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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VI
OKLAHOMA STATE DEPARTMENT OF HEALTH
AND THE
UNITED STATES AIR FORCE

IN THE MATTER OF)	
)	FEDERAL FACILITY
)	AGREEMENT UNDER
THE U.S. AIR FORCE)	CERCLA SECTION 120
)	
)	
TINKER AFB, OKLAHOMA)	ADMINISTRATIVE
)	DOCKET NUMBER: NPL-U3-2-27
)	

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 issue of fact or law, the Parties agree as follows:

I. JURISDICTION

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

A. The Environmental Protection Agency (EPA), Region VI, enters into those portions of this Agreement that relate to the remedial investigation/feasibility study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law 99-499 (hereinafter jointly referred to as CERCLA/SARA or CERCLA) and Sections 6001, 3008(h) and 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6961, 6928(h), 6924(u) and (v), as amended by the Hazardous and

Solid Waste Amendments of 1984 (HSWA), (hereinafter jointly referred to as RCRA/HSWA or RCRA), and Executive Order 12580.

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

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

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

E. The Oklahoma State Department of Health (OSDH) enters into this pursuant to Agreement under Section 120(f) of CERCLA, 42 U.S.C. §9620(f), and 63 O.S. 1981, §1-106. The OSDH was designated the lead state agency on CERCLA matters for the State of Oklahoma by Governor George Nigh by letter dated October 21, 1981.

II. STATEMENT OF PURPOSE

A. The general purposes of this Agreement are to:

1. Ensure that the environmental impacts associated with past and present activities at the Site (Building 3001 and Soldier Creek) are thoroughly investigated and appropriate remedial action taken as necessary to protect the public health, welfare, and the environment;

s 2. Establish a procedural framework and schedule for developing, implementing, and monitoring appropriate response actions at the Site in accordance with CERCLA, the NCP, Superfund guidance and policy, RCRA, RCRA guidance and policy; and

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

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

1. Identify Operable Units which are appropriate at each, Building 3001 or Soldier Creek, prior to the implementation of final remedial action(s) for each, Building 3001 and Soldier Creek. Operable Units shall be identified and proposed to the Parties as early as possible prior to formal proposal of operable units to EPA and OSDH pursuant to CERCLA. This process is designed to promote cooperation among the Parties in identifying remedial actions for an Operable Unit prior to selection of final Operable Units.

2. Establish requirements for the performance of Remedial Investigation(s) (RI) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of Feasibility

Study(s) (FS) for the Site to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants, or contaminants at the Site in accordance with CERCLA.

3. Identify the nature, objective, and schedule of response actions to be taken at each, Building 3001 or Soldier Creek. Response actions at each, Building 3001 or Soldier Creek, shall attain that degree of cleanup of hazardous substances, pollutants, or contaminants mandated by CERCLA.

4. Implement the selected remedial actions for the Operable Unit(s) and final remedial action(s) in accordance with CERCLA and meet the requirements of Section 120(e)(2) of CERCLA, 42 U.S.C. §9620(e)(2), for a federal facility agreement with the EPA, the Air Force, and the OSDH.

5. Assure compliance, through this Agreement, with RCRA and other federal and state hazardous waste laws and regulations for matters covered herein.

6. Coordinate response actions at each, Building 3001 or Soldier Creek, with the mission and support activities at Tinker Air Force Base (TAFB).

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

III. SCOPE

Under this Agreement the Air Force shall:

A. Conduct remedial actions for Operable Units as described in Part XI., Work to be Performed.

B. Conduct a Remedial Investigation (RI) at Soldier Creek as described in Part XI., Work to be Performed.

C. Conduct a Feasibility Study (FS) at Building 3001 and an FS at Soldier Creek as described in Part XI, Work to be Performed. These studies should incorporate, at a minimum, the results of the Building 3001 RI and Soldier Creek RI and all of the focused RIs and FSs for Operable Units at each, Building 3001 or Soldier Creek.

D. Develop remedial action alternative(s) for each, Building 3001 or Soldier Creek, and implement those remedial actions selected for either Building 3001 or Soldier Creek, in accordance with Section 120 (e)(4) of CERCLA, 42 U.S.C. §9620(e)(4).

E. These activities are set forth in more detail in Part XI., Work to be Performed, and in the Attachments to the Agreement. In the event of any inconsistency between Part XI. of this Agreement and the Attachments to this Agreement, Part XI. of this Agreement shall govern. EPA and OSDH agree to provide the Air Force with guidance and timely response to requests for guidance to assist the Air Force in the performance of the requirements under this Agreement.

IV. DEFINITIONS

Terms used in this Agreement, and as applied to the investigatory and remedial work to be incorporated herein and completed by the Air Force, shall have the same meaning as used in Section 101 of CERCLA, (42 U.S.C. §9601). Additionally, the following terms used in this Agreement are defined as follows:

A. "Administrative Record" shall mean all documents that form the basis for the selection of a response action.

B. "Air Force" shall include the United States Air Force, Tinker Air Force Base, any predecessor agency, and their employees, agents, successors, assigns, and designated representatives.

C. "Authorized representative" includes contractors acting by and for EPA and/or the Oklahoma State Department of Health (OSDH) relative to functions associated with this Agreement.

D. "Building 3001" shall include that area underlying or adjacent to Building 3001 located on Tinker Air Force Base which has been contaminated by the migration of hazardous substances, pollutants, or contaminants which have been released from Building 3001.

E. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law 99-499.

F. "Days" shall mean calendar days, unless business days are specified.

G. "Deadline" shall be the time limitation applicable to a discrete and significant portion of any RI/FS and RD/RA submittal specifically established under the terms of the Agreement.

H. "Decision Document" or "DD" shall mean a document submitted by the Air Force that describes the development and evaluation of remedial alternatives for each operable unit and the Air Force's proposed alternative.

I. "Documents" shall mean any records, reports, correspondence, or retrievable information of any kind relating to treatment, storage, disposal, investigation, and remediation of hazardous substances, pollutants, or contaminants at or migrating from Tinker AFB. Such terms shall be construed broadly to reflect a clear preference to share and disclose information concerning this Agreement among all Parties.

J. "EPA" shall mean the United States Environmental Protection Agency, its employees, and authorized representatives.

K. "Feasibility Study" or "FS" means the evaluation, development, and design of remedial alternatives as defined in 40 C.F.R. Part 300 for each, Building 3001 or Soldier Creek.

L. "Federal Facility Agreement" or "Agreement" shall refer to this document and shall include all Attachments to this Agreement. All such Attachments shall be appended to and made an integral part of this Agreement.

M. "Focused RI and/or focused FS" is defined as set forth in CERCLA and 40 C.F.R., Part 300 (National Oil and Hazardous Substances Pollution Contingency Plan).

N. "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan as set forth in 40 C.F.R., Part 300.

- O. "Operable Unit" shall be defined as set forth in the NCP.
- P. "OSDH" shall mean the Oklahoma State Department of Health its employees and authorized representatives.
- Q. "Parties" shall mean the Air Force, EPA, and OSDH.
- R. "Proposed Plan" shall mean the document which describes the preferred remedial action and reviews the screening of alternatives which have been considered.
- S. "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq, as amended, as further amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Public Law 98-616.
- T. "Record of Decision" or "ROD" shall be the public document that explains which cleanup alternative(s) will be implemented for the final remedial action for each, Building 3001 or Soldier Creek, and includes the bases for the selection of remedy. The bases include information and technical analysis generated during the RI and FS and consideration of public comments and community concerns.
- U. "Remedial Action," or "RA" as defined in 40 C.F.R. Part 300, shall mean the actual construction or implementation that follows the Remedial Design of the selected cleanup alternative(s).
- V. "Remedial Actions for Operable Unit" shall mean all discrete remedial actions implemented prior to or apart from a final remedial action which are consistent with the final remedial action and which are taken to prevent or minimize the release of hazardous substances, pollutants, or contaminants so that they do not migrate or endanger public health or

welfare or the environment. All remedial actions for Operable Units shall be undertaken in accordance with CERCLA, 40 C.F.R., Part 300, and all applicable EPA guidance.

W. "Remedial Design" or "RD" shall mean the technical analyses and procedures which follow the selection of remedy and result in a detailed set of plans and specifications for implementation of the remedial action.

X. "Remedial Investigation" or "RI" means that investigation, as set forth at 40 C.F.R. Part 300, conducted to determine the nature and extent of the contamination in and from each, Building 3001 or Soldier Creek, and to gather necessary data to support the Feasibility Study.

Y. "Responsiveness Summary" shall mean a summary of oral and/or written public comments during a comment period on primary documents and responses to those comments.

Z. "Schedule" shall mean the time limitations established for the completion of remedial actions at each, Building 3001 or Soldier Creek.

AA. "Site" shall include the areal extent of contamination areas in close proximity thereto necessary to the response action and shall also mean any identified area at Building 3001 or Soldier Creek at which hazardous substances, pollutants, or contaminants are released or are suspected to have been released which could endanger human health or the environment.

BB. "Soldier Creek" shall include the waterway as well as any area underlying or adjacent to Soldier Creek contaminated by the migration of hazardous substances, pollutants, or contaminants from Tinker Air Force Base.

CC. "Submittal" shall mean any written communications submitted to EPA, OSDH, or the Air Force.

DD. "TAFB" shall mean Tinker Air Force Base, located in Oklahoma County, State of Oklahoma.

EE. "Timetable" shall be the collective term for all the "deadlines" established for each RI and FS.

V. FINDINGS OF FACTS

For purposes of this Agreement, the following constitutes a summary of the facts upon which this Agreement is based. None of these facts related herein shall be considered admissions nor are they legally binding on any Party with respect to any claims unrelated to or persons not a party to this Agreement.

A. TAFB is located in the southeast portion of Oklahoma City, Oklahoma. It has been in operation since the 1940s.

B. TAFB began a Preliminary Assessment (PA) of previously used waste disposal sites in 1981. This action was conducted as part of the overall Air Force Installation Restoration Program (IRP) and findings from that PA were summarized in a report issued in 1982.

C. In 1983, a basewide sampling program detected trichloroethylene (TCE) in the groundwater. This fact initiated an extensive RI in and around Building 3001. This RI identified chromium (Cr) as another contaminant.

D. On January 15, 1985, the Parties established a Technical Review Committee (TRC).

E. During the summer of 1985, additional wells were installed to monitor the plume emanating from Building 3001.

F. On October 1, 1985, TAFB established an Environmental Directorate which combined the IRP management oversight previously provided by the Air Force medical and civil engineering offices.

G. Building 3001 and Soldier Creek were added to the National Priorities List (NPL), 52 Fed. Reg. 27620, on July 22, 1987 because of TCE and chromium contamination, and is, therefore, subject to the provisions for federal facility NPL sites in CERCLA Section 120, 42 U.S.C. §9620.

H. A preliminary survey of Soldier Creek was completed in November 1988. The Preliminary Assessment and Site Investigation will be submitted to EPA and OSDH. Future RIs are scheduled to be initiated pursuant to this Agreement.

I. A Risk Assessment of Bldg 3001 Draft Report was completed in December 1987 and submitted to and reviewed by EPA and OSDH.

J. The Building 3001 Remedial Investigation Final Report was completed in January 1988 and submitted to and reviewed by EPA and OSDH.

K. In February 1988, a Water Quality Criteria report was submitted to and reviewed by EPA and OSDH.

L. The report "Preliminary Screening of Alternatives for Remedial Actions at Building 3001" was completed in June 1987 and submitted to and reviewed by EPA and OSDH.

VI. EPA DETERMINATIONS

Section 3004(u) of the Solid Waste Disposal Act, (RCRA), 42 U.S.C. §6924 (u), requires that a permit issued after the date of enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA) must provide for

corrective action for all releases of hazardous waste or hazardous constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit, regardless of the time that the waste was placed in such a unit. In addition, Section 3004(v) of the Solid Waste Disposal Act, (RCRA), 42 U.S.C. §6924(v), requires that corrective action must be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner or operator demonstrates to the satisfaction of EPA that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such corrective action. These "determinations," and those which follow are not to be construed as admissions by any Party, nor are they legally binding on any Party with respect to any claims unrelated to or persons not a party to this Agreement.

A. The EPA determines that TAFB is subject to, and shall comply with, CERCLA as set forth in Section 120, 42 U.S.C. §9620.

B. TAFB constitutes a "Facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(9). The Air Force is defined as a "person" in Section 101(21) of CERCLA, 42 U.S.C. §101(21).

C. The Air Force is an "owner or operator" as defined in Section 101(20) of CERCLA, 42 U.S.C. §9601(20), and "owned" or "operated" TAFB within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2).

D. The presence of hazardous substances in the groundwater under Building 3001 and Soldier Creek as defined in Section 101(14) constitutes a "release" as defined in Section 101(22) of CERCLA and 42 U.S.C. §9601(22).

E. The EPA and OSDH have determined that the submittals, actions, and other elements of work required by this Agreement are necessary to protect the public health or welfare or the environment.

VII. STATE DETERMINATIONS

These "determinations" are not to be construed as admissions by any Party nor are they legally binding on any Party with respect to any claims unrelated to or persons not a party to this Agreement.

A. The substances in the groundwater under Building 3001 and Soldier Creek are "controlled industrial waste" as that term is defined at 63 O.S. Supp. 1988, §1-2002(1).

B. The groundwater has been polluted in a manner prejudicial to the health of inhabitants of the State of Oklahoma within the meaning of 63 O.S. §1-908.

VIII. AIR FORCE DETERMINATIONS

The following "determinations" are not to be construed as admissions by any Party nor are they legally binding on any Party:

A. Tinker AFB in general, and the Site (Building 3001 or Soldier Creek) specifically, are facilities under the jurisdiction, custody, or control of the Department of Defense within the meaning of Executive Order (E.O.) 12580, 52 Fed. Reg. 2923, January 29, 1987. The Department of the Air Force is authorized to act in behalf of the Secretary of Defense for all functions which are relevant to this Agreement delegated by the President through E.O. 12580.

B. Tinker AFB in general, and the Site (Building 3001 or Soldier Creek) specifically, are facilities under the jurisdiction of the Secretary of Defense within the meaning of the Superfund Amendments and Reauthorization Act (SARA) Section 211, 10 U.S.C. §2701, et seq., and subject to the Defense Environmental Restoration Program (DERP) therein.

IX. COMPLIANCE WITH APPLICABLE LAWS

This Agreement shall not be construed to restrict EPA or OSDH from taking any appropriate action under any applicable statute or law relative to matters which are not covered by this agreement. All work undertaken by the Air Force pursuant to this Agreement or otherwise shall be performed in compliance with all applicable Federal, State, and local laws and regulations except for the requirements waived by CERCLA. Any necessary permits for response actions taken pursuant to this Agreement shall be obtained in accordance with Parts X, Statutory Compliance/RCRA-CERCLA Integration, paragraph C, and Part XXI, Permits.

X. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

A. The Parties intend to integrate the Air Force's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants, or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will be deemed to achieve compliance with CERCLA, 42 U.S.C. §9601, et seq., to satisfy the corrective action requirements of RCRA Sections 3004(u) and

(v), 42 U.S.C. §6924(u) and (v), for a RCRA permit, and RCRA Section 3008 (h), 42 U.S.C. §6928(h), for interim status facilities; and to meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. §9621.

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

C. The Parties recognize that the requirements to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that on-going hazardous waste management activities at TAFB may require the issuance of permits under Federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to the Air Force for on-going hazardous waste management activities at Building 3001 and/or Soldier Creek, EPA shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such

permit. The Parties intend that the judicial review of any permit conditions which reference this Agreement shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

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

XI. WORK TO BE PERFORMED

The Air Force shall develop and implement plans for the study and remediation of surface and subsurface contamination at each, Building 3001 and Soldier Creek. All response actions taken pursuant to this Agreement shall be consistent with CERCLA, the NCP, CERCLA guidance and policy, and all ARARs. Specifically the objectives are:

A. INVESTIGATION AND REMEDIATION FOR EACH, BUILDING 3001 AND SOLDIER CREEK

1. Building 3001 Remedial Investigation (RI)

The Air Force has submitted an RI workplan, which is hereby incorporated by reference, for the investigation of contamination at Building 3001. This workplan includes, but is not limited to: schedules for completing the groundwater investigation, provisions for a Risk Assessment, a Quality Assurance Project Plan (QAPP), a Sampling and Analysis Plan, a Health and Safety Plan, a list of secondary documents as provided for in Part XII, Consultation With EPA and OSDH, a Remedial Investigation Report, and Supplemental Quarterly RI data.

The Air Force has submitted an RI Report to EPA and OSDH. EPA and OSDH have reviewed the RI report and provided comments to the Air Force. These comments have been addressed and the RI report has been

finalized. The Supplemental Quarterly RI data is subject to review as described in Part XII, Consultation with EPA and OSDH. All documents submitted and required by this Agreement, prior to the effective date of this Agreement, are incorporated by reference and made a part of this Agreement.

2. Feasibility Study for Building 3001

The Air Force has submitted an FS Workplan, which is hereby incorporated by reference, for remediation of surface and subsurface contamination at Building 3001. The workplan includes a schedule for completing the FS and a list of secondary documents as provided for in Part XII, Consultation with EPA and OSDH. Upon completion of the FS, the Air Force shall implement the remedy selection process for Building 3001 as outlined in Section A.5 of this Part.

3. Soldier Creek Remedial Investigation

The Air Force shall submit an RI workplan for the investigation of surface and subsurface contamination at Soldier Creek in the manner specified in Part XII, Consultation with EPA and OSDH, and in accordance with the deadlines established in Part XVII, Deadlines. This workplan shall include, but is not limited to: schedules for completing the surface and subsurface investigation, provisions for a Risk Assessment, Quality Assurance Project Plan (QAPP), Sampling and Analysis Plan, Health and Safety Plan, an RI report, and a list of secondary documents. The RI shall include data on all currently identified sources of contamination that are contributing to surface and subsurface contamination at Soldier Creek and a procedure for identifying other units that are contributing to surface and subsurface contamination at Soldier Creek.

4. Feasibility Study for Soldier Creek

In accordance with the deadlines established in Part XVII, Deadlines, the Air Force shall submit an FS Workplan for surface and subsurface remediation at Soldier Creek in the manner specified in Part XII, Consultation with EPA and OSDH. This workplan shall include, but is not limited to, a schedule for completing the FS and a list of secondary documents. Upon completion of the FS for Soldier Creek, the Air Force shall implement the remedy selection process as outlined in Section A, 5, of this Part.

5. Remedy Selection Process

Upon finalization of the RI and FS for each, Building 3001 and Soldier Creek, in the manner specified in Part XII, Consultation With EPA and OSDH, the Air Force shall submit a Proposed Plan which describes the preferred remedial action and reviews the screening of alternatives for surface and subsurface remediation in accordance with deadlines established in Part XVII, Deadlines:-

Following the review and comment process of Part XII, Consultation with EPA and OSDH, the Air Force shall publish the Proposed Plan and provide opportunity for public comment in accordance with Section 117 of CERCLA.

Within thirty (30) days of the close of the public comment period, the Air Force shall prepare a draft ROD and a Responsiveness Summary in accordance with Section 117(b) of CERCLA. The Air Force shall submit the Responsiveness Summary and ROD in accordance with the review and comments process of Part XII, Consultation With EPA and OSDH.

If EPA, OSDH, and the Air Force cannot jointly agree on the proposed alternative for remedial action then the final selection of the remedial action(s) shall be in accordance with CERCLA Section 120(e)(4)(A), 42 U.S.C. §9620(e)(4)(A). Following final selection of the remedial action, the Air Force shall propose, design, and submit a Plan for implementation of the selected remedial action, including appropriate timetables and schedules, to EPA and OSDH for review as outlined in Part XII, Consultation With EPA and OSDH, of this Agreement. Within fifteen (15) months following approval of the Plan in the manner indicated herein, the Air Force shall implement substantial, continuous, physical on-site remedial action(s) in accordance with the deadlines established in Part XVII, Deadlines. A dispute arising under this Part on any matter other than final selection of a remedial action shall be resolved pursuant to Part XXVII, Dispute Resolution.

The Air Force shall perform the long-term operation and maintenance for the selected remedial action.

B. REMEDIAL ACTION FOR OPERABLE UNITS

Remedial Actions for operable units shall satisfy the requirements of CERCLA, the NCP, CERCLA guidance and policy, and any ARARs. Remedial actions for operable units shall be at those sources of contamination contributing to the surface and subsurface contamination at each, Building 3001 and Soldier Creek.

1. Remedial Actions for Operable Units which have been Implemented Prior to this Agreement

(a) The following remedial actions have been completed to control the migration of contamination at Building 3001:

(1) Removal of contents of three pits located in the north portion of Building 3001 at column-rows: E-105, V-85, and LM-107, as referenced in the Building 3001 RI report;

(2) Removal of the contents of two pits located in the south part Building 3001 at column-rows: MN-36 and P-75, as referenced in the Building 3001 RI Report.

(3) Plugging of Wells 18 and 19 in Building 3001 as described in the Building 3001 RI Report.

(b) The following remedial actions are scheduled to be completed to control the migration of contamination at Building 3001:

(1) Plugging Well 17 in Building 3001 as described in the Building 3001 RI Report.

(2) Removing fuel and vapors from the groundwater north of Building 3001.

(3) Removing contents of two pits located in the south portion of Building 3001, at column-rows Q-51 and U-51, as described in the Building 3001 RI Report.

2. Remedial Actions for Operable Units to be Implemented Subsequent to this Agreement

The Air Force shall follow the procedures for implementing remedial actions as outlined in Section B, 3, of this Part for those operable units not identified in Section B, 1, of this Part.

3. Procedures for Remedial Actions for Operable Units to be Implemented Subsequent to this Agreement

The remediation of each discrete source of surface and subsurface contamination for any Operable Units shall be implemented pursuant to the following procedures:

(a) The Air Force shall conduct a separate focused RI and FS for each operable unit contributing to the surface and subsurface contamination. An individual focused RI and FS report need not be submitted for each operable unit. Individual focused RI and FS data for separate operable units may be combined in a single focused RI and FS report.

(b) The FS Report shall contain a proposed plan for the selection of an appropriate remedial action for an operable unit(s). The RI and FS Reports and proposed plan shall be presented in draft to EPA and OSDH for review in accordance with Part XII, "Consultation With EPA and OSDH. Following the finalization of the focused RI and FS process for an operable unit, the Air Force shall publish the proposed plan for that operable unit and provide opportunity for public comment in accordance with Section 117 of CERCLA, 42 U.S.C. §9617.

(c) Within thirty (30) days of the close of the thirty (30) day comment period, the Air Force shall prepare a draft ROD for each operable unit and submit them to EPA and OSDH for review in accordance with Part XII, Consultation With EPA and OSDH. If EPA, OSDH, and the Air Force cannot jointly agree on the proposed alternative for any operable unit the final selection of the remedial action for any operable unit shall be in accordance with Section 120(e)(4)(A) of CERCLA, 42 U.S.C. §9620(e)(4)(A). Following the final selection of the remedial action for the operable unit, the Air Force shall propose, design, and submit a plan for implementation of the selected remedial action, including appropriate timetables and schedules as established in Part XVII, Deadlines. Upon approval of the plan by EPA and OSDH, the Air Force shall implement the remedial action(s) in accordance with the plan.

(d) The Air Force shall perform the necessary long-term operation and maintenance for the selected remedial action. A dispute arising under this Part on any matter other than final selection of a remedial action for an operable unit shall be resolved pursuant to Part XXVII, Dispute Resolution.

C. ADDITIONAL WORK OR MODIFICATION TO WORK

1. The Parties may seek the performance of additional work or modification of work through the following Parts in the Agreement:

a. XII.J., Consultation with EPA and OSDH, Subsequent Modification of Final Reports,

b. XXIII, Five Year Review, or

c. XXXIII., Effective Date and Subsequent Modification.

2. The Air Force's obligation to perform additional work or modify work will be established by:

a. The procedures established under Part XII.J.1. and XII.J.2, or

b. Part XXXIII.

3. Notwithstanding 1. or 2. above, EPA and OSDH reserve the right to take action under any applicable statute or law for matters which are not covered by this Agreement.

D. QUARTERLY PROGRESS REPORTS.

The Air Force shall provide quarterly written progress reports to EPA and OSDH unless mutually changed by the Parties. At a minimum, these progress reports shall:

1. Describe the actions which have been taken pursuant to this Agreement;

2. Include all results of sampling, tests, and all other data received or-generated and verified by the Air Force during the reporting period;

3. Include relevant photographs illustrating actions taken by the Air Force at each, Building 3001 and Soldier Creek;

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

5. Describe any delays or problems that arise in the execution of the workplan during the quarter and any steps that were taken to alleviate the delays or problems.

6. Each previous quarter's report shall be submitted to EPA and to OSDH by certified mail, or hand-delivered with receipt, by the last business day of each month following the last day of each quarter. All documents to be submitted shall be sent to the Designated Project Coordinators.

XII. CONSULTATION WITH EPA AND OSDH

REVIEW AND COMMENT PROCESS FOR DRAFT AND FINAL DOCUMENTS

A. APPLICABILITY

The provisions of this Part establish the procedures that shall be used by the Air Force, OSDH, and the EPA to provide the Parties with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either primary or secondary documents. In accordance with Section 120 of CERCLA, 42 U.S.C. §9620, and 10 U.S.C §2705, the Air Force will normally be responsible for issuing

primary and secondary documents to OSDH and EPA. As of the effective date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed, and subject to dispute in accordance with Paragraphs B through J below.

The designation of a document as "draft" or "final" is solely for purposes of consultation with OSDH and EPA in accordance with this Part. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final," to the public for review and comment as appropriate and as required by law.

B. GENERAL PROCESS FOR RI/FS AND RD/RA DOCUMENTS

1. Primary documents include those reports that are major, discrete portions of RI/FS or RD/RA activities. Primary documents are initially issued by the Air Force in draft, subject to review and comment by OSDH and EPA. Following receipt of comments on a particular draft primary document, the Air Force shall respond to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary document shall become the final primary document either thirty (30) days after it is issued, if dispute resolution is not invoked, or as modified by decision of the dispute resolution process.

2. Secondary documents include those reports that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by the Air Force in draft subject to review and comment by OSDH and EPA. Although the Air Force will respond to comments received, the draft secondary documents may be finalized in the

context of the corresponding primary documents. A secondary document may be disputed at the time the corresponding draft final primary document is issued.

C. PRIMARY REPORTS

1. The Air Force shall complete and transmit draft reports for the following primary documents to OSDH and EPA for review and comment in accordance with the provisions of this Part.

- (a). Supplemental Quarterly RI Data for Building 3001
- (b). Building 3001 Proposed Plan
- (c). Building 3001 Record of Decision
- (d). Building 3001 RD documents
- (e). Building 3001 RA workplans and any reports generated during the RA.
- (f). A Soldier Creek RI workplan, including Sampling and Analysis Plan, QAPP, and the Health and Safety Plan for Soldier Creek
- (g). Soldier Creek Risk Assessment
- (h). Soldier Creek RI Report
- (i). Soldier Creek FS Workplan
- (j). Soldier Creek Initial Screening of Alternatives
- (k). Soldier Creek FS Report
- (l). Soldier Creek Proposed Plan
- (m). Soldier Creek Record of Decision
- (n). Soldier Creek RD documents
- (o). Soldier Creek RA workplans and any reports generated during the RA.

(p). Community Relations Plan for Building 3001 and Soldier
Creek

2. The Air Force shall complete and transmit draft reports for the following primary documents on operable units implemented subsequent to this Agreement, and EPA for review and comment in accordance with the provisions of this Part.

- (a). Focused RI and FS reports
- (b). Records of Decision
- (c). Proposed plan
- (d). RD documents
- (e). RA workplans and any report generated during the RA.

3. Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. The Air Force shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Part XVII, Deadlines.

D. SECONDARY DOCUMENTS

1. The Air Force shall complete and transmit draft reports for the secondary documents as described in the RI and FS Workplans for Soldier Creek to OSDH and EPA for review and comments in accordance with the provisions of this Part. All secondary documents for Building 3001 have been submitted, see Part XVI of this Agreement.

2. Although OSDH and EPA may comment on the draft reports for the secondary documents described above, such documents shall not be subject to dispute resolution except as provided by Paragraph B hereof. Target dates shall be established for the completion and transmission of draft secondary reports pursuant to Part XVII, Deadlines.

E. MEETINGS OF THE PROJECT COORDINATORS ON DEVELOPMENT OF REPORTS

The Project Coordinators shall meet at a minimum of every 90 days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at either Building 3001 or Soldier Creek, or both, on the Primary and Secondary documents. Prior to preparing any draft report specified in Paragraphs C and D above, the Project Coordinators shall meet to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft report.

F. IDENTIFICATION AND DETERMINATION OF POTENTIAL ARARS

1. For those primary reports or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft report the Project Coordinators shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the report being addressed. At that time, OSDH shall identify all potential State ARARs as required by CERCLA §121(d)(2)(A)(ii), 42 U.S.C. §9621(d)(2)(A)(ii), which are pertinent to the report being addressed. Draft ARAR determinations shall be prepared by the Air Force in accordance with §121(d)(2) of CERCLA, 42 U.S.C. §9621(d)(2) the NCP, and pertinent guidance issued by EPA, which is not inconsistent with CERCLA and the NCP.

2. 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 re-examined throughout the RI/FS process until a ROD is issued.

G. REVIEW AND COMMENT ON DRAFT REPORTS

1. The Air Force shall complete and transmit each draft primary report to the EPA and OSDH on or before the corresponding deadline established for the issuance of the report. The Air Force shall complete and transmit the draft secondary document in accordance with the target dates established for the issuance of such reports established pursuant to Part XVII, Deadlines.

2. Unless the Parties mutually agree to another time period, all draft reports shall be subject to a thirty (30) day period for review and comment. Review of any document by OSDH and EPA may concern all aspects of the report (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP and any pertinent guidance or policy promulgated by the OSDH and EPA. Comments by OSDH and EPA shall be provided with adequate specificity so that the Air Force may respond to the comments and, if appropriate, make changes to the draft report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Air Force, the OSDH or EPA shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, EPA or OSDH may extend the thirty (30) day comment period for an additional twenty (20) days by written notice to the

Air Force prior to the end of the thirty (30) day period. On or before the close of the comment period, EPA and OSDH shall transmit by next day mail their written comments to the Air Force.

3. Representatives of the Air Force shall make themselves readily available to the EPA and OSDH during the thirty (30) day comment period for purposes of informally responding to questions and comments on draft reports. Oral comments made during such discussions need not be the subject of a written response by the Air Force on the close of the comment period.

4. In commenting on a draft report which contains a proposed ARAR determination, OSDH and EPA shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that OSDH or EPA do object, they shall explain the bases for their objections in detail and shall identify any ARARs which they believe were not properly addressed in the proposed ARAR determination.

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

6. The Air Force may extend the thirty (30) day period for either responding to comments on a draft report and issuing the draft final report for an additional twenty (20) days by providing notice to OSDH and EPA. In appropriate circumstances, this time period may be further extended in accordance with Part XIX, Extensions.

H. AVAILABILITY OF DISPUTE RESOLUTION FOR DRAFT FINAL PRIMARY DOCUMENTS

1. Dispute resolution shall be available to the Parties for draft final primary reports as set forth in Part XXVII, Dispute Resolution.

2. When dispute resolution is invoked on a draft primary report, work may be stopped in accordance with the procedures set forth in Part XXVII regarding dispute resolution.

I. FINALIZATION OF REPORTS

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

J. SUBSEQUENT MODIFICATIONS OF FINAL REPORTS

Following finalization of any primary report pursuant to Paragraph I above, OSDH, EPA, or the Air Force may seek to modify the report, including seeking additional field work, pilot studies, computer modeling

or other supporting technical work, only as provided in Paragraphs 1 and 2 below.

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

2. In the event that a consensus is not reached by the Project Coordinators on the need for a modification, the OSDH or EPA or the Air Force may invoke dispute resolution to determine if such modification shall be conducted. Modification of a report shall be required only upon a showing that: (a) the requested modification is based on significant new information, and (b) 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.

3. Nothing in this Subpart shall alter EPA's or OSDH's ability to request the performance of additional work which was not contemplated by this Agreement. The Air Force's obligation to perform such work must be established by either a modification of a report or document or by amendment to this Agreement.

XIII. DESIGNATED PROJECT COORDINATORS

A. On -or before the effective date of this Agreement, the Parties shall each designate a Project Coordinator, Alternate and/or Designate (hereinafter jointly referred to as Project Coordinator), for the purpose of overseeing the implementation of this Agreement. Each Party's Project Coordinator shall also be a representative on the TAFB Technical Review Committee (TRC). To the maximum extent possible, communications among the Parties pertaining to all documents, including, but not limited to, reports, approvals, and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Project Coordinators. During implementation of this Agreement, the Project Coordinators shall operate, whenever possible, by consensus. If the Project Coordinators cannot agree, dispute resolution procedures under Part XXVII of this Agreement shall apply. The Air Force Project Coordinator will function as the Remedial Project Manager within the meaning of the National Contingency Plan.

B. The Parties may change their respective Project Coordinators. Such change shall be accomplished by notifying the other Parties, in writing, no later than five (5) days prior to the effective date of the change.

C. Without limitation on any authority conferred on EPA and/or OSDH by statute or regulation, the EPA and OSDH Project Coordinators' authority includes, but is not limited to:

1. Taking samples and ensuring the type, quantity, and location of the samples taken by the Air Force are done in accordance with the terms of any approved workplan;

2. Observing, taking photographs, and making such other reports on the progress of the work as the Project Coordinators deem appropriate subject to the Access provision of Section XVIII of this Agreement.

3. Reviewing records, files, and documents relevant to the work performed by the Air Force pursuant to this Agreement. The Air Force's Project Coordinator or his designee, shall make himself available during normal business hours to the other Parties' Project Coordinators. The EPA and OSDH Project Coordinators, or their designees, shall be reasonably available during normal business hours to each other and the Air Force Project Coordinator.

4. Emergency cessation of work due to imminent and substantial endangerment to human health.

(a) The Project Coordinators may collectively agree on a cessation of work due to an imminent and substantial endangerment to human health.

(b) In the absence of the Air Force Project Coordinator, the EPA or OSDH Project Coordinator can order a temporary cessation of work in order to immediately consult the Air Force Project Coordinator to determine whether a formal cessation of work is warranted.

(c) In the event the Air Force Project Coordinator does not concur with the EPA or OSDH Project Coordinator on the need for an immediate cessation of work, the Parties agree to discontinue the work for an interim period of time to determine whether continued cessation of work is warranted. During this period of time, the matter will be immediately referred to the installation commander for resolution. The Air Force will

also immediately provide the EPA Project Coordinator with communication capability to the EPA Regional Hazardous Waste Division Director or his/her superior who may verbally direct the continued cessation of work followed immediately by a formal written request in accordance with Part XXVII, Dispute Resolution, paragraph H. Absent the provisions of paragraph 3(b) above, only an authorized Air Force contracting official may order an emergency cessation of work.

D. Each Project Coordinator shall be responsible for disseminating all communications generated by its representative entity pertaining to response actions at Building 3001 and/or Soldier Creek.

XIV. QUALITY ASSURANCE

Subject to Part XII, Consultation With EPA and OSDH, and so long as they are consistent with Section XII, the following Quality Assurance procedures shall apply:

A. The Air Force shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection, and laboratory analysis activities. The Air Force shall inform and obtain the comments of EPA and OSDH in planning for, and prior to, all sampling and analysis and shall develop operable-unit or element-specific Quality Assurance Project Plans (QAPPs), as necessary, for review and comment by the EPA and OSDH. The QAPP should be prepared in accordance with EPA Document QAMS-005/80 and applicable guidance as developed and provided by EPA and should include, but not be limited to: operable-unit or element-specific sampling methodology; sample storage and

shipping; methods; documentation, sampling and chain-of-custody procedures; laboratory quality control/quality assurance procedures; and calibration procedures and frequency;

B. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Agreement, the Air Force shall obtain the prior written comments of EPA and OSDH for all protocols used for sampling and analysis. The Air Force shall also ensure that any laboratories utilized for analysis participate in a quality assurance/quality control program and those laboratories shall be approved by EPA;

C. The Air Force shall also ensure that appropriate EPA and OSDH personnel or their authorized representatives will be allowed access to any laboratory and personnel utilized by the Air Force in implementing this Agreement. Such access shall be for the purpose of validating sample analyses, protocols, and procedures required by the Remedial Investigation and Quality Assurance Project Plan.

XV. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. All Parties shall make the results of all sampling and/or tests or other data generated by or on behalf of any Party, with respect to the implementation of this Agreement, available to all Parties. The Air Force shall submit its results in quarterly progress reports as described in Part XI, Work to be Performed.

B. Upon fourteen (14) days advanced written notice from EPA or OSDH, the Air Force Project Coordinator shall arrange for sampling by EPA or

OSDH. If it is not possible to provide fourteen (14) days prior written notification, the Air Force, upon receipt of notice, shall supply expeditious access to the sampling location(s).

XVI. NOTIFICATION

A. Unless otherwise specified, any primary document provided pursuant to a schedule or deadline identified in or developed under this Agreement shall be sent by next-day mail, hand delivery, or facsimile. Any relevant time limitations as to a primary document shall commence upon receipt of the document by the Party to whom it is sent. All documents shall be sent to:

Larry Wright (6H-E)
Acting Chief, Superfund Enforcement Branch
U.S. Environmental Protection Agency
Region VI
1445 Ross Ave.
Dallas, TX 75202

and

Mark S. Coleman
Deputy Commissioner for Environmental Health Services
Oklahoma State Department of Health
P.O. Box 53551
1000 N.E. 10th Street
Oklahoma City, OK 73152

Documents sent to the Air Force shall be addressed as follows unless the Air Force specifies otherwise by written notice:

Colonel Ray D. Reaves
Director of Environmental Management
OC-ALC/EM(R)
Tinker AFB, OK 73145

Unless otherwise requested, all secondary documents shall be sent via certified mail, "return receipt requested," or hand-delivered with a

receipt, to the above named Parties.

B. Unless otherwise indicated in this Agreement, notification of change of representative specified in this Part shall be provided to the other Parties within fifteen (15) days of the effective date of said change.

XVII. DEADLINES

A. The following documents for Building 3001 have been submitted:

<u>Documents</u>	<u>Date Accomplished</u>
Sampling & Analysis Quality Assurance/Quality Control Plan	February 28, 1986
Health & Safety Plan	February 28, 1986
RI Work Plan	March 17, 1986
RI Report	March 9, 1988
Initial Screening of Alternatives (Screening of Technologies)	July 13, 1988
Risk Assessment	September 26, 1988

B. The following deadline has been established, in conjunction with OSDH, for the submittal of the following draft primary document pursuant to this Agreement:

FS Report (Building 3001)	April 28, 1989
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C. Within twenty-one (21) days of the effective date of this Agreement, the Air Force shall propose deadlines for completion of the following draft primary documents:

1. Building 3001

(a) Supplemental Quarterly RI Data

(b) Building 3001 Proposed Plan

(c) Record of Decision

2. Soldier Creek

(a) RI Workplan, including Sampling and Analysis Plan, QAPP,
and Health and Safety Plan

(b) Risk Assessment

(c) RI Report

(d) FS Workplan

(e) Initial Screening of Alternatives

(f) FS Report

(g) Proposed Plan

(h) Record of Decision

3. Operable Units Implemented Subsequent to this Agreement

(a) Focused RI and FS Reports

(b) Proposed Plan

(c) Decision Document

4. The Site Community Relations Plan

Within fifteen (15) days of receipt, EPA, in conjunction with the OSDH, shall review and provide comments to the Air Force regarding the proposed deadlines. Within fifteen (15) days following receipt of the comments the Air Force shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. If the Parties agree on proposed deadlines, the finalized deadlines shall be incorporated into the appropriate workplans.

If the Parties fail to agree within thirty (30) days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Part XXVII, Dispute Resolution.

D. Within twenty-one (21) days of issuance of the Record of Decision for Building 3001 and the Record of Decision for Soldier Creek, the Air Force shall propose deadlines for completion of the following draft primary documents:

1. Remedial Design for each, Building 3001 and Soldier Creek
2. Remedial Action Work Plan for each, Building 3001 and Soldier Creek, and any reports generated during the RA.

These deadlines shall be proposed, finalized, and published utilizing the same procedures set forth in Paragraph C, above.

E. Within twenty-one (21) days of the receipt by EPA and OSDH of the final RI and FS workplans for Soldier Creek, the Air Force shall furnish target completion dates for secondary documents listed in the RI and FS workplans.

F. Within twenty-one (21) days of issuance of the Decision Document for the operable units implemented subsequent to this Agreement, the Air Force shall propose deadlines for completion of the following draft primary documents:

1. Remedial Design for the operable unit
2. Remedial Action Workplan for the operable unit and any reports generated during the RA.

These deadlines shall be proposed, finalized, and published utilizing the same procedures set forth in Paragraph C, above.

G. The deadlines set forth in this Part, or to be established as set forth in this Part, may be extended pursuant to Part XIX, Extensions. The Parties recognize that one possible basis for extension of the deadlines for completion of the Remedial Investigation and Feasibility Study Reports is the identification of significant new Site conditions at the Site (Building 3001 and Soldier Creek) during the performance of the remedial investigation.

XVIII. RECORD PRESERVATION

The Air Force shall preserve, during the pendency of this Agreement and for a minimum of seven (7) years after its termination, all records and documents in their possession or in the possession of their divisions, employees, or agents, or contractors, which relate in any way to the actions carried out pursuant to this Agreement, despite any document retention policy to the contrary. After this seven (7) year period, the Air Force shall notify EPA and OSDH at least thirty (30) days prior to the destruction of any such documents. Upon request by EPA or OSDH, the Air Force shall make available such records or copies of any such records, unless withholding is authorized and determined appropriate by statute or regulation.

XIX. EXTENSIONS

A. Either a timetable and deadline or a schedule shall be extended upon receipt of a timely request for extension and when good cause exists

for the requested extension. Any request for extension by the Air Force shall be submitted in writing and shall specify in writing to EPA and OSDH:

1. The timetable and deadline or the schedule that is sought to be extended.
 2. The length of the extension sought;
 3. The good cause(s) for the extension; and
 4. Any related timetable and deadline or schedule that would be affected if the extension were granted.
- B. Good cause exists for an extension when sought in regard to:
1. An event of force majeure;
 2. A delay caused by another Party's failure to meet any requirement of this Agreement
 3. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
 4. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; and
 5. Any other event or series of events mutually agreed to by the Parties as constituting good cause.
- C. Absent agreement of the Parties with respect to the existence of good cause, the Air Force may seek and obtain a determination through the dispute resolution process that good cause exists.
- D. Within seven (7) days of receipt of a request for an extension of a timetable and deadline or a schedule, EPA and OSDH shall advise the Air Force in writing of its respective position on the request. Any failure by

EPA or OSDH to respond within the seven (7) day period shall be deemed to constitute concurrence in the request for extension. If EPA or OSDH does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

E. If there is consensus among the Parties that the requested extension is warranted, the Air Force shall extend the affected timetable and deadline or schedule accordingly. If there is no consensus among the Parties as to whether all or part of the requested extension is warranted, the timetable and deadline or schedule shall not be extended except in accordance with determination resulting from the dispute resolution process.

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

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

XX. ACCESS

A. Without limitation on any authority conferred on EPA and OSDH by statute or regulation, EPA, OSDH, or their authorized representatives shall have the authority to enter and freely move about at TAFB at all reasonable times for purposes consistent with this Agreement, State of Oklahoma laws and regulations, CERCLA, and ARARs, subject to statutory and regulatory requirements as may be necessary to protect national security or mission essential activities. Such authority shall include, but not be limited to, inspecting records, operating logs, and contracts related to this Agreement; reviewing the progress of the Air Force in carrying out the terms of this Agreement; conducting such tests as EPA, OSDH, or the Project Coordinators deem necessary; and verifying the data submitted to EPA and OSDH by the Air Force. In order to facilitate access to TAFB, the Parties agree that the Air Force will provide an escort whenever EPA or OSDH, including contractors, desire access to TAFB. EPA and OSDH will provide advance notice of the need for access to the TAFB Director of Environmental Management, or his designee. In addition, EPA and OSDH shall not use any cameras, sound recording, or other electronic recording devices at TAFB without the written permission of the Air Force Project Coordinator. The Air Force shall not unreasonably withhold such permission and shall deny permission only when the electronic or photographic equipment will interfere with mission requirements, including, but not limited to, radar, radio, and other electronic transmissions or jeopardize Air Force security or safety requirements. When permission must be withheld, the Air Force shall be responsible for alternate arrangements for any work utilizing cameras, sound recorders, or other electronic recording devices.

B. Prior to entering and exiting TAFB, representatives of EPA and OSDH shall be briefed, as necessary, on security matters. EPA and OSDH representatives shall provide the Air Force with an entry briefing on matters to be observed and inspected, and an exit briefing on their observations and findings.

C. The rights to access by EPA and OSDH, granted in Paragraph A of this Part, shall be subject to those regulations as may be necessary to protect national security or mission essential activities. All applicable regulations justifying any denial of access, shall be clearly documented by the Air Force, reasonably applied and shall not unduly hinder EPA or OSDH from carrying out their responsibilities and authorities pursuant to this Agreement. Upon denying any aspect of access as described in the preceding paragraph, the Air Force shall submit in writing within seventy-two (72) hours an explanation of the reason for the denial and a recommendation for accommodating the needed access in an alternate manner. The Parties agree that this Agreement is subject to Section 120(j) of CERCLA, 42 U.S.C. §9620(j), regarding the issuance of Site Specific Presidential Orders as may be necessary to protect national security.

D. All Parties with access to TAFB pursuant to this Part shall comply with all approved health and safety plans.

E. To the extent that activities pursuant to this Agreement must be carried out on other than Air Force property, the Air Force shall use its best efforts to obtain access agreements from the owners which shall provide reasonable access for the Parties. In the event that the Air Force

is unable to obtain such access agreements, the Air Force shall promptly provide written notification to EPA and OSDH regarding the lack of agreements and efforts to obtain such access agreements.

XXI. PERMITS

A. The Parties recognize that under Sections 121(d) and 121(e)(1) of CERCLA, 42 U.S.C. §§9621(d) and 9621(e)(1), and the NCP, portions of the response actions covered by this Agreement and conducted entirely on-site, are exempted from the procedural requirement to obtain Federal, State, or local permits, but must satisfy all the applicable or relevant and appropriate Federal and State standards, requirements, criteria, or limitations which would have been included in any such permit.

B. The Air Force shall notify the other Parties when it becomes aware of any permits required for activities associated with this Agreement. If a permit necessary for implementation of this Agreement is not issued, or is issued or renewed in a manner which is materially inconsistent with the requirements of this Agreement, the Parties shall meet to consider modification of this Agreement that is necessary either to obtain a permit or to conform to an issued permit.

C. During any appeal of any permit required to implement this Agreement or during review of any Party's proposed modifications as provided above, all Parties shall continue to implement those portions of this Agreement which can reasonably be implemented pending final resolution of the permit issues. However, as to work which cannot be so implemented, any corresponding timetable, deadline, and schedule will be subject to Part XIX, Extensions.

XXII. CONFIDENTIAL INFORMATION

The Air Force may assert a business confidentiality claim covering all or part of the information requested by this Agreement. Analytical data shall not be claimed as confidential by the Air Force. Information determined to be confidential business information by EPA, pursuant to 40 C.F.R. Part 2, shall be afforded the protection specified therein; and, such information shall be treated by the OSDH as "confidential" pursuant to the Oklahoma Open Records Act, 51 O.S.Supp. 1985, §24A.1 et seq., as amended. It is not an open record within the Oklahoma Records Act. Any Air Force determination of confidentiality is subject to dispute resolution as set forth in Part XXVII. If no claim of business confidentiality accompanies the information when it is submitted to the EPA or the OSDH, the information may be made available to the public without further notice to the Air Force.

XXIII. FIVE YEAR REVIEW

If a remedial action is selected that results in any hazardous substances, pollutants, or contaminants remaining at the Site, the Parties shall review such remedial action no less often than each five (5) years after the initiation of such remedial action to assure that human health and the environment are being protected by the remedial action then being implemented. The EPA Project Coordinator and the OSDH Project Coordinator shall advise the Air Force Project Coordinator of their findings in this regard. If the Air Force determines that additional action is required, the Agreement may be amended pursuant to Part XII.J. or Part XXXIII. The

Air Force determination under this Part shall be subject to dispute resolution by the other Parties.

XXIV. FORCE MAJEURE

A Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or prevents the performance of any obligation under this Agreement, including but not limited to, acts of God, fire, war, insurrection, civil disturbance, explosion, unanticipated breakage or accident to machinery, equipment, or lines of pipe despite reasonably diligent maintenance, adverse weather conditions that could not be reasonably anticipated, unusual delay in transportation, restraint by court order or order of public authority, inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the Air Force; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence, and insufficient availability of appropriated funds, if the Air Force shall have made timely request for such funds as part of the budgetary process as set forth in Part XXXIV, Funding. A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

XXV. EXEMPTIONS

The obligation of the Air Force to comply with the provisions of this Agreement may be relieved by:

- A. A Presidential order of exemption issued pursuant to the provisions of CERCLA Section 120(j)(1), 42 U.S.C. §9620(j)(1), or RCRA §6001, 42 U.S.C. §6961;
- B. The order of an appropriate court; or
- C. The dispute resolution process of Part XXVII of this Agreement.

XXVI. EMERGENCY ACTIONS

Notwithstanding any other provision of this Agreement, the Air Force retains the right, consistent with E.O. 12580, to conduct such emergency response actions as may be necessary to alleviate immediate threats to human health or the environment from the release or threat of release of hazardous substances, pollutants or contaminants at or from TAFB. In the exercise of such authority, the Air Force shall provide notice to the other Parties in accordance with SARA section 211(a)(1)(B), 10 U.S.C. §2705(a). The Air Force shall give the other Parties adequate opportunity for timely review and comment after the Air Force makes any proposal to carry out such response action and before the Air Force initiates any such response action. This opportunity for review and comment shall not apply if the action is in the nature of an emergency removal taken because of imminent and substantial endangerment to human health or the environment and it is

the determination of the Air Force that consultation would be impractical. However the Air Force shall notify the other Parties in writing within forty-eight (48) hours of taking any such emergency removal action.

XXVII. DISPUTE RESOLUTION

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

A. Within thirty (30) days after:

1. The issuance of a draft final primary document pursuant to Part XII, Consultation with EPA and OSDH, or

2. Any action which leads to or generates a dispute, the disputing Party shall submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position.

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

C. The DRC shall serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (SES or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on the DRC is the Waste Management Division Director of EPA's Region VI. The Air Force's designated member is the Vice Commander, Oklahoma City Air Logistics Center. The OSDH member is the Deputy Commissioner for Environmental Health Services. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Part XV, Notification.

D. 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. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period, the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution, within seven (7) days after the close of the twenty-one (21) day resolution period.

E. The SEC shall serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA representative on the SEC is the Regional Administrator of EPA's Region VI. The Air Force's representative on the SEC is the Chief of Staff, HQ Air Force Logistics Command. The OSDH member is the Commissioner of Health. The SEC members shall, as appropriate, confer, meet, and exert their best efforts

to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, EPA's Regional Administrator shall issue a written position on the dispute. The Air Force may, within fourteen (14) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event that the Air Force elects not to elevate the dispute to the Administrator within the designated fourteen days (14) escalation period, the Air Force shall be deemed to have agreed with Regional Administrator's written position with respect to the dispute.

F. Upon escalation of a dispute to the Administrator of EPA pursuant to Subpart E, the Administrator shall review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Air Force's Secretariat Representative to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the Air Force with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Part shall not be delegated.

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

H. When dispute resolution is in progress, work affected by the dispute shall immediately be discontinued if the Hazardous Waste Division Director for EPA's Region VI 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, EPA shall consult with the Air Force prior to initiating a work stoppage request. After stoppage of work, if the Air Force believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Air Force may meet with the Division Director to discuss the work stoppage. Following this meeting, and further consideration of the issues, the Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Air Force.

I. Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Part, the Air Force shall incorporate the resolution and final determination into the appropriate plan, schedule, or procedures and proceed to implement this Agreement according to the amended plan, schedule, or procedures.

J. Resolution of a dispute pursuant to this Part of the Agreement constitutes a final resolution of any dispute arising under this

Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Part of this Agreement.

XXVIII. STIPULATED PENALTIES

A. In the event that the Air Force fails to submit a primary document to EPA pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an interim or final remedial action, EPA may assess a stipulated penalty against the Air Force. A stipulated penalty may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs.

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

C. The annual reports required by Section 120(e)(5) of CERCLA, 42 U.S.C. §9620(e)(5), shall include, with respect to each final assessment

of a stipulated penalty against the Air Force under this Agreement, each of the following:

1. The facility responsible for the failure;
2. A statement of the facts and circumstances giving rise to the failure;
3. A statement of any administrative or other corrective action taken at the relevant facility, or a statement of why such measures were determined to be inappropriate;
4. A statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure; and
5. The total dollar amount of the stipulated penalty assessed for the particular failure.

D. Stipulated penalties assessed pursuant to this Part shall be payable to the Hazardous Substances Response Trust Fund only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the DOD.

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

F. This Part shall not affect the Air Force's ability to obtain an extension of a timetable, deadline, or schedule pursuant to Part XIX, Extensions.

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

XXIX. OTHER CLAIMS

Nothing in this Agreement shall constitute or be construed as a release from any claim, cause of action, demand in law, or equity 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 constituents, hazardous substances, pollutants, or contaminants found at, taken to, or taken from TAFB.

XXX. PUBLIC PARTICIPATION

A. The Parties agree that this Agreement and any subsequent proposed remedial action alternative(s) for Building 3001 and Soldier Creek arising out of this Agreement shall comply with the public participation requirements of CERCLA, including Section 117 of CERCLA, 42 U.S.C. §9617, and the NCP.

B. Consistent with Part XII, Consultation With EPA and OSDH, the Air Force shall develop and implement a Community Relations Plan (CRP) which responds to the need for an interactive relationship with all interested community elements, both on TAFB and off, regarding environmental activities conducted pursuant to this Agreement by the Air Force. The Air Force agrees to develop and implement the CRP in a manner consistent with Section 117 of CERCLA, 42 U.S.C. §9617, the NCP, and EPA guidances on community relations.

C. Any party issuing a press release with reference to any of the work required by this Agreement shall advise the other Parties of such press

release and the contents thereof at least forty-eight (48) hours before the issuance of such press release.

XXXI. ADMINISTRATIVE RECORD

The Air Force shall establish and maintain an Administrative Record at or near TAFB in accordance with Section 113(k) of CERCLA, 42 U.S.C. §9613(k). The Administrative Record shall be established and maintained in accordance with current and future EPA policy and guidelines. A copy of the index for the Administrative Record shall be provided to EPA and OSDH. The Administrative Record developed by the Air Force shall be updated and supplied to EPA and OSDH on at least a quarterly basis. An index of documents in the Administrative Records shall accompany each update of the Administrative Record.

XXXII. PUBLIC COMMENT

A. The Parties intend that compliance with this public comment provision obviates the need to subject any portions of this Agreement that are subsequently incorporated into a RCRA permit under Part X. paragraph C to public comment for that permit or similar State hazardous waste remedial requirements for the contamination at this Site.

(1) Within fifteen (15) days of the execution of this Agreement by all Parties, TAFB shall provide public notice that this Agreement has been developed and shall announce the availability of this Agreement to the public for a forty-five (45) day review and comment period. The public notice shall be published in a major local newspaper and broadcast over

local radio stations. The procedures of 40 CFR Part 124.10(c) regarding persons to be notified and Part 124.10(d) regarding contents of the notice shall apply.

(2) EPA shall accept comments from the public in behalf of all Parties for a period of forty-five (45) days after such announcement. At the end of the comment period, the Parties shall review all such comments and after consultation shall either:

(a) Determine that the Agreement should be made effective in its present form, in which case the EPA shall immediately issue a written notice to that effect to the other Parties, and the Agreement shall become effective on the date said notice is issued; or

(b) Determine that modification of the Agreement is necessary, in which case the Parties will either amend the agreement by mutual consent, or, if the Parties do not mutually agree on needed changes within fifteen (15) days from the close of the public comment period, the Parties shall submit their written notices of position directly to the Dispute Resolution Committee, and the dispute resolution procedure of Part XXVII shall apply.

(3) If there is written notice of opposition to this Agreement within the time period for public comment, EPA shall hold a public hearing after 30 days prior notice. A written transcript or tape recording of the hearing shall be prepared by the EPA and provided to TAFB, which shall make it a part of the administrative record required under this Agreement.

B. In the event that the Agreement is modified following the exhaustion of the dispute resolution procedures of Part XXVII, the Air Force and OSDH reserve the right to withdraw from the Agreement within

twenty (20) days of EPA's submission of the modified Agreement to the Parties via overnight mail. If neither the Air Force or OSDH provide EPA with written notice of withdrawal from the Agreement within such twenty (20) day period, the Agreement, as modified shall automatically become effective on the twenty-first day, and the EPA shall issue a notice to the Parties within three working days of the effective date.

C. When a final decision by the Parties is reached on whether to finalize the Agreement in its original form, modify or withdraw from the Agreement, EPA shall issue a notice of decision for the Agreement in accordance with 40 CFR Part 124.15(d). In addition EPA shall issue a response to comments in accordance with 40 CFR Part 124.17.

XXXIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

A. This Agreement shall become effective in accordance with Part XXXII, Public Comment. --

B. This Agreement may be modified by any Party, upon the approval of all Parties, by submitting requested modifications to the other Parties. Such amendments and/or modifications must be in writing and shall have as the effective date that date on which such amendments are signed by all Parties.

C. Any final reports, plans, specifications, schedules, and attachments required by this Agreement upon which have been submitted and reviewed by EPA and OSDH prior to the effective date of this Agreement shall be incorporated into this Agreement.

D. No informal advice, guidance, suggestions, or comments by EPA or OSDH regarding reports, plans, specifications, schedules, and any other

writing submitted by the Air Force shall be construed as relieving the Air Force of its obligation to obtain such formal approval as may be required by this Agreement. This paragraph does not apply to field decisions made by Project Coordinators, provided that all Project Coordinators have agreed that such field decisions are appropriate and applicable to the work.

XXXIV. FUNDING

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

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

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

C. If appropriated funds are not available to fulfill the Air Force's obligations under this Agreement, EPA reserves the right to initiate an

action against any other person, or to take any response action, which would be appropriate absent this Agreement.

D. Funds authorized and appropriated annually by Congress under the "Environmental Restoration Defense" appropriation in the Department of Defense Appropriation Act and allocated by the DASD(E) to the Air Force will be the source of funds for activities required by this Agreement consistent with Section 211 of CERCLA, 10 U.S.C., Chapter 160. However, should the Environmental Restoration Defense appropriation be inadequate in any year to meet the total Air Force CERCLA implementation requirements, the DOD shall employ and the Air Force shall follow a standardized DOD prioritization process which allocates that year's appropriations in a manner which maximizes the protection of human health and the environment. A standardized DOD prioritization model shall be developed and utilized with the assistance of EPA and the OSDH.

XXXV. ENFORCEABILITY

A. The Parties agree that:

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

2. All timetables and deadlines associated with RIs and FSs shall be enforceable by any person pursuant to CERCLA Section 310, 42

U.S.C. §9659, and any violation of such timetables or deadlines will be subject to civil penalties under CERCLA Sections 310(c) and 109, 42 U.S.C. §9659(c) and §9609.

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

4. Any final resolution of a dispute pursuant to Part XXVII of this Agreement which establishes a term, condition, timetable, deadline, or schedule shall be enforceable by any person pursuant to CERCLA Section 310(c), 42 U.S.C. §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. §9659(c) and §9609.

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

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

XXXVI. SUCCESSORS AND ASSIGNS

This Agreement shall apply to and be binding upon the Air Force, EPA, OSDH, their officers, successors in office, agents, and employees. Except

for any adjustment to monitoring systems which may be required by TAFB mission necessity, the Air Force shall assure that no portion of TAFB will be used in any manner which would adversely affect the integrity of any monitoring system or response measures installed pursuant to this Agreement. If any such adjustments are required due to TAFB mission requirements, the Air Force shall notify the other Parties before any adjustments are made, if possible, and in any event as expeditiously as possible. This Agreement shall also apply to subsequent owners and operators of TAFB. The Air Force agrees to include notice of this Agreement in any document transferring ownership to any subsequent owner and/or operator of any portion of TAFB subject to this Agreement in accordance with Section 120(h) of CERCLA, 42 U.S.C. §9620(h), and shall notify EPA and OSDH of any such change or transfer at least ninety (90) days prior to such transfer. Notice pursuant to Section 120(h)(3)(B) of CERCLA, 42 U.S.C. §9620(h)(3)(B), of any transfer of ownership shall not relieve the Air Force of its obligations to perform pursuant to this Agreement.

XXXVII. RESERVATION OF RIGHTS FOR RECOVERY OF EXPENSES

The Parties agree to amend this Agreement at a later date in accordance with any subsequent national resolution of the issue of cost reimbursement.

XXXVIII. TERMINATION AND SATISFACTION

The provisions of this Agreement shall be deemed satisfied and terminated upon receipt by the Air Force of written notice from EPA and OSDH that the Air Force has demonstrated to the satisfaction of EPA and

OSDH that all terms of the Agreement have been completed. Written notice from EPA and OSDH may not be unreasonably withheld. Any unreasonable failure or refusal to provide written notice shall be subject to dispute resolution in accordance with Section XXVII, Dispute Resolution. Termination and satisfaction of this Agreement shall be in accordance with Part X, Statutory Compliance/RCRA-CERCLA Integration.

IT IS SO AGREED:

UNITED STATES AIR FORCE

BY:

William P. Bowden
WILLIAM P. BOWDEN, Major General, USAF
Commander, Oklahoma City Air Logistics Center
Department of the Air Force

9 Dec 1988

DATE

OKLAHOMA STATE DEPARTMENT OF HEALTH

BY:

Mark S. Coleman
MARK S. COLEMAN
Deputy Commissioner for Environmental Health
Services
Oklahoma State Department of Health

12-9-88

DATE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

Robert E. Layton
ROBERT E. LAYTON, P.E.
Regional Administrator, Region VI
U. S. Environmental Protection Agency

12-9-88

DATE