, Response Actions, completion of construction, and a detailed Schedule of steps remaining for Site completion. The PCOR must address Five-Year Review requirements. The Parties recognize that in some cases, depending on the nature of the Remedial Action at the last OU, a PCOR may not be necessary and that the FCOR may meet the requirements for Site Completion.

9.20 A. When the Navy determines that Remedial Actions at all OUs have been completed, it shall submit a FCOR to EPA and the State for review. The FCOR shall document compliance with statutory requirements and provide a consolidated record of all remedial activities for all OUs at a Site. The FCOR documents Site completion. In order for a Site to be eligible for Site completion, the following criteria must be met:

1. Performance Standards specified in all RODs have been met, and all cleanup actions and other measures identified in the RODS have been successfully implemented.
2. The constructed Remedies are operational and performing according to engineering specifications.
3. The Site is protective of human health and the environment.

4. The only remaining activities, if any, at the Site are operation and maintenance activities (which may include long-term monitoring).

B. The FCOR shall cover the entire Site, including all OUs. As outlined in Section 9.13 of this Agreement, the Remedial Action Report for each OU, including the final OU, is required to document that Work was performed according to design specifications. An Remedial Action Report, however, cannot document Site completion. Only the FCOR satisfies Site completion requirements. The FCOR shall include a discussion regarding any operation and maintenance requirements and/or land use restrictions needed at the Site.

C. The FCOR shall be signed by the Navy's signatory authority or designee, certifying that remedial activities have been completed in full satisfaction of the requirements of this Agreement, and shall include a request for EPA certification of Site completion. Within ninety (90) days of EPA's receipt of the Navy's request for certification of Site completion, EPA, in consultation with the State, shall advise the Navy in writing that:

1. EPA certifies that all Response Actions have been completed at the Site in accordance with CERCLA, the NCP and this Agreement, based on conditions known at the time of certification; or

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

D. If EPA denies the Navy's request for certification for Site completion in accordance with this Agreement, the Navy may invoke Dispute Resolution in accordance with Section XX - DISPUTE RESOLUTION of this Agreement within twenty (20) days of receipt of EPA's written denial of certification or determination that additional Work is necessary. If EPA's denial of certification is upheld through the Dispute Resolution process, the Navy will perform the requested additional Work.

E. If Dispute Resolution is not invoked, or if EPA's denial of certification is upheld through Dispute Resolution, the Navy shall, in the next draft Amended Site Management Plan submitted after receipt of the written denial of certification or Dispute Resolution finding, propose a Deadline for the submittal of a draft Supplemental Work Plan. The draft Supplemental Work Plan shall contain a Schedule for completion of the additional Work

required. This Schedule, once approved, will be incorporated in the Site Management Plan. After performing the additional Work, the Navy may resubmit a request for certification to EPA as outlined in this Section. EPA shall then grant or deny certification pursuant to the process set forth in this Section.

X. CONSULTATION

Review and Comment Process for Draft and Final Documents

10.1 Applicability:

The provisions of this Section establish the procedures that shall be used by the Parties to provide each other and the State with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either Primary or Secondary Documents. Separate procedures for notice, review, comment and response to comments for Proposed Plans, RODs and amendments to the Site Management Plan are addressed in Subsections 9.11 and 12.4 through 12.7 of this Agreement. In accordance with CERCLA Section 120, 42 U.S.C. Section 9620, and 10 U.S.C. Section 2705, the Navy shall 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 deliverable documents identified herein shall be prepared, distributed and subject to dispute in accordance with Subsections 10.2 through 10.9 below. The designation of a document as "draft" or "final" is solely for purposes of consultation with EPA in accordance with this Section. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final," to the public for review and comment as appropriate and as required by law and the NCP.

10.2 Process for Primary Documents:

A. Primary Documents include those documents specified in Subsection 10.2(C). Primary Documents are initially issued by the Navy in draft subject to review and comment by EPA and the State. Following timely receipt of comments on a particular draft Primary Document, the Navy shall respond to comments received and issue a draft final Primary Document subject to Dispute Resolution. The draft final Primary Document shall become the final Primary Document in accordance with Subsection 10.8 of this Agreement.

In issuing a draft Primary Document to the State, the Navy shall notify the State of the duration of the review and comment period corresponding to such document as established in this Agreement. If comments are not received from the State within such review period, the Navy shall proceed to issue the document in draft final form.

B. Prior to the effective date of this Agreement, the Navy has transmitted the following Primary Documents to EPA and the State for review and comment:

Off-Shore Ecological Risk Assessment;

On-Shore/Off-Shore Fate and Transport Phase II Report;

MBI Close Out Report;

Groundwater Monitoring Report;

IEUBK Report for Quarters S, N, and 68.

C. All Primary Documents shall be prepared in accordance with the NCP and applicable EPA Guidance. For each SSA, AOC or OU, as appropriate, the Navy shall complete and transmit drafts of the following Primary Documents to EPA and the State for review and comment in accordance with the provisions of this Section X - CONSULTATION:

(1) Site Screening Process Work Plans

(2) Site Screening Process Reports

(3) RI/FS (including Baseline Risk Assessment) Work Plans (to include the following as appropriate):-

- Sampling and Analysis Plan
- Quality Assurance Project Plan
- Health and Safety Plan

(4) Remedial Investigation Reports (including Baseline Risk Assessments)

(5) FS Reports

(6) Proposed Plans

(7) Final Remedial Designs

(8) Remedial Action Work Plans (to include the following as appropriate for the RA selected):

- Schedules for Remedial Action
- Remedial Action Sampling Plan
- Remedial Action Construction Quality Assurance Plan
- Remedial Action Environmental Monitoring Plan
- Contingency Plan

(9) Long-Term Monitoring Plans

(10) Interim Remedial Action Reports

(11) Remedial Action Reports

(12) Operation and Maintenance Plans

(13) Preliminary Close Out Report (PCOR)

(14) Final Close Out Report (FCOR)

D. Only the draft final Primary Documents identified above shall be subject to Dispute Resolution. The Navy shall complete and transmit draft Primary Documents in accordance with the Schedule and Deadlines established in the Site Management Plan.

10.3 Process for Secondary Documents:

A. Secondary Documents include those documents that are discrete portions of the Primary Documents and are typically input or feeder documents. Secondary Documents are issued by the Navy in draft subject to review and comment by EPA and the State. Although the Navy must respond to comments received, the draft Secondary Document may be finalized in the context of the corresponding draft final Primary Document. A Secondary Document is subject to Dispute Resolution at the time the corresponding draft final Primary Document is issued. In issuing a draft Secondary Document to the State, the Navy shall notify the State of the duration of the review and comment period corresponding to such document as established in this Agreement. If comments are not received from the State within such review and comment period, the Navy shall proceed to finalize the Secondary Document in the context of the corresponding draft final Primary Document in accordance with Subsection 10.2 of this Agreement.

B. All Secondary Documents shall be prepared in accordance with the NCP and applicable EPA Guidance. The Navy shall

complete and transmit drafts of the following Secondary Documents to EPA and the State for review and comment in accordance with the provisions of this Section:

- (1) Community Relations Plan Updates
- (2) Engineering Evaluation/Cost Analysis Reports
- (3) Removal Action Memoranda
- (4) Non-Time Critical Removal Action Plans (40 C.F.R. § 300.415(b)(4)(ii))
- (5) Pilot/Treatability Study Work Plans
- (6) Pilot/Treatability Study Reports
- (7) Well Closure Methods and Procedures
- (8) Preliminary/Conceptual Remedial Designs, or Equivalents
- (9) Pre-final Remedial Designs
- (10) Periodic Review Assessment Reports
- (11) Sampling and Data Results
- (12) Initial Screening of Alternatives

C. Although EPA and the State may comment on the draft Secondary Documents listed above, such documents shall not be subject to Dispute Resolution except as provided by Subsection 10.3A of this Agreement. Target Dates shall be established for the completion and transmission of draft Secondary Documents and shall be included in the Site Management Plan in accordance with Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN and Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN of this Agreement.

D. Unless otherwise agreed to by the Parties, Secondary Documents will be subject to a thirty (30) day review period. Within thirty (30) days from its receipt of comments on a Secondary Document, the Navy shall submit to EPA and the State a letter including a response to each comment submitted. EPA and the State shall review the response letter within thirty (30) days. Following the review period for the Navy's response to comments on the Secondary Document, either EPA or the Navy may request a meeting to discuss outstanding technical issues.

10.4 Meetings of the Project Managers on Development of Documents:

The Project Managers shall meet approximately every ninety (90) days, and confer by telephone every thirty (30) days, except as otherwise agreed by the Parties, to review and discuss the development of Primary and Secondary Documents. Prior to preparing any draft document specified in Subsection 10.2 or 10.3 of this Agreement, the Project Managers shall meet to discuss the document in an effort to reach a common understanding, to the maximum extent practicable, with respect to the content of draft documents. The Navy shall notify the State of all meetings and conference calls covered by this Subsection within a reasonable time prior to each such meeting or conference call, and the State may choose to participate, through its representative designated in Subsection 14.9 of this Agreement, in such meeting or call.

10.5 Identification and Determination of Potential ARARs:

A. For those Primary Documents or Secondary Documents that consist of or include ARAR determinations, the Project Managers shall meet as necessary prior to the issuance of the draft document to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. The State shall identify all potential state ARARs as early in the remedial process as possible consistent with the requirements of CERCLA Section 121(d)(2)(A)(ii), 42 U.S.C. Section 9621(d)(2)(A)(ii), and the NCP. The Navy shall consider any written interpretations of ARARs provided by the State and shall prepare draft ARAR determinations in accordance with CERCLA Section 121(d)(2), 42 U.S.C. Section 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 ARARs depend on the specific Hazardous Substances, pollutants and contaminants at a site, the particular actions proposed as a Remedy and the characteristics of a site. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be reexamined throughout the RI/FS process until a ROD is issued.

10.6 Review and Comment on Draft Documents:

A. The Navy shall complete and transmit each draft Primary Document to EPA and the State on or before the corresponding Deadline included in the Site Management Plan for the issuance of

the document. The Navy shall complete and transmit each draft Secondary Document in accordance with the Target Dates established by the Project Managers and included in the Site Management Plan for the issuance of such documents.

B. With the exception of draft Proposed Plans, Final Remedial Design documents, and Remedial Action Work Plans, which are addressed in Section IX - WORK TO BE PERFORMED of this Agreement, the review and comment periods for all draft Primary Documents developed and submitted to EPA and the State shall be as follows:

- (1) EPA/State review of draft Primary Document and transmission of comments to Navy - forty-five (45) days, commencing at receipt of draft Primary Document;
- (2) Navy review of EPA/State comments and transmission of response letter to EPA/State - forty-five (45) days, commencing at the close of the 45-day period specified in Subsection 10.6B(1);
- (3) EPA/State review of Navy response letter and transmission of comments to Navy - thirty (30) days, commencing at the close of the 45-day period specified in Subsection 10.6B(2);
- (4) Navy revision and issuance of draft final Primary Document to EPA/State - thirty (30) days, commencing at the close of the 30-day period specified in Subsection 10.6B(3).

In submitting a draft Primary Document to the State, the Navy shall notify the State of the duration of the review and comment periods corresponding to such document as established in this Subsection. If comments are not received from the State within the period specified in Subsection 10.6B(1), the Navy shall proceed to issue its response letter to any EPA comments in accordance with Subsection 10.6B(2). If comments are not received from the State within the period specified in Subsection 10.6B(3), the Navy shall proceed to issue the draft final Primary Document in accordance with Subsection 10.6B(4).

C. (1) Unless the Parties mutually agree in writing to another time period, all draft Primary Documents shall be subject to the review periods established in Subsection 10.6B (with the exception of Proposed Plans, Final Remedial Design documents, and Remedial Action Work Plans, which are addressed in Section IX - WORK TO BE PERFORMED of this Agreement).

(2) Review of any document by EPA and the State may concern all aspects of the document and should include, but not be limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, and any pertinent Guidance issued by EPA or the State. Comments by EPA and the State shall be provided with adequate specificity so that the Navy may respond to the comment and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Navy, EPA or the State shall provide a copy of the cited authority or reference. On or before the close of any comment period, EPA and the State shall transmit by next day mail, overnight delivery, hand delivery or facsimile their written comments to the Navy.

D. Representatives of the Navy, and their contractors, if appropriate, shall make themselves readily available to EPA and the State during the comment period for purposes of informally responding to questions and comments on draft documents. Oral comments made during such discussions need not be the subject of a written response by the Navy at the close of the comment period.

E. In commenting on a draft document that contains a proposed ARAR determination, EPA and/or 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 in detail and shall identify any ARARs that it believes were not properly addressed in the proposed ARAR determination.

F. Following the close of any comment period for a draft document, the Navy shall give full consideration to all written comments on the draft document submitted during the comment period. The Navy shall transmit to EPA and the State its written response to comments received within the comment period. While the resulting draft final document shall be the responsibility of the Navy, it shall be the product of consensus between the Parties and the State to the maximum extent practicable.

G. Either Party may extend any review and comment period set out in Subsection 10.6B(1), 10.6B(2) and 10.6B(3) for an additional fifteen (15) days by providing written notice to the other Party at least seven (7) days prior to the close of such comment period. In appropriate circumstances, this time period may be further extended in accordance with Section XIII - EXTENSIONS of this Agreement.

H. With the concurrence of EPA, the Navy may extend the thirty (30) day period for issuing a draft final Primary Document for an additional twenty (20) days by providing written notice to EPA and the State prior to the end of the thirty (30) day period. In appropriate circumstances, this time period may be further extended in accordance with Section XIII - EXTENSIONS of this Agreement.

10.7 Availability of Dispute Resolution on draft final Primary Documents:

A. Dispute Resolution shall be available to the Parties for draft final Primary Documents.

B. When Dispute Resolution is invoked on a draft final Primary Document, Work may be stopped in accordance with the procedures set forth in Section XX - DISPUTE RESOLUTION of this Agreement.

10.8 Finalization of Documents:

A. Unless otherwise provided, a draft final Primary Document shall become a final Primary Document thirty (30) days from issuance if neither EPA nor the State provides comments on such document by the close of that 30-day period.

B. If EPA provides comments on such draft final Primary Document to the Navy by the close of the 30-day period set out in Subsection 10.8A (or by the close of any extension period(s) mutually agreed to by the Parties in accordance with Subsection 20.2 of this Agreement) and does not invoke Dispute Resolution, the Navy shall give full consideration to such comments and submit a revised draft final Primary Document to EPA and the State within thirty (30) days from the close of that 30-day period (or such extension period(s)).

C. (1) If EPA invokes Dispute Resolution within the 30-day period set out in Subsection 10.8A (or within any extension period(s) mutually agreed to by the Parties in accordance with Subsection 20.2 of this Agreement), and the Navy's position is sustained in the Dispute Resolution process, the draft final Primary Document shall serve as the final Primary Document.

(2) If EPA invokes Dispute Resolution within that 30-day period (or within such extension period(s)), and the Navy's position is not sustained in the Dispute Resolution process, the Navy shall, within thirty (30) days from the issuance of a

decision in that process, submit to EPA and the State a revised draft final Primary Document that conforms to the results of the Dispute Resolution. Under the circumstances specified in Section XIII - EXTENSIONS of this Agreement, the time period for this revision may be extended.

D. In issuing a draft final Primary Document to the State, the Navy shall notify the State of the duration of the 30-day review and comment period corresponding to such document as established in Subsection 10.8A above. If comments are not received from the State within that 30-day period, the draft final Primary Document shall become the final Primary Document in accordance with Subsection 10.8A, 10.8B or 10.8C, as appropriate. If comments are received from the State within that 30-day period, the Navy shall give full consideration to such comments, and the draft final Primary Document shall become the final Primary Document in accordance with Subsection 10.8A, 10.8B or 10.8C, as appropriate.

If, based on the State's comments, the Navy and EPA agree that the draft final Primary Document should be revised, the Navy will prepare a revised draft final Primary Document. This revised draft final Primary Document shall be submitted to EPA and the State within thirty (30) days after the close of the 30-day review and comment period on the draft final Primary Document, and shall become a final Primary Document in accordance with Subsection 10.8A, 10.8B or 10.8C, as appropriate.

E. If Dispute Resolution results in Additional Work, the Navy shall develop a scope of Work to address said Additional Work within ninety (90) days from the issuance of a decision in the Dispute Resolution process, for review and comment by EPA and the State.

10.9 Subsequent Modification of Final Document:

Following finalization of any Primary Document in accordance with Subsection 10.8 above, EPA or the Navy may seek to modify the document, including seeking additional field Work, pilot studies, computer modeling or other supporting technical Work, only as provided in Paragraphs A and B below.

A. A Party may seek to modify a document after finalization if it determines, based on new information (i.e., information that became available, or conditions that became known, after the document was finalized) that the requested modification is necessary. A Party may seek such a

modification by submitting a concise written request to the Project Manager of the other Party. 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, either Party may invoke Dispute Resolution to determine if such modification shall be conducted. Modification of a document shall be required only upon a showing that:

(1) The requested modification is based on 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 ability to request the performance of additional Work that was not contemplated by this Agreement. The Navy's obligation to perform such Work must be established by either a modification of a report or document or by amendment to this Agreement.

XI. DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN

11.1 In order to ensure that the Work to be performed under this Agreement is accomplished in a timely manner, the Parties have agreed to establish Deadlines consisting of (i) Near Term Milestones for the current fiscal year (FY), the budget year (FY+1) and the planning year (FY+2); (ii) Out Year Milestones for the years occurring after the planning year until the completion of the cleanup or phase of the cleanup (FY+3 and beyond); and (iii) Project End Dates for the completion of major portions of the cleanup or for the cleanup as a whole. The Parties shall consult with the State in establishing these Deadlines. Near Term Milestones for performance of Work and submittal of Primary Documents within the current fiscal year (FY) are enforceable and shall be subject to stipulated penalties. Near Term Milestones, Out Year Milestones and Project End Dates will not change without the mutual consent of both Parties to the Agreement. Out Year Milestones and Project End Dates shall not be enforceable until they become Near Term Milestones for the current FY in accordance with the terms of Subsection 12.4 below; provided, however, that

if an activity is fully funded in the current FY, milestones associated with performance of Work and submittal of Primary Documents associated with such activity (even if they extend beyond the current FY) shall be enforceable. For the purposes of this Agreement, a fiscal year is the yearly time frame used by the United States Government that commences on October 1 and ends September 30 of the following calendar year.

11.2 The Site Management Plan (SMP), attached to this Agreement as Appendix D, establishes Deadlines for a three-year period for the submittal of Primary Documents pursuant to this Agreement. The SMP includes proposed actions for both CERCLA responses and actions that would otherwise be handled pursuant to RCRA corrective actions per Section VIII - STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION and outlines all response activities and associated documentation to be undertaken at the Facility. The SMP incorporates all Deadlines and Target Dates contained in approved Work Plans. All Schedules approved in future Work Plans immediately become incorporated in the Site Management Plan.

11.3 Deadlines in the SMP reflect the priorities agreed to by the Parties, in consultation with Public Stakeholders, through a process of "Risk Plus Other Factors" Priority Setting. Site activities have been prioritized by weighing and balancing a variety of factors including, but not limited to: (i) the DoD relative risk rankings for the Site; (ii) potential or future use of the Facility; (iii) ecological impacts; (iv) intrinsic and future value of affected resources; (v) cost effectiveness of the proposed activities; (vi) regulatory requirements; (vii) environmental justice considerations; and (viii) actual and anticipated funding levels. While Deadlines should not be driven by budget targets, such targets should be considered. Furthermore, in setting and modifying Deadlines, the Parties agree to make good faith efforts to accommodate federal fiscal constraints, which include budget targets established by the Navy.

11.4 The SMP includes (and shall be amended annually to include):

A. Actions necessary to mitigate any immediate threat to human health or the environment;

B. A listing of all currently identified SSAs, Operable Units (OUs), Interim Remedial Actions, Supplemental Response Actions, and Critical and Non-Time Critical Removal Actions covered or identified pursuant to this Agreement;

C. Activities and Schedules for Response Actions planned for the three-fiscal-year period covered by the SMP. Activities included, at a minimum, are:

-Near Term Milestones for the performance of Work and submittal of all Primary Documents in the three-year SMP period;

-Out Year Milestones for all Primary Documents covered in the SMP for the years FY+3 through the Project End Date;

-Target Dates for the submittal of all Secondary Documents;

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

-Project End Dates for the completion of any planned Response Action(s) covered by this Agreement;

D. A provision that, for each OU identified by the Parties within the three-year period covered by that SMP, the Navy shall submit a draft Proposed Plan within ninety (90) days of submission of a draft final FS Report;

E. If the development of a Primary Document is fully funded in the first year of the three-year period covered by the SMP, enforceable Deadlines for submittal of that draft Primary Document may extend beyond the current fiscal year as reflected in the SMP.

11.5 The SMP shall be amended on a yearly basis as provided in Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN. All subsequent Amendments to the SMP shall meet all of the requirements set forth in this Section.

11.6 The enforceable Deadlines established pursuant to this Section and Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN - shall be published by EPA and shall be incorporated into the SMP attached to this Agreement.

11.7 The Deadlines established pursuant to this Section and Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN - may be extended during the SMP review process by following Subsections 12.4 through 12.7 of this Agreement. All other extensions shall be governed pursuant to Section XIII - EXTENSIONS of this Agreement. The Parties recognize that

possible bases for extension of the Deadlines, as determined by mutual consent of the Parties, include: (I) the identification of significant new site conditions at this installation; (ii) reprioritization of activities under this Agreement caused by changing priorities or new site conditions elsewhere in the Navy; and (iii) reprioritization of activities under this Agreement caused by budget adjustments (e.g., recisions, inflation adjustments, and reduced congressional appropriations).

XII. BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN

12.1 The Department of the Navy (DoN), as a federal agency, is subject to fiscal controls, hereinafter referred to as the Future Year Defense Plan (FYDP). The Navy describes the first year of the FYDP as the year for which the next budget will be developed. The process for reviewing and adjusting the FYDP to (I) meet program requirements, and (ii) conform to OMB fiscal plans, is called the "POM" process. The Parties recognize that the planning, programming and budgeting is a multi-year process. The Parties also agree that both Parties should be involved in the full cycle of planning, programming, and budgeting activities.

Facility-Specific Planning, Programming and Budgeting

12.2 In order to ensure effective involvement by the Parties in the planning, programming, and budgeting process, the Navy agrees to meet, at the Project Manager level, with EPA for the purpose of reviewing the FYDP controls, developing a list of requirements/Work to be performed at the Site for inclusion in the DoN POM process, and participating in development of the Northern Division, Naval Facilities Engineering Command (NORDIV) submission to the proposed President's budget based on POM decisions for the year currently under consideration. When developing the proposed President's budget, the Navy agrees to notify EPA, at the Project Manager level, that budget controls have been received within two (2) business days of receiving those controls. Unless the Navy and EPA agree to a different time frame, within five (5) days of such notification, the Navy also agrees to consult with EPA, at the Project Manager level, on the proposed President's budget. This consultation must occur prior to NORDIV's initial budget submission to Naval Facilities Engineering Command (NAVFAC).

In the event that the Parties' Project Managers cannot agree on funding levels required to perform all Work outlined in the SMP, the Parties agree to make reasonable efforts to informally resolve these disputes, either at the immediate or secondary

supervisors' level, which would include discussions with NAVFAC. If resolution cannot be achieved informally within a reasonable period of time, NORDIV shall resolve the disagreement, if possible with the concurrence of EPA, and notify EPA. If EPA does not concur in the resolution, NORDIV, through NAVFAC, agrees to elevate the budget request to the Office of the Chief of Naval Operations (OCNO) Navy Headquarters (after incorporating as much input from EPA as possible) and inform OCNO of the possibility of future enforcement action should the money requested not be sufficient to perform the Work in dispute. In addition, if NORDIV's budget submission to NAVFAC does not include sufficient funds to complete all Work in the existing SMP, after any agreed-upon modifications, the Navy's budget submission shall also include supplemental reports that fully disclose the Work required by the SMP, but not included in the budget request. These supplemental reports shall accompany the cleanup budget that the Navy submits from NORDIV through successive levels of the Navy to OCNO and to the DoD Comptroller.

NORDIV-Budget

12.3 It is understood by both Parties that NORDIV will coordinate the development of their budget with representatives of the EPA regional offices and the states located within the geographical area administered by NORDIV.

The Navy shall forward to EPA and the State documentation of the budget requests (and any supplemental reports as outlined in Subsection 12.2 above) for the Site, as submitted by NORDIV to NAVFAC, and by NAVFAC to DoN, within fourteen (14) days after the submittal of such documentation to OCNO.

Amended Site Management Plan

12.4 No later than June 15 of each year after the development of the SMP, the Navy shall submit a draft Amended SMP to EPA and the State that will propose Deadlines to take effect in the next FY. Unless the Parties agree to modify the Deadlines as provided below, the draft Amended SMP should carry forward all Near Term Milestones, Out Year Milestones and Project End Dates included in the existing SMP. Therefore, in most cases, Near Term Milestones in the existing SMP for FY+1 and FY+2 shall be proposed as the Near Term Milestones for FY and FY+1 in the draft Amended SMP. In addition, the Navy shall examine the newly proposed FY and FY+1 milestones, funding circumstances (including OMB targets/guidance), and "risk plus other factors" outlined in Subsection 11.3 to evaluate whether the previously agreed upon Project End Dates and Out Year Milestones for FY+3 (i.e., what is

FY+3 under the existing SMP and will become FY+2 under the Amended SMP) should become Near Term Milestones.

Any proposed changes to Milestones must be explained in a cover letter to the draft Amended SMP. Moreover, any changes to Near Term Milestones, Out Year Milestones or Project End Dates require the agreement of both Parties, in consultation with Public Stakeholders. The draft Amended SMP should reflect any decisions made by the Parties during the planning, programming, and budgeting consultation process outlined in Subsection 12.1, above, and shall be based upon the assumption that all remedial requirements for the Site submitted during the development of the President's budget for the upcoming fiscal year will be fully funded. Any disagreement over adjustment of Deadlines pursuant to this Section shall be resolved in the context of the draft final amendment to the SMP. Additionally, the yearly Amended SMP shall contain revised Target Dates for the submission of Secondary Documents to be submitted during the upcoming three fiscal years. The yearly Amendment to the SMP will incorporate any newly finalized SSAs or Operable Units identified pursuant to this Agreement.

12.5 The Parties shall meet as necessary to discuss the draft Amended SMP. Within a reasonable time prior to each such meeting, the Navy shall notify the State of such meeting, and the State may choose to participate in such meeting.

Within thirty (30) days of receipt of the draft Amended SMP, EPA and the State shall review the draft Amended SMP and provide comments to the Navy. If EPA provides comments and is not satisfied with the draft Amended SMP, the Parties will meet within fifteen (15) days from the close of that 30-day review and comment period to discuss and finalize the draft Amended SMP. In submitting the draft Amended SMP to the State, the Navy shall notify the State of the duration of the 30-day review and comment period corresponding to such document as established in this Subsection. If comments on the draft Amended SMP are received from the State within that 30-day period, the Navy shall address those comments to the extent practicable prior to finalizing the draft Amended SMP in accordance with this Subsection. If comments are not received from the State within that 30-day period, the Navy shall proceed to finalize the draft Amended SMP in accordance with this Subsection.

Within thirty (30) days from receipt of EPA comments on the draft Amended SMP, the Navy shall, as appropriate, make revisions and submit to EPA and the State a revised draft, hereinafter referred

to as the draft final SMP. Following receipt of the draft final SMP, EPA has thirty (30) days to approve or disapprove the draft final SMP. If EPA disapproves the draft final SMP, the Navy shall have twenty (20) days from receipt of notice of disapproval to invoke Dispute Resolution directly to the SEC or amend the SMP in conformance with EPA comments. In submitting the draft final SMP to the State, the Navy shall notify the State of the duration of the 30-day review and comment period corresponding to such document as established in this Subsection. If comments on the draft final SMP are received from the State within that 30-day period, the Navy shall address those comments to the extent practicable prior to finalizing the draft final SMP in accordance with this Section. If comments are not received from the State within that 30-day period, the Navy shall proceed to finalize the draft final SMP in accordance with this Section.

12.6 It is understood by both Parties that the Navy will Work with representatives of the EPA regional offices and the states located within the geographical area administered by NORDIV to reach consensus on the reprioritization of Work made necessary by any yearly appropriation shortfalls or other circumstances as described in Subsection 11.7 above.

12.7 Within forty-five (45) days after NORDIV has received official notification of NORDIV's allocation based on the current year's Navy Environmental Restoration (ER,N) appropriation, the Navy shall determine if planned Work (as outlined in the draft final SMP) can be accomplished with the allocated funds. If the allocated funds are sufficient to complete all planned Work for that fiscal year and no changes to the draft final SMP are required, the Navy shall immediately forward a letter to EPA and the State indicating that the draft final SMP has become the final SMP.

In the event that the Navy determines within the forty-five (45) day period specified above that the allocated funds are not sufficient to accomplish the planned Work for the Site (an appropriation shortfall), the Navy shall immediately notify EPA and the State, and the Parties' Project Managers shall meet within thirty (30) days to determine if planned Work (as outlined in the draft final SMP) can be accomplished through: 1) rescoping or rescheduling activities in a manner that does not cause previously agreed upon Near Term Milestones and Out Year Milestones to be missed; or 2) developing and implementing new cost-saving measures. The Parties shall consult with the State in making such determinations. If, during this thirty (30) day consultation period, the Parties determine that rescoping or

implementing cost-saving measures is not sufficient to offset the appropriation shortfall and the Parties agree that Near Term Milestones, Out Year Milestones and Project End Dates should be modified, the Parties shall discuss these changes and develop modified Deadlines. The Parties shall consult with the State in developing such modified Deadlines. Such modifications shall be based on the "Risk Plus Other Factors" prioritization process discussed in Subsection 11.3 of this Agreement. If agreement on appropriate modifications cannot be reached among the Parties, EPA retains its authority to disapprove a request to modify or extend existing Schedules and Deadlines.

The Navy shall submit a revised draft final SMP to EPA and the State within thirty (30) days of the end of the consultation period specified above. The revised draft final SMP shall reflect EPA input during the consultation period. EPA and the State shall have twenty-one (21) days to review the revised draft final SMP. If EPA concurs with any modifications made in the revised draft final SMP, EPA shall notify the Navy in writing of its concurrence, and the revised draft final SMP shall become the final SMP.

In submitting the revised draft final SMP to the State, the Navy shall notify the State of the duration of the 21-day review and comment period corresponding to such document as established in this Subsection. If comments are not received from the State within that 21-day period, the revised draft final SMP shall become the final SMP in accordance with this Subsection.

If following the twenty-one (21) day review period for the revised draft final SMP, the Parties fail to agree on the content of the revised draft final SMP, the matter shall immediately be submitted directly to the SEC level for Dispute Resolution pursuant to Section XX - DISPUTE RESOLUTION of this Agreement. Within twenty (20) days after the conclusion of Dispute Resolution, the Navy shall revise and reissue, as necessary, the Final SMP. The pendency of any dispute under this Section shall not affect the timely adherence to the terms of this Agreement, including Schedules, except as specifically provided herein. Enforceable Deadlines established in the Final SMP are subject to stipulated penalties in accordance with Section XXI - STIPULATED PENALTIES of this Agreement.

XIII. EXTENSIONS

13.1 A Timetable, Deadline or Schedule shall be extended upon

receipt of a timely request for extension and when good cause exists for the requested extension as described in Subsection 13.2 of this Agreement. Any request for extension by the Navy shall be submitted in writing and shall specify:

- A. The Timetable, Deadline or Schedule that is sought to be extended;
- B. The length of the extension sought;
- C. The good cause(s) for the extension; and
- D. Any related Timetable and Deadline or Schedule that would be affected if the extension were granted.

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

- A. An event of Force Majeure, as defined in Section XXII - FORCE MAJEURE of this Agreement;
- B. A delay caused by the other 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 that is likely to be caused, by the grant of an extension in regard to another Timetable and Deadline or Schedule;
- E. The identification of significant new Site conditions during the performance of an RI; and
- F. Any other event or series of events mutually agreed to by the Parties as constituting good cause.

13.3 Absent agreement of the Parties with respect to the existence of good cause, either Party may seek and obtain a determination through Dispute Resolution that good cause exists.

13.4 Within fourteen (14) days from receipt of a request for an extension of a Timetable and Deadline or a Schedule, the receiving Party shall advise the requesting Party in writing of its respective position on the request. Any failure by the receiving Party to respond within the 14-day period shall be deemed to constitute concurrence in the request for extension. If a Party does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the

basis for its position.

13.5 If there is consensus between the Parties that the requested extension is warranted, the requesting Party shall extend the affected Timetable and Deadline or Schedule accordingly. If there is no consensus between the Parties as to whether all or part of the requested extension is warranted, the Timetable and Deadline or Schedule shall not be extended except in accordance with a determination resulting from Dispute Resolution.

13.6 Within seven (7) days of receipt of a statement of nonconcurrency with the requested extension, the requesting Party may invoke Dispute Resolution.

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

XIV. PROJECT MANAGERS

14.1 On or before the effective date of this Agreement, EPA and the Navy shall each designate a Project Manager and notify the other Party and the State of the name and address of its Project Manager. The Parties' Project Managers shall be responsible for assuring proper implementation of all Work performed under the terms of the Agreement. To the maximum extent practicable, communications between the Navy and EPA, and from the Navy and EPA to the State, on all documents, including reports, comments and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Project Managers. The Parties may designate an Alternate Project Manager to exercise the authority of the Project Manager in his or her absence.

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

prior to the new Project Manager exercising his or her delegated authority.

14.3 The Parties' Project Managers and a designated representative of the State shall meet or confer informally as necessary as provided in Section X - CONSULTATION of this Agreement. Although the Navy has ultimate responsibility for meeting its respective Deadlines, the EPA Project Manager shall endeavor to assist in this effort by scheduling meetings to review documents and reports, overseeing the performance of environmental monitoring at the Site, reviewing SSP, RI/FS or RD/RA progress, identifying opportunities for early/interim actions and attempting to resolve disputes informally. At least one week prior to each scheduled Project Manager meeting, the Navy will provide to the EPA Project Manager and the State a draft agenda and summary of the status of the Work subject to this Agreement.

These status reports shall include, when applicable:

- A. A summary of all data received and not previously provided by the Navy during the reporting period consistent with the limitations of Subsection 31.1 of this Agreement;
- B. A summary of all activities completed pursuant to this Agreement since the last Project Manager meeting as well as such actions and plans that are scheduled for the upcoming ninety (90) days; and
- C. A description of any delays, the reasons for such delays, anticipated delays, concerns over possible Timetable implementation or problems that arise in the execution of any Work required by this Agreement and expected to be executed during the quarter and any steps that were or will be taken to alleviate the delays or problems.

The Navy will send the minutes of each Project Manager meeting to the EPA Project Manager and the State within twenty-one (21) days after the meeting. Any documents requested during the meeting will be provided in a timely manner.

14.4 A Party's Project Manager may recommend and request minor field modifications to the Work performed pursuant to this Agreement, or in techniques, procedures or designs utilized in carrying out this Agreement. The minor field modifications proposed under this Subsection must be approved orally by both Parties' Project Managers to be effective. No such Work modifications can be so implemented if an increase in contract

cost will result without the authorization of the Navy Contracting Officer. If agreement cannot be reached on the proposed additional Work or modification to Work, Dispute Resolution shall be invoked by the Party requesting the modification by submitting a written statement to the other Party in accordance with Section XX - DISPUTE RESOLUTION of this Agreement. If both Parties agree to the modification, within five (5) business days following a modification made in accordance with this Subsection, the Project Manager who requested the modification shall prepare a written memorandum detailing the modification and the reasons therefor and shall provide or mail a copy of the memorandum to the Project Manager of the other Party for signature and return. The Project Manager who requested the modification shall also provide or mail a copy of the memorandum to the State.

14.5 Modifications of Work not provided for in Subsection 14.4 of this Agreement must be approved by both Parties' Project Managers to be effective. If agreement cannot be reached on the proposed modification to Work, Dispute Resolution shall be invoked. Within five (5) business days following a modification made in accordance with this Subsection, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefor and shall provide or mail a copy of the memorandum to the Project Manager of the other Party for signature and return. The Project Manager who requested the modification shall also provide or mail a copy of the memorandum to the State.

14.6 Each Party's Project Manager shall be responsible for assuring that all communications received from the other Project Manager or the State are appropriately disseminated to and processed by the Party that each represents.

14.7 The Parties shall transmit Primary and Secondary Documents and all notices and notifications required herein by next day mail, overnight delivery, hand delivery or certified letter to the persons specified in Subsections 14.8 and 14.9 below by the Deadlines established under Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN and Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN. Any document or notice to be transmitted by a certain date will be considered as transmitted on time if: (1) it is provided to a carrier on a next day mail or overnight delivery basis no later than the day before it is due to be delivered according to the requirements of this Agreement; (2) it is hand-delivered by the due date; or (3) it is sent by certified mail return receipt requested no later than two days before it is due to be delivered according to the requirements of

this Agreement. Any other means of transmission must arrive on the due date to be considered as timely delivered. Time limitations shall commence upon receipt. The Navy shall provide to the EPA and the State five (5) copies each of each Primary and Secondary Document.

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

A. For the Navy:

Commander, Northern Division
Naval Facilities Engineering Command
Code 1823 (Attn: Fred Evans)
10 Industrial Highway
Mail Stop #82
Lester, PA 19113-2090

B. For EPA:

Meghan F. Cassidy
Environmental Protection Agency
Region 1
One Congress Street, Suite 1100
Mail Code: HBT
Boston, MA 02203

14.9 Notice to the State shall be provided under this Agreement to the following address:

Maine Department of Environmental Protection
Bureau of Remediation and Waste Management
17 State House Station
Augusta, ME 04333-0017

14.10 EPA shall also forward to the Installation Restoration Office, Portsmouth Naval Shipyard, Portsmouth, NH 03804-5000, copies of all correspondence relating to Primary and Secondary documents and all notices transmitted to the Navy Project Manager under Subsections 14.7 and 14.8 above. Delivery may be by regular first class mail. Time limitations will not commence until receipt by the Navy Project Manager as provided in Subsection 14.7 above.

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

14.12 The Project Manager for the Navy shall represent the Navy

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

14.13 The authority of the Parties' Project Managers shall include, but not be limited to:

A. Taking samples and ensuring that sampling and other field Work is performed in accordance with the terms of any final Work Plans and QA/QC Plan;

B. Observing, requesting photographs to be taken by a designated representative of PNS, and making such other reports on the progress of the Work as the Parties' Project Managers deem appropriate, subject to the limitations set forth in Section XVI - ACCESS of this Agreement;

C. Reviewing sampling data, records, files, and documents relevant to the Agreement, subject to the limitations set forth in Section XXX - RECORD PRESERVATION of this Agreement; and

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

14.14 If any event occurs or has occurred that may delay or prevent the performance of any obligation under this Agreement, whether or not caused by a Force Majeure event, any Party shall notify by telephone the other Party's Project Manager and the State within two (2) working days of when the Party first became aware that the event might cause a delay. If the Party intends to seek an extension of a Deadline or Schedule because of the event, the procedures of Section XIII - EXTENSIONS of this Agreement shall apply.

XV. EXEMPTIONS

15.1 The Parties recognize that the President may issue an Executive Order, as needed to protect national security interests, regarding Response Actions at PNS, pursuant to CERCLA Section 120(j), 42 U.S.C. Section 9620(j). Such an Executive Order may exempt PNS or any portion thereof from the requirements of CERCLA for a period of time not to exceed one (1) year after

the issuance of that Order. This Executive Order may be renewed. The Navy shall obtain access to and perform all actions required by this Agreement within all areas inside those portions of PNS that are not the subject of or subject to any such Executive Order issued by the President.

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

XVI. ACCESS

16.1 EPA and/or its representatives shall have the authority to enter the Site at all reasonable times for the purposes consistent with CERCLA Section 104(e), 42 U.S.C. Section 9604(e), and the provisions of this Agreement. Such authority shall include but not be limited to: inspecting records, logs, contracts, and other documents relevant to implementation of this Agreement; reviewing and monitoring the progress of the Navy, its contractors, and lessees in carrying out the activities under this Agreement; conducting, with prior notice to the Navy, tests that EPA deems necessary; assessing the need for planning additional Response Actions at the Site; and verifying data or information submitted to EPA. The Navy recognizes that the State has those rights provided by CERCLA Section 104(e), 42 U.S.C. Section 9604(e). The Navy shall honor all reasonable requests for access to the Site made by EPA upon presentation of credentials showing the bearer's identification and that he/she is an employee or agent of EPA and is a United States citizen. The Navy Project Manager or his/her designee will provide briefing information, coordinate access and escort to restricted or controlled-access areas, arrange for Base passes, and coordinate any other access requests that arise. The Navy shall use its best efforts to ensure that conformance with the requirements of this Subsection 16.1 do not delay access.

16.2 The rights granted in Subsections 16.1 and 16.4 to EPA regarding access shall be subject to regulations and statutes, including all applicable PNS security regulations, as may be necessary to protect national security information ("classified information") as defined in Executive Order 12958, and comply with PNS's health and safety requirements. Such requirements shall be applied so as not to unreasonably hinder EPA from carrying out its responsibilities and authority pursuant to CERCLA and this Agreement.

16.3 The Navy shall accompany EPA during EPA oversight visits to the Site. The Navy shall provide an escort whenever EPA requires access to restricted areas of PNS for purposes consistent with CERCLA and the provisions of this Agreement. EPA shall provide reasonable notice (which may, if practical, be 48 hours advance notice) to the Navy Project Manager to request any necessary escorts for such restricted areas.

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

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

16.6 To the extent that activities pursuant to this Agreement must be carried out on other than Navy property, the Navy shall use its best efforts, including its authority under CERCLA Section 104, 42 U.S.C. Section 9604, to obtain access agreements from the owners that shall provide reasonable access for the Navy and EPA and their representatives. Although the Navy may choose to do so, nothing in this Section requires the Navy to purchase easements or pay for access to such non-Navy property. In the event that such access is not obtained within a reasonable time to avoid interference with ongoing Response Actions, the Navy shall notify EPA regarding the lack of the necessary access agreements and describe the efforts undertaken to obtain such access agreements. EPA may thereafter, consistent with its authority, assist the Navy in obtaining access. The Navy shall submit to EPA and the State appropriate modifications to any Response Action affected by the inability to obtain proper access.

16.7 With respect to property referred to in Subsection 16.6, upon which monitoring wells, pumping wells, or other Response Actions are to be located, the Navy shall use its best efforts to ensure that any access agreements shall provide for the continued right of entry for both Parties for the performance of such Response Actions. In addition, any access agreement shall provide: (i) that no conveyance of title, easement, or other interest in such property shall be consummated without the continued right of entry; (ii) that the owners or lessees of any

such property shall notify the Navy and EPA by certified mail, at least sixty (60) days prior to any conveyance of an interest in the property, of the property owner's or lessee'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; and (iii) that EPA shall have identical access to such property as the Navy.

16.8 The Navy shall ensure that all Response Actions, including ground water rehabilitation measures and Remedial Actions of any kind, that are undertaken pursuant to this Agreement on any areas that (i) are presently owned by the United States and that are occupied by the Navy or leased by the Navy to any other entity, or (ii) are in any manner under the control of the Navy or any lessees or agents of the Navy, shall not be impeded or impaired in any manner by any transfer of title or change in occupancy or any other change in circumstances of such areas.

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

XVII. PERMITS

17.1 The Navy shall be responsible for obtaining all Federal, State and local permits that are necessary for the performance of all Work under this Agreement.

17.2 The Parties recognize that under CERCLA Sections 121(d) and 121(e)(1), 42 U.S.C. Sections 9621(d) and 9621(e)(1), and the NCP, portions of the Response Actions called for by this Agreement and conducted entirely on the Site, where such Response Actions are selected and carried out in accordance with CERCLA, are exempt from the procedural requirement to obtain Federal, State, or local permits. All activities must, however, comply with all the substantive Federal and State standards, requirements, criteria, or limitations that are contained in the applicable Federal or State permit regulations.

17.3 When the Navy proposes a Response Action, other than an emergency Removal Action, to be conducted entirely on the Site, that in the absence of CERCLA Section 121(e)(1), 42 U.S.C. Section 9621(e)(1), and the NCP, would require a Federal, State or local permit, the Navy shall include in its draft ROD or removal memorandum:

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

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

C. An explanation of how the Response Action proposed will meet the standards, requirements, criteria or limitations identified immediately above.

17.4 Subsection 17.2 above is not intended to relieve the Navy from the requirement(s) of obtaining a permit whenever it proposes a Response Action involving the shipment or movement of a Hazardous Substance, pollutant, or contaminant off the Site or in any other circumstances where the exemption for which CERCLA Section 121(e)(1), 42 U.S.C. Section 9621(e), provides does not apply.

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

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

17.7 EPA shall review the Navy's proposed modifications to this Agreement in accordance with Section XXXVI - AMENDMENT OF AGREEMENT of this Agreement. If the Navy submits proposed modifications prior to a final determination of any appeal taken on a permit needed to implement this Agreement, EPA may elect to delay review of the proposed modifications until after such final determination is entered.

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

17.9 With the exception of the Corrective Action Permit, which is superseded as of the effective date of this Agreement, nothing in this Agreement shall be construed to affect the Navy's obligation to comply with any RCRA permit(s) that PNS may already have or be issued in the future.

XVIII. REMOVAL AND EMERGENCY ACTIONS

18.1 The Navy shall provide EPA and the State with timely notice of any proposed Removal Action.

18.2 Nothing in this Agreement shall alter the Navy's, the State's, or EPA's authority with respect to Removal Actions conducted pursuant to CERCLA Section 104, 42 U.S.C. Section 9604, and Executive Order 12580.

18.3 If during the course of performing the activities required under this Agreement, either Party identifies an actual or a substantial threat of a Release of any Hazardous Substance, pollutant, or contaminant at or from the Site, that Party may propose that the Navy undertake Removal Actions to abate the danger and threat that may be posed by such actual or threatened Release. All Removal Actions conducted at the Site shall be conducted in a manner consistent with this Agreement, CERCLA, Executive Order 12580, DERP, including provisions for timely notification and consultation with EPA and appropriate State and local officials, and the NCP, and shall, to the extent practicable, contribute to the efficient performance of any long-term Remedial Action with respect to the Release(s) or threatened Release(s) concerned. Such a proposal to undertake such actions by the Navy shall be submitted to the EPA and the State and shall include:

A. Documentation of the actual or threatened Release of Hazardous Substances, pollutants, or contaminants at or from the Site;

B. Documentation that the actions posed will abate the

danger and threat that may be posed by such actual or threatened Release;

C. Documentation that the action is consistent with the NCP and, to the extent practicable, contributes to the efficient performance of any long-term Remedial Action with respect to such actual or threatened Release;

D. An Engineering Evaluation/Cost Analysis ("EE/CA") or its equivalent. The EE/CA or its equivalent shall contain an analysis of removal alternatives for a site. The screening of alternatives shall be based on criteria as provided in CERCLA and the NCP, such as cost, feasibility, and effectiveness; and

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

EPA and the State shall expedite all reviews of these proposals to the maximum extent practicable.

18.4 The opportunity for review and comment for proposed Removal Actions, as stated in Subsection 18.3 above, may not apply if the action is in the nature of an emergency Removal Action taken because a Release or threatened Release may present an imminent and substantial endangerment to human health or the environment. The Navy may determine that review and comment, as stated in Subsection 18.3 above, is impractical. However, in the case of an emergency Removal Action, the Navy shall provide EPA with oral notice as soon as possible and written notice within forty-eight (48) hours after the Navy determines that an emergency Removal Action is necessary. Within seven (7) days after initiating an emergency Removal Action, the Navy shall provide EPA and the State with the written basis (factual, technical and scientific) for such action and any available documents supporting such action. Upon completion of an emergency Removal Action, the Navy shall state whether, and to what extent, the emergency Removal Action varied from the description of the action in the written notice provided in accordance with this Section. Within thirty (30) days of completion of an emergency Removal Action, the Navy shall furnish EPA and the State with an Action Memorandum addressing the information provided in the oral notification, whether and to what extent the action varied from the description previously provided, and any other information required by CERCLA or the NCP, and in accordance with EPA Guidance for such actions. Such actions may be conducted at any time, either before or after the issuance of a ROD.

18.5 If an imminent health hazard (e.g., a drinking water well containing any contaminant at concentrations greater than any Federal or State drinking water action levels) or an activity conducted pursuant to this Agreement that is creating a danger to the public health or welfare or the environment is discovered by either Party during the efforts covered by this Agreement, the discovering Party will notify the other Party, and the Navy will take immediate action to promptly notify all appropriate State and local agencies, potentially affected persons and officials in accordance with 10 U.S.C. Section 2705(a). The Navy will expeditiously take appropriate measures to protect all persons affected.

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

18.7 Work Stoppage: In the event that either Party determines that activities conducted pursuant to this Agreement will cause or otherwise be threatened by a situation described in Subsection 18.3 above, 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 immediately be referred to the Director of EPA New England's Office of Site Remediation and Restoration for a Work stoppage determination in accordance with Subsection 20.9 of this Agreement.

XIX. PERIODIC REVIEW

19.1 Consistent with CERCLA Section 121(c), 42 U.S.C. Section 9621(c), and in accordance with this Agreement, if the selected Remedial Action for any Operable Unit results in any Hazardous Substance, pollutants or contaminants remaining at the Site, the Parties shall review the Remedial Action program for that Operable Unit at least every five (5) years after the initiation of the first Remedial Action at the Site to assure that human health and the environment are being protected by the Remedial Action being implemented. As part of this review, the Navy shall report the findings of the review to EPA and the State upon its completion. This report, the Periodic Review Assessment Report, shall be a Secondary Document as described in Section X - CONSULTATION of this Agreement.

19.2 If upon such review it is the conclusion of either Party

that additional action or modification of such Remedial Action is appropriate at the Site in accordance with CERCLA Section 104 or 106, 42 U.S.C. Section 9604 or 9606, the Navy shall implement such additional or modified action in accordance with Section IX - WORK TO BE PERFORMED of this Agreement.

19.3 Any dispute between the Parties regarding the need for or the scope of additional action or modification to a Remedial Action shall be resolved in accordance with Section XX - DISPUTE RESOLUTION of this Agreement, and such resolution shall be enforceable hereunder.

19.4 Any additional action or modification agreed upon in accordance with this Section shall be made a part of this Agreement.

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

19.6 Except for emergency Removal Actions, which shall be governed by Section XVIII - REMOVAL AND EMERGENCY ACTIONS of this Agreement, any additional Response Actions determined necessary as a result of a Periodic Review shall be implemented as Supplemental Response Actions in accordance with Subsections 9.14 through 9.18 of this Agreement.

19.7 When the final ROD for an Operable Unit contains the requirement for the development and implementation of a Long-Term Monitoring Plan because the selected Remedial Action results in any Hazardous Substance, pollutants or contaminants remaining at the Site, the Long-Term Monitoring Plan shall be submitted in accordance with Section X - CONSULTATION of this Agreement.

XX. DISPUTE RESOLUTION

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

20.2

A. Within thirty (30) days after (1) issuance of a draft final Primary Document in accordance with Section X - CONSULTATION of this Agreement, or (2) any action that leads to or generates a dispute, the disputing Party shall submit to the other Party a written statement of dispute setting forth the

nature of the dispute, the Work affected by the dispute, the disputing Party's position with respect to the dispute, and the information upon which the disputing Party is relying to support its position.

B. The Parties may extend this 30-day period by mutual agreement. Such agreement shall be confirmed in writing by the Project Managers. If either Party does not agree to extend this 30-day period, the disputing Party shall submit such written statement of dispute to the other Party at the end of this 30-day period. If either Party does not agree to extend any extension period mutually agreed upon by the Parties in accordance with this Subsection, the disputing Party shall submit such written statement of dispute to the other Party at the end of such mutually agreed upon extension period.

20.3 Prior to any Party's issuance of such a written statement of dispute, the disputing Party shall engage the other Party in informal dispute resolution between the Project Managers and/or their immediate supervisors. During this informal dispute resolution period, the Parties shall meet and/or confer as many times as are necessary to discuss and attempt resolution of the dispute. Both Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. The Parties may by mutual agreement extend a Schedule or Deadline affected by the decision of such informal dispute resolution. Such agreement shall be confirmed in writing by the Project Managers.

20.4 The Dispute Resolution Committee (DRC) will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution as described in Subsection 20.3 above. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for the purposes of Dispute Resolution under this Agreement. EPA's representative on the DRC is the Office of Site Remediation and Restoration (OSRR) Director of EPA New England. The Navy's designated member is the Commanding Officer of NORDIV. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to the other Party in accordance with the procedures of Section XIV - PROJECT MANAGERS of this Agreement.

20.5 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 both Parties. If the DRC is unable to unanimously resolve the dispute within this 21-day period, the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution.

20.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. EPA's representative on the SEC is the Regional Administrator of EPA New England. The Navy's representative on the SEC is the Deputy Assistant Secretary of the Navy for Environment and Safety. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a unanimous written decision signed by both 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 Navy 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 U.S. EPA for resolution in accordance with all applicable laws and procedures. In the event that a Party elects not to elevate the dispute to the Administrator within the designated twenty-one (21) day escalation period, the decision will become final, and the Work will proceed in accordance with the Regional Administrator's written position with respect to the dispute.

20.7 Upon escalation of a dispute to the Administrator of U.S. EPA in accordance with Subsection 20.6 above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the Administrator shall meet and confer with the Navy's Secretariat Representative to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the Navy with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Section shall not be delegated.

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

20.9 When Dispute Resolution is in progress, Work affected by the dispute will immediately be discontinued if the OSRR Director

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

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

20.11 Resolution of a dispute in accordance with this Section of the Agreement constitutes a final resolution of any dispute arising under this Agreement. The Navy and EPA shall abide by all terms and conditions of any final resolution of dispute obtained in accordance with this Section of this Agreement.

XXI. STIPULATED PENALTIES

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

21.2 Upon determining that the Navy has failed in a manner set forth in Subsection 21.1, EPA shall so notify the Navy in

writing. If the failure in question is not already subject to Dispute Resolution at the time such notice is received, the Navy 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 Navy shall not be liable for the stipulated penalty assessed by EPA if the failure is determined, through Dispute Resolution, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of Dispute Resolution procedures related to the assessment of the stipulated penalty.

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

- A. The 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, 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.

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

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

21.6 This Section shall not affect the Navy's ability to obtain an extension of a Timetable, Deadline or Schedule in accordance with Section XIII - EXTENSIONS of this Agreement.

21.7 Nothing in this Agreement shall be construed to render any officer or employee of the Navy personally liable for the payment of any stipulated penalty assessed in accordance with this

Section.

XXII. FORCE MAJEURE

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

- A. Acts of God;
- B. Fire;
- C. War;
- D. Insurrection;
- E. Civil disturbance;
- F. Explosion;
- G. Unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance;
- H. Adverse weather conditions that could not be reasonably anticipated or overcome;
- I. Unusual delay in transportation due to circumstances beyond the control of the Navy;
- J. Restraint by court order or order of public authority;
- K. Inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the Navy;
- L. Delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and
- M. Insufficient availability of appropriated funds, if the Navy shall have made a timely request for such funds as a part of the budgetary process in accordance with Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN and Section XXVII - FUNDING of this Agreement.

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

22.2 When circumstances, which may delay or prevent the completion of the Navy's obligation under this Agreement, are caused by a Force Majeure event, the Navy shall notify the EPA

Project Manager and the State orally of the circumstances within forty-eight (48) hours after the Navy first becomes aware of these circumstances. Within fifteen (15) days of the oral notification, the Navy shall supply to EPA and the State in writing an explanation of the cause(s) of any actual or expected delay and the anticipated duration of any delay. The Navy shall exercise its best efforts to avoid or minimize any such delay and any effects of such delay.

XXIII. ENFORCEABILITY

23.1 EPA and the Navy agree that:

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

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

C. All terms and conditions of this Agreement that relate to interim or final Remedial Actions, including corresponding Timetables, Deadlines or Schedules, and all Work associated with such interim or final Remedial Actions, shall be enforceable by any person pursuant to CERCLA Section 310(c), 42 U.S.C. Section 9659, and any violation of such terms or conditions will be subject to civil penalties under CERCLA Sections 310(c) and 109, 42 U.S.C. Sections 9659 and 9609; and

D. Any final resolution of a dispute in accordance with Section XX - DISPUTE RESOLUTION of this Agreement that establishes a term, condition, Timetable, Deadline or Schedule shall be enforceable by any person pursuant to CERCLA Section 310(c), 42 U.S.C. Section 9659(c), and any violation of such term, condition, Timetable, Deadline or Schedule will be subject to civil penalties under CERCLA Sections 310(c) and 109, 42 U.S.C. Sections 9659 and 9609.

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

23.3 Nothing in this Agreement shall be construed as a restriction or waiver of any rights EPA may have under CERCLA, including but not limited to any rights under CERCLA Sections 113, 120, 121 and 310, 42 U.S.C. Sections 9613, 9620, 9621 and 9659.

The Navy does not waive any rights it may have under CERCLA Section 120, 42 U.S.C. Section 9620, SARA Section 211, and Executive Order 12580.

23.4 The Parties agree to exhaust their rights under Section XX - DISPUTE RESOLUTION of this Agreement prior to exercising any rights to judicial review that they may have.

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

XXIV. OTHER CLAIMS

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

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

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

24.4 EPA shall not be held as a party to any contract entered

into by the Navy to implement the requirements of this Agreement.

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

24.6 This Agreement does not bar any claim for:

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

B. liability for disposal of any Hazardous Substances or waste material taken from the Site.

XXV. RESERVATION OF RIGHTS

25.1 Notwithstanding anything in this Agreement, EPA may initiate any administrative, legal or equitable remedies available to it, including requiring additional Response Actions by the Navy in the event that: (a) conditions previously unknown or undetected by EPA arise or are discovered at the Site; or (b) EPA receives additional information not previously available concerning the premises which it employed in reaching this Agreement; or (c) the implementation of the requirements of this Agreement are no longer protective of public health and the environment; or (d) EPA discovers the presence of conditions on the Site that may constitute an imminent and substantial danger to the public health, welfare, or the environment; or (e) the Navy fails to meet any of its obligations under this Agreement; or (f) the Navy fails or refuses to comply with any applicable requirement of CERCLA or RCRA or related regulations.

25.2 The Parties agree to exhaust their rights under Section XX - DISPUTE RESOLUTION of this Agreement prior to exercising any rights to judicial review that they may have.

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

XXVI. PROPERTY TRANSFER

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

26.2 In accordance with CERCLA Section 120(h), 42 U.S.C. Section 9620(h), and 40 C.F.R. Part 373, the Navy shall include notice of this Agreement in any Lease Agreement or other instrument that permits any entity other than the Navy to possess an interest in, occupy or function as an operator on any portion of the Site.

XXVII. FUNDING

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

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

27.3 Any requirement for the payment or obligation of funds, including stipulated penalties, by the Navy established by the terms of this Agreement shall be subject to the availability of appropriated funds, and provisions governing the payment of penalties (10 U.S.C. 2703(e)). No provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

27.4 If appropriated funds are not available to fulfill the

Navy's obligations under this Agreement, EPA reserves the right to initiate an action against any other person, or to take any Response Action, that would be appropriate absent this Agreement.

27.5 Funds authorized and appropriated by Congress under the Environmental Restoration, Navy (ER,N) appropriation in the Department of Defense Appropriation Act to the Navy will be the source of funds for activities required by this Agreement consistent with SARA Section 211, 10 U.S.C. Chapter 160. However, should the ER,N appropriation be inadequate in any year to meet the total Navy CERCLA implementation requirements, the Navy will, in consultation with EPA and Public Stakeholders, prioritize and allocate that year's appropriation, considering legal requirements pertaining to each site, relative risks to human health and the environment, and other relevant factors.

XXVIII. RECOVERY OF EPA EXPENSES

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

XXXIX. QUALITY ASSURANCE

29.1 The Navy shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. A Quality Assurance/Quality Control (QA/QC) Project Plan shall be submitted as a component of each SSP, RI, FS, RD, and RA Work Plan(s), as appropriate. These Work Plans will be reviewed as Primary Documents in accordance with Section X - CONSULTATION of this Agreement. QA/QC Plans shall be prepared in accordance with applicable EPA Guidance.

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

29.3 The Navy shall ensure that lab audits are conducted as

appropriate and are made available to EPA and the State upon request. The Navy shall ensure that EPA and/or the State and/or their authorized representatives shall have access to all laboratories performing analyses on behalf of the Navy pursuant to this Agreement.

XXX. RECORD PRESERVATION

30.1 Despite any document retention policy to the contrary, the Parties shall preserve, during the pendency of this Agreement and for a minimum of seven (7) years after its termination or for a minimum of seven (7) years after implementation of any additional action taken in accordance with Section XIX - PERIODIC REVIEW, all records and documents in their possession that relate to actions taken pursuant to this Agreement. The Navy agrees to require its contractors, assigns and agents to turn over, as part of the contract, the above-described records to the Navy at the completion of the contract. After the seven (7) year period, each Party shall notify the other Party at least forty-five (45) days prior to the proposed destruction or disposal of any such documents or records. Upon the request of the notified Party, the Party providing such notification shall make available such records or copies of any such records unless withholding is authorized and determined appropriate by law. The Party withholding such records shall identify any documents withheld and the legal basis for withholding such records. No records withheld shall be destroyed until forty-five (45) days after the final decision by the highest court or administrative body requested to review the matter.

30.2 All such records and documents shall be preserved for a period of seven (7) years following the termination of any judicial action regarding the Work performed under CERCLA, which is the subject of this Agreement.

XXXI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

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

31.2 At the request of a Party, the other Party shall allow the requesting Party or its authorized representative to observe field work and to take split or duplicate samples of any samples collected pursuant to this Agreement. Each Party shall notify

the other Party by telephone not less than fourteen (14) days in advance of any scheduled sample collection activity unless otherwise agreed upon by the Parties. The Party shall provide written confirmation within three (3) days of the telephonic notification.

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

XXXII. PROTECTED INFORMATION/RELEASE OF RECORDS

32.1 The Parties may request of one another access to or a copy of any record or document relating to the subject matter of this Agreement. 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 a claim of attorney-client privilege, attorney work product, and/or proper classification for national security under law or executive order.

32.2 Records or documents identified by the originating Party as confidential pursuant to one or more of the non-disclosure provisions of Section 552(b) and (c) of the Freedom of Information Act (FOIA), 5 U.S.C. Section 552(b) and 552(c), shall be released to the requesting Party, provided that 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 that are provided to the requesting Party and that are not identified as confidential may be made available to the public without further notice to the originating Party.

32.3 When any person requests records from a Party in accordance with FOIA, 5 U.S.C. Section 552, consistent with the current policy of the United States Department of Justice dated October 4, 1993, the originating Party shall not assert a FOIA exemption unless it reasonably foresees that disclosure of the requested records would be harmful to an interest protected by that FOIA exemption, as determined solely by the originating Party. However, in the event of a change in such DOJ policy, each Party reserves the right to change this practice to make it consistent with such change in policy.

32.4 Subject to CERCLA Section 120(j)(2), 42 U.S.C. Section

9620(j)(2), any documents required to be provided by Section X - CONSULTATION, as well as analytical data showing test results, will always be releasable, and no exemption shall be asserted by either Party, other than reasons of national security under law or executive order.

32.5 A determination not to release a record or document for one of the reasons specified above shall not be subject to Dispute Resolution. A Party objecting to such a determination by the other Party may pursue the objection through the determining Party's appeal procedures.

32.6 If the Navy withholds a record or document based on grounds specified in this Section, it shall identify the document and summarize the contents of such document.

32.7 National Security Information:

A. Notwithstanding any other provision in this Section, any dispute concerning EPA access to national security information ("classified information"), as defined in Executive Order 12958, shall be resolved in accordance with Executive Order 12958 and 32 C.F.R. Part 159, including the opportunity to demonstrate that EPA representatives have proper clearances and a need to know, appeal to the Information Security Oversight Office, and final appeal to the National Security Council.

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

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

national security information.

XXXIII. COMMUNITY RELATIONS

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

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

33.3 The Parties agree to comply with all relevant EPA Guidance on community relations programs and the public participation requirements of CERCLA, including Sections 113(k) and 117, 42 U.S.C. Sections 9613(k) and 9617, the NCP and other applicable, relevant and appropriate requirements, laws and regulations. This shall be achieved through implementation of the Community Relations Plan.

33.4 In accordance with the requirements of CERCLA Section 117(d), 42 U.S.C. Section 9617(d), public information repositories exist, as of the date of this Agreement, at the Portsmouth Public Library in Portsmouth, New Hampshire and the Rice Public Library in Kittery, Maine for public inspection. The location of these repositories is subject to change, and to the extent practicable, any such change in location will be indicated in the Community Relations Plan. The Navy shall place all Primary and Secondary Documents as listed in Section X - CONSULTATION of this Agreement in the information repositories.

33.5 The Navy shall establish and maintain an Administrative Record at or near PNS, in accordance with CERCLA Section 113(k), 42 U.S.C. Section 9613(k), Subpart I of the NCP, and applicable EPA Guidance. The Administrative Record developed by the Navy shall be available to the public and regularly updated. A copy of the Index to the Administrative Record and its update will be provided to EPA and the State.

33.6 Pursuant to Department of Defense/EPA guidance, the Navy

has established a Restoration Advisory Board (RAB) for the Site. The purpose of the RAB is to bring together individuals who reflect diverse interests within the community, enabling early and continued two-way flow of information regarding environmental cleanup activities at the Site. A representative of PNS acts as co-chair of the RAB.

XXXIV. EFFECTIVE DATE

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

34.2 Any Timetable, Deadline, Schedule or ROD required by this Agreement shall be effective upon finalization in accordance with Section IX - WORK TO BE PERFORMED, Section X - CONSULTATION and Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN of this Agreement.

XXXV. PUBLIC COMMENT ON THIS AGREEMENT

35.1 Within thirty (30) days after the last Party executes this Agreement, the Navy shall announce the availability of this Agreement to the public for its review and comment, including publication in at least two (2) major local newspapers of general circulation. Such public notices shall include information advising the public as to availability of this Agreement to the public for a forty-five (45) day comment period. Within twenty-one (21) days of completion of the public comment period, the Navy shall transmit copies of all comments received within the comment period to EPA. Within thirty (30) days after such transmittal, the Parties shall review the comments and shall decide that either:

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

B. The Agreement shall be modified in accordance with this Section prior to being made effective.

35.2 If the Parties agree that the Agreement shall be made effective without any modifications, and if the Parties agree on the Responsiveness Summary, EPA shall transmit a copy of the signed Agreement to the Navy and the State and shall notify them in writing that the Agreement is effective. The effective date of the Agreement shall be the date of receipt by the Navy of the

signed Agreement from EPA.

35.3 A. If the Parties agree that modifications are needed and agree upon the modifications and amend the Agreement by mutual consent within sixty (60) days after the expiration of the public comment period, EPA, in consultation with the Navy, will determine whether the modified Agreement requires additional public notice and comment pursuant to any provision of CERCLA.

B. If the Parties so amend the Agreement and EPA determines that no additional public notice and comment are required, and the Parties agree on the Responsiveness Summary, EPA shall transmit a copy of the modified Agreement to the Navy and the State and shall notify them in writing that the modified Agreement is effective. The effective date of the modified Agreement shall be the date of receipt by the Navy from EPA of such notification that the modified Agreement is effective.

C. If the Parties so amend the Agreement and EPA determines that additional public notice and comment are required, such additional notice shall be provided and such additional comment shall be solicited, received, transmitted to EPA and reviewed by the Parties in accordance with Subsection 35.1 of this Agreement. If the Parties agree, after such additional notice and comment, that the modified Agreement does not require any further modification, and if the Parties agree on the Responsiveness Summary, EPA shall send a copy of the modified Agreement to the Navy and the State and shall notify them that the modified Agreement is effective. The effective date of the modified Agreement shall be the date of receipt by the Navy from EPA of such notification that the modified Agreement is effective. If the Parties agree, after such additional notice and comment, that the modified Agreement does require further modification, such further modification shall be in accordance with Subsection 35.1 of this Agreement.

35.4 In the event that the Parties cannot agree on the modifications or on the Responsiveness Summary within the time period provided for in Subsection 35.3 above, the Parties agree to have at least one meeting within thirty (30) days after EPA's receipt of the public comments from the Navy, to attempt to reach agreement. The Parties agree to negotiate in good faith for at least a fifteen (15) day period before invoking Dispute Resolution.

35.5 If, thirty (30) days after EPA's receipt of the public comments from the Navy, the Parties have not reached agreement on:

- A. whether modifications to the Agreement are needed; or
- B. what modifications to the Agreement should be made; or
- C. any language, any provisions, any Deadlines, any Work to be performed or any content of the Agreement or any Attachments to the Agreement; or
- D. whether additional public notice and comments are required; or
- E. the contents of the Responsiveness Summary,

then the matters that are in dispute shall be resolved by Dispute Resolution. For the purposes of this Section, the Agreement shall not be effective while Dispute Resolution is underway. After these proceedings are completed, the final written decision shall be provided to the Parties indicating the results of such Dispute Resolution. Each Party reserves the right to withdraw from the Agreement by providing written notice to the other Party within twenty (20) days after receiving from EPA the final written decision of the resolution of the matters in dispute by Dispute Resolution. Failure by the Navy to provide such a written notice of withdrawal to EPA within this 20-day period shall act as a waiver of the Navy's right to withdraw from the Agreement, and EPA shall thereafter send a copy of the final Agreement to the Navy and the State and shall notify them that the Agreement is effective. The effective date of the Agreement shall be the date of receipt by the Navy from EPA of such notification that the Agreement is effective.

35.6 At the start of the 45-day public comment period, the Navy shall transmit copies of this Agreement to the appropriate federal, State, and local Natural Resource Trustees for review and comment within the time limits set forth in this Section.

XXXVI. AMENDMENT OF AGREEMENT

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

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

36.3 A summary of any amendment to or modification of this Agreement relating to a Remedial Action, which the Parties mutually agree will not significantly affect the authority or obligations established under this Agreement (including annual amendments to the Site Management Plan), shall be published in two (2) major local newspapers of general circulation. A summary of any amendment to or modification of this Agreement, which the Parties mutually agree will significantly affect the authority or obligations established under this Agreement, shall be published in two (2) major local newspapers of general circulation and the public shall be given the opportunity to comment in a manner consistent with Section XXXV - PUBLIC COMMENT ON THIS AGREEMENT. In the event that the Parties cannot mutually agree, the amendments or modifications shall be deemed to significantly affect the authority or obligations established under this Agreement.

XXXVII. SEVERABILITY

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

XXXVIII. TERMINATION AND SATISFACTION

38.1 The provisions of this Agreement shall be deemed satisfied upon a consensus of the Parties that the Navy has completed its obligations under the terms of this Agreement. Following EPA Certification of the Response Actions at the Site in accordance with Subsection 9.20 of Section IX - WORK TO BE PERFORMED, either Party may propose in writing the termination of this Agreement upon a showing that the requirements of this Agreement have been satisfied. The obligations and objectives of this Agreement shall be deemed satisfied and terminated upon receipt by the Navy of written notice from EPA that the Navy has demonstrated that all the requirements of this Agreement have been satisfied. A Party opposing termination of this Agreement shall provide a written statement of the basis for its denial and describe the actions necessary to grant a termination notice to the proposing Party within thirty (30) days of receipt of the proposal.

38.2 Any disputes arising from this Termination and Satisfaction process shall be resolved in accordance with Section XX - DISPUTE RESOLUTION of this Agreement.

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

38.4 This Section shall not affect the Parties' obligations under Section XIX - PERIODIC REVIEW of this Agreement. In no event will this Agreement terminate prior to the Navy's completion of the Work required by this Agreement.

AUTHORIZED SIGNATURES

Each of the undersigned representatives of the Parties certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

IT IS SO AGREED:

By

Elsie L. Munsell

Elsie L. Munsell
Deputy Assistant Secretary
of the Navy (Environment &
Safety)

9/29/99

Date

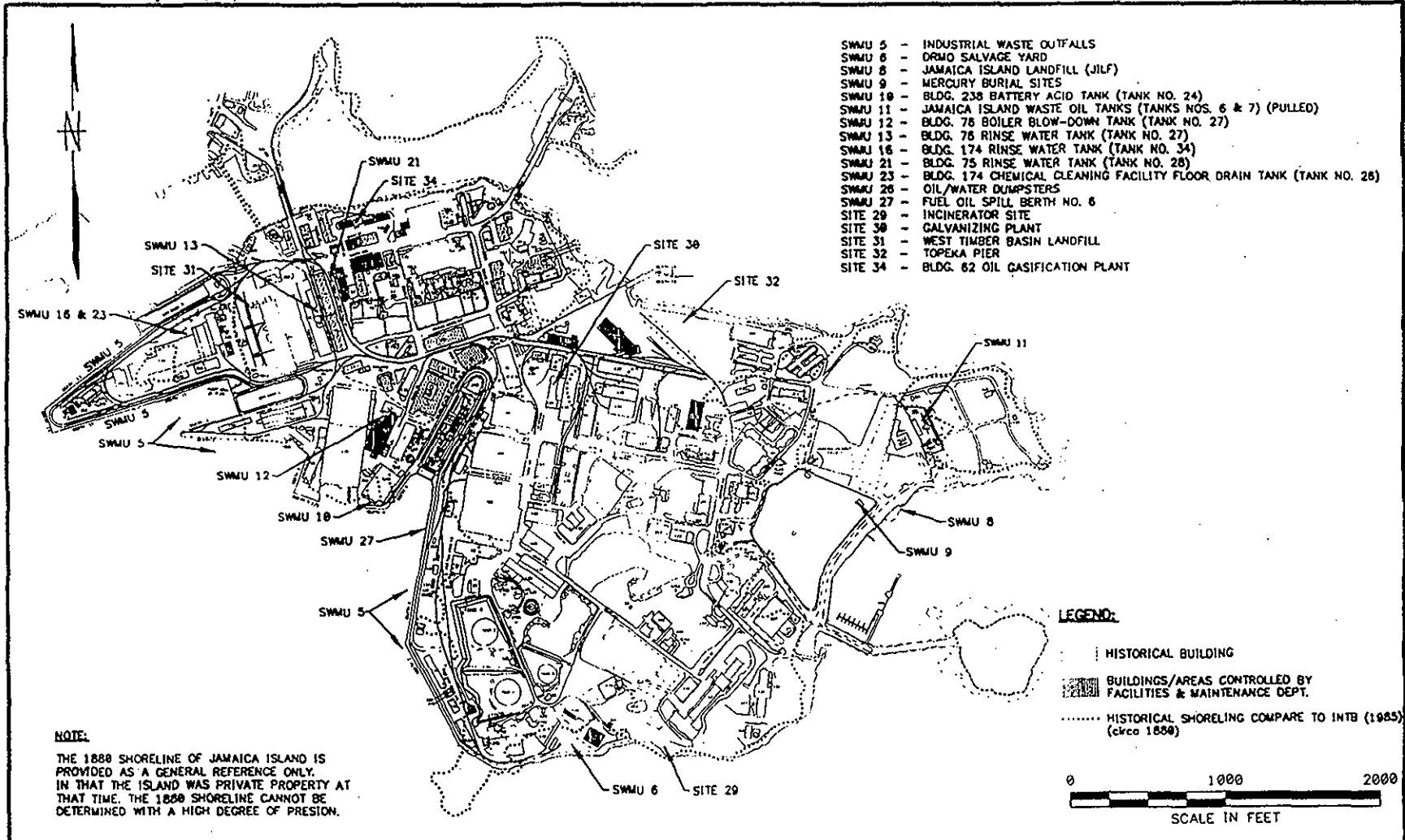
By

John P. Devillars

JOHN P. DEVILLARS
Regional Administrator
New England Region
Environmental Protection Agency

9/30/99

Date



DRAWN BY HJP	DATE 2/16/99	Tetra Tech NUS, Inc.	CONTRACT NO. 7090	OWNER NO. 0256
CHECKED BY	DATE		APPROVED BY	DATE
COST/SCHED-AREA	FACILITY MAP PORTSMOUTH NAVAL SHIPYARD KITTERY, MAINE		APPROVED BY	DATE
SCALE AS NOTED			DRAWING NO.	REV. 0

Appendix B - LIST OF AREAS OF CONCERN AT PORTSMOUTH NAVAL SHIPYARD

The AOCs as of the effective date of this Agreement are as follows (the SWMU designation from the RCRA Corrective Action permit is provided in parenthesis where appropriate):

- Industrial Waste Outfalls (SWMU #5)
- Defense Reutilization and Marketing Office (DRMO) (SWMU #6) and Teepee Incinerator
- Jamaica Island Landfill (JILF) (SWMU #8)
- Mercury Burial Sites (MBI and MBII)(SWMU#9)
- Battery Acid Tank No. 24 (SWMU #10)
- Former Waste Oil Tanks Nos. 6 and 7 (SWMU #11)
- Acid Alkaline Drain Tank (SWMU #21)
- Portable Oil/Water Tanks (SWMU #26)
- Fuel Spill Area at Berth 6 (SWMU #27)
- JILF Impact Area - Former Child Development Center (CDC)
- DRMO Salvage Yard Impact Area - Quarters S, N & 68
- Offshore Areas:
 - Clarks Cove
 - Sullivan Point
 - DRMO Storage Yard
 - Dry Docks
 - Back Channel
 - Jamaica Cove

APPENDIX C - LIST OF SITE SCREENING AREAS AT PORTSMOUTH NAVAL SHIPYARD

Site Screening Areas identified as of the effective date of this Agreement are listed below.

Oil Gasification Plant, Building 62
Galvanizing Plant, Building 184
Topcka Pier Site
West Timber Basin

APPENDIX D - SITE MANAGEMENT PLAN