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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

UNITED STATES DEPARTMENT OF THE NAVY

DISTRICT OF COLUMBIA

IN THE MATTER OF:)
)
U.S. Department of the Navy)
Washington Navy Yard) FEDERAL FACILITY AGREEMENT
Washington, DC) Under CERCLA Section 120
)
) Administrative Docket Number:
) III-FCA-CERC-016
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TABLE OF CONTENTS

I. JURISDICTION	1
II. DEFINITIONS	2
III. PARTIES BOUND	5
IV. PURPOSE	6
V. SCOPE OF AGREEMENT	7
VI. FINDINGS OF FACT	8
VII. EPA DETERMINATIONS	13
VIII. DISTRICT OF COLUMBIA DETERMINATIONS	14
IX. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION	15
X. WORK TO BE PERFORMED	15
XI. CONSULTATION	23
XII. DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN	28
XIII. BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN	29
XIV. EXTENSIONS	33
XV. PROJECT MANAGERS	34
XVI. EXEMPTIONS	36
XVII. ACCESS	36
XVIII. PERMITS	37
XIX. REMOVAL AND EMERGENCY ACTIONS	39
XX. PERIODIC REVIEW	40
XXI. DISPUTE RESOLUTION	41
XXII. STIPULATED PENALTIES	43
XXIII. FORCE MAJEURE	44
XXIV. ENFORCEABILITY	45
XXV. OTHER CLAIMS	45
XXVI. RESERVATION OF RIGHTS	46

XXVII. DISTRICT OF COLUMBIA RESERVATION OF RIGHTS	46
XXVIII. PROPERTY TRANSFER	47
XXIX. FUNDING	47
XXX. RECOVERY OF EPA EXPENSES	48
XXXI. QUALITY ASSURANCE	48
XXXII. RECORD PRESERVATION	48
XXXIII. SAMPLING AND DATA/DOCUMENT AVAILABILITY	48
XXXIV. PROTECTED INFORMATION	49
XXXV. COMMUNITY RELATIONS	49
XXXVI. PUBLIC COMMENT ON THIS AGREEMENT	50
XXXVII. RESTORATION ADVISORY BOARD	52
XXXVIII. EFFECTIVE DATE	52
XXXIX. AMENDMENT OF AGREEMENT	52
XXXX. SEVERABILITY	53
XXXXI. TERMINATION AND SATISFACTION	53
XXXXII. NATURAL RESOURCES TRUSTEES	54
AUTHORIZED SIGNATURES	55

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

I. JURISDICTION

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

- A. The U.S. Environmental Protection Agency (EPA) Region III 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), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. No. 99-499 (hereinafter jointly referred to as CERCLA), 42 U.S.C. Section 9620(e)(1), and Sections 6001 and 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sections 6961 and 6973, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA), and Executive Order 12580;
- B. EPA Region III enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to CERCLA Section 120(e)(2), 42 U.S.C. Section 9620(e)(2), RCRA Sections 6001 and 7003, 42 U.S.C. Sections 6961 and 6973, and Executive Order 12580;
- C. The Navy enters into those portions of this Agreement that relate to the RI/FS pursuant to CERCLA Section 120(e)(1), 42 U.S.C. Section 9620(e)(1), RCRA Sections 6001 and 7003, 42 U.S.C. Sections 6961 and 6973, Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. Section 4321, and the Defense Environmental Restoration Program (DERP), 10 U.S.C. Section 2701 et seq.;
- D. The Navy enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to CERCLA Section 120(e)(2), 42 U.S.C. Section 9620(e)(2), RCRA Sections 6001 and 7003, 42 U.S.C. Sections 6961 and 6973, Executive Order 12580 and the DERP.
- E. The District of Columbia, as represented by the District of Columbia Department of Health, Environmental Health Administration, enters into this Agreement pursuant to CERCLA Sections 120(f) and 121(f), 42 U.S.C. Sections 9620(f) and 9621(f), RCRA Sections 6001 and 7003, 42 U.S.C. Sections 6961 and 6973, and the Defense

Environmental Restoration Act, 10 U.S.C. §2701 et seq., the Department of Defense/District of Columbia Memorandum of Agreement (DSMOA or DDMOA), dated May 9, 1994; the District of Columbia Water Pollution Control Act of 1984, D.C. Law 5-188, effective March 16, 1985, D.C. Code §6-921 et seq.; the District of Columbia Hazardous Waste Management Act of 1977, D.C. Law 2-64, effective March 16, 1978, D.C. Code §6-701 et seq.; and the District of Columbia Air Pollution Control Act of 1984, D.C. Law 5-165, effective March 16, 1985, D.C. Code §6-904 et seq.

II. DEFINITIONS

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

- A. "Accelerated Operable Unit" or "AOU" shall mean a remedial action which prevents, controls, or responds to a release or threatened release of hazardous substances, pollutants, and contaminants where prompt action is necessary but a response under removal authorities is not appropriate or desirable. The purpose of an AOU is to allow the Parties to proceed with a remedial action for that Operable Unit prior to completion of the final Record of Decision (ROD) for the total remedial action. AOU's are particularly appropriate where the size and complexity of the total remedial action would seriously delay implementation of independent parts of the action. AOU's will only proceed after complying with applicable procedures in the NCP, and the Parties shall make every effort to expedite these procedures. It is not intended that AOU's diminish the requirements for or delay the conduct of a total remedial action.
- B. "Agreement" shall refer to this document and shall include all Appendices and Attachments to this document. All such Appendices and Attachments are integral parts of this Agreement and shall be enforceable to the extent provided herein.
- C. "Applicable State law" shall mean all the District of Columbia laws determined to be applicable under this Agreement. The term shall include but not be limited to all laws determined to be Applicable or Relevant and Appropriate Requirements (ARARs).
- D. "ARARs" shall mean "legally applicable" or "relevant and appropriate" requirements, standards, criteria or limitations, as those terms are used in Section 121 of CERCLA, 42 U.S.C. Section 9621, and as defined in the NCP.
- E. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law No. 99-499, and any amendments thereto.
- F. "Community Relations" shall mean the program to inform and involve the public in the installation restoration, Superfund, and RCRA processes and to respond to community concerns.
- G. "Corrective Action Permit" shall mean the corrective action portion of any RCRA Permit issued to the Washington Navy Yard pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA).
- H. "Days" shall mean calendar days, unless business days are specified. Any submittal, written statement of position, or written statement of dispute which, under the terms of this Agreement, would be due on a Saturday, Sunday, or Federal or State holiday shall be due on the following business day.
- I. "Deadlines" shall mean the Near Term Milestones specifically established for the current fiscal year under the Plan. Deadlines are subject to stipulated penalties in accordance with Section XXII- STIPULATED PENALTIES.

- J. "Deliverable Document" shall mean those required documents listed as Primary and Secondary Documents under this Agreement.
- K. "Documents" or "records" shall mean any documents, writings, correspondence and all other tangible things on which information has been stored which relates to this Agreement or to any activities to be undertaken relating to this Agreement.
- L. "EPA" or "U.S. EPA" shall mean the United States Environmental Protection Agency, its employees, agents, authorized representatives, successors and assigns.
- M. "Facility" shall mean that property owned by the United States and operated by the U.S. Department of the Navy currently known as the Washington Navy Yard ("WNY") located in the District of Columbia and including all areas identified in Appendices A, B and C, and all areas added as Site Screening Areas in the future, and all areas designated as Operable Units in the future.
- N. "Fiscal year" shall mean the time period used by the United States Government for budget management; it commences on October 1 and ends September 30th of the following calendar year.
- O. "Focused Feasibility Study" or "FFS" shall mean a comparison of alternatives which concentrates on a particular contaminated medium or a discrete portion of the Site which does not need added investigation in order to progress forward in the remedial process.
- P. "Guidance" shall mean any requirements or policy directives published or issued by EPA, or which may be published by the District of Columbia, which are of general application to environmental matters and which are otherwise applicable to the Navy's work under this Agreement.
- Q. "Interim remedial action" shall mean all discrete remedial actions, including, but not limited to, Accelerated Operable Units, implemented prior to a final remedial action which are taken to prevent or minimize the release of hazardous substances, pollutants, or contaminants.
- R. "Milestones" shall mean the dates established by the Parties in the Site Management Plan for the initiation or completion of Primary Actions and the submission of Primary Documents and Project End Dates. Milestones shall include Near Term Milestones, Out Year Milestones, Primary Actions, and Project End Dates.
- S. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and any amendment thereto.
- T. "Navy" shall mean the United States Department of the Navy, including the Naval Facilities Engineering Command, Atlantic Division (LANTDIV), WNY, their employees, members, successors and authorized representatives, and assigns. The Navy shall also include the United States Department of Defense (DOD) to the extent necessary to effectuate the terms of the Agreement, including, but not limited to, appropriations and Congressional reporting requirements.
- U. "Near Term Milestones" shall mean the Milestones within the current fiscal year (FY), the next fiscal year or "budget year" (FY+1), and the year for which the budget is being developed or "planning year" (FY+2).
- V. "Onsite" shall have the meaning as defined in the NCP.
- W. "Operable Unit" or "OU" shall mean a discrete action that comprises an incremental step toward comprehensively remediating the Site. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of release, or pathway of exposure related to the Site. Operable Units may address geographical portions of the Site, specific Site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions

that are concurrent but located in different parts of the Site. The cleanup of the Site can be divided into a number of Operable Units, depending on the complexity of the problems associated with the Site. The term "Operable Unit" is not intended to refer to the term "operating unit" as used in RCRA. All Operable Units shall be addressed in accordance with the NCP, EPA Guidance and the requirements of CERCLA.

- X. "Out Year Milestones" shall mean the Milestones within those years occurring after the planning year until the completion of the cleanup or phase of the cleanup (FY+3 through Project End Date).
- Y. "Parties" shall mean the Navy, the District of Columbia, and the EPA.
- Z. "Plan," unless the context indicates otherwise, shall refer to the Site Management Plan or the Corrective Action Management Plan.
- AA. "Primary Actions" as used in these definitions and in this Agreement shall mean those specified major, discrete actions that the Parties identify as such in the Site Management Plan. The Parties should identify all major, discrete actions for which there is sufficient information to be confident that the date for taking such action is implementable.
- BB. "Project End Dates" shall mean the dates established by the Parties in the Site Management Plan for the completion of major portions of the cleanup or completion of the cleanup of the Facility. The Parties recognize that, in many cases, a higher degree of flexibility is appropriate with Project End Dates due to uncertainties associated with establishing such dates.
- CC. "Project Manager" shall mean each person designated by the Parties to represent that Party's interests and manage all response actions undertaken at the Site.
- DD. "Public Stakeholder" shall mean members of the public including residents, environmentalists, community leaders, public officials, citizens' action groups, and any other interested parties.
- EE. "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. No. 98-616, and any amendments thereto.
- FF. "Record(s) of Decision" or "ROD(s)" shall be the public document(s) that select(s) and explain(s) which cleanup alternative(s) will be implemented at the Site, and includes the bases for the selection of such remedy. The bases include, but are not limited to, information and technical analyses generated during the RI/FS and consideration of public comments and community concerns.
- GG. "Schedule" shall mean a timetable or plan that indicates the time and sequence of events.
- HH. "Site" shall include areas within the Facility, and any other areas, where a hazardous substance, hazardous waste, hazardous constituent, pollutant, or contaminant from the Facility has been deposited, stored, disposed of, or placed, or has migrated or otherwise come to be located. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9). This definition is not intended to include hazardous substances or wastes intentionally transported from the Facility by motor vehicle.
- II. "Site Management Plan" or "SMP" or "Corrective Action Management Plan" or "CAMP" shall mean a planning document, prepared specifically under Section XII - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN, that contains a timetable, plan, or Schedule which indicates the time and sequence of events. The Site Management Plan will be used as a management tool in planning, reviewing and setting priorities for all response activities at the Facility. Milestones developed under the terms of this Agreement are listed in the SMP. Deadlines listed in the SMP are subject to stipulated penalties.

- JJ. "Site-Screening Areas" or "SSAs" shall mean those geographical areas listed in Appendix B and any additional areas agreed to by the Parties in the future. SSAs may be either RCRA Solid Waste Management Units (SWMUs) or Areas of Concern or CERCLA Areas of Concern (AOCs). When the Parties agree, SSAs may expand or contract in size as information becomes available indicating the extent of contamination and the geographical area needed to be studied.
- KK. "Site-Screening Process" or "SSP" refers to the mechanism described in Subsection 10.3 for evaluating whether identified SSAs should proceed with a Remedial Investigation/Feasibility Study. The Site-Screening Process encompasses both the Facility's RCRA AOCs and SWMU areas and newly discovered CERCLA Areas of Concern within the Facility boundaries as defined in the National Priority List.
- LL. "Solid Waste Management Unit" or "SWMU", as defined pursuant to RCRA, shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid and/or hazardous waste. Such units include any area at a RCRA facility at which solid wastes have been routinely and systematically released.
- MM. "State" and/or "District of Columbia" shall mean the District of Columbia, including all departments, offices and agencies thereof, as represented by the Department of Health, Environmental Health Administration (DOH/EHA).
- NN. "Target Dates" shall mean dates established for the completion and transmission of Secondary Documents. Target Dates are not subject to dispute resolution and they are not Milestones.
- OO. "To Be Considered" or "TBC" is any advisory, criterion, or Guidance developed by EPA, other federal agencies, or the District of Columbia that may be useful in developing CERCLA remedies. TBCs shall be timely identified and provided as required by the NCP.
- PP. "Transmit" shall mean the following: any document or notice to be transmitted by a certain date will be considered as transmitted on time if: (1) it is provided to the carrier on a next day mail basis no later than the day before it is due to be delivered according to the requirements of this Agreement; (2) it is hand-delivered by the due date; or (3) it is sent by certified mail return receipt requested no later than two days before it is due to be delivered according to the requirements of this Agreement. Any other means of transmission must arrive on the due date to be considered as timely delivered.
- QQ. "WNY" shall mean the Washington Navy Yard, located in Washington, DC.
- RR. "Work" shall mean all activities the Navy is required to perform under this Agreement, except those required by Section XXXII - RECORD PRESERVATION.

III. PARTIES BOUND

3.1 This Agreement shall apply to and be binding upon EPA, the District of Columbia, and the Navy. The Navy agrees to include the notices required by Section 120(h) of CERCLA in any contract for the sale or transfer of real property affected by this Agreement. Transfer (sale or lease) of property affected by this paragraph shall not relieve the Navy of its applicable obligations under this Agreement.

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

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

IV. PURPOSE

4.1 The general purposes of this Agreement are to:

- A. Ensure that the environmental impacts associated with the past and present activities covered under this Agreement at the Site are thoroughly investigated and the appropriate remedial action is taken as necessary to protect the public health, welfare, and the environment;
- B. Establish a procedural framework and Schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with CERCLA as amended by SARA, the NCP, Superfund Guidance and policy, RCRA, RCRA Guidance and policy, and applicable District of Columbia law; and
- C. Facilitate cooperation, exchange of information and participation of the Parties in such actions.

4.2 Specifically, the purposes of this Agreement are to:

- A. Identify interim and final remedial action alternatives which are appropriate at the Site. The interim remedial action alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of interim remedial action(s) to EPA and the District of Columbia pursuant to CERCLA and applicable State law. This process is designed to promote cooperation among the Parties in identifying remedial alternatives for Operable Units prior to selection of final remedial actions.
- B. Establish requirements for the performance of Remedial Investigations (RIs) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of Feasibility Studies (FSs) for the Site to identify, evaluate and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA, the NCP, and applicable District of Columbia law.
- C. Identify the nature, objective and Schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA, the NCP, and applicable State law.
- D. Implement the selected interim remedial and final remedial action(s) at the Site in accordance with CERCLA, the NCP, and applicable District of Columbia law and meet the requirements of CERCLA Section 120(e)(2) for an interagency agreement among the Parties.
- E. Assure compliance, through this Agreement, with RCRA and other federal and District of Columbia hazardous waste laws and regulations for matters covered herein.
- F. Coordinate response actions at the Site with the mission and support activities at WNY.
- G. Expedite the cleanup process to the extent consistent with protection of human health and the environment.
- H. Provide, in accordance with CERCLA and the NCP, for District of Columbia involvement in the initiation, development, selection, and enforcement of remedial actions to be undertaken at the WNY, including the review of all applicable data

as it becomes available, and the development of studies, reports, and action plans; and to identify and integrate State ARARs into the remedial action process.

- I. Provide for operation and maintenance of any remedial action selected and implemented pursuant to this Agreement.

V. SCOPE OF AGREEMENT

5.1 This Agreement is entered into by the Parties to enable the Navy to meet the provisions of CERCLA, 42 U.S.C. Section 9601 et seq., and Sections 6001 and 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6961 and 6973, as amended by the Hazardous and Solid Waste Amendments of 1984. EPA and the District of Columbia agree that with respect to any portion of the Site that is identified as requiring investigation, corrective action, or cleanup pursuant to RCRA (including but not limited to RCRA §§ 7003, 3004(u), 3004(v), 3008(h) and 40 C.F.R. §258.38) after the Effective Date but before the termination of this Agreement, such investigation, corrective action or cleanup shall be conducted in accordance with this Agreement, subject to Sections XXI - DISPUTE RESOLUTION, XXVI - RESERVATION OF RIGHTS, and XXVII - DISTRICT OF COLUMBIA RESERVATION OF RIGHTS.

5.2 This Agreement is intended to cover the investigation, development, selection, and implementation of response actions for all releases or threatened releases of hazardous substances, contaminants, hazardous wastes, hazardous constituents, or pollutants at or from the Site. This Agreement covers all phases of remediation for these releases, bringing together into one agreement the requirements for remediation as well as the system the Parties will use to determine and accomplish remediation, ensuring the necessary and proper level of participation by each Party. Although all such releases at the Site are not currently known, the Agreement establishes the system for dealing with those undiscovered releases. To accomplish remediation of those undiscovered releases, the Parties will establish Schedules and Deadlines as necessary and as information becomes available and, if required, amend this Agreement as needed.

5.3 This Agreement is intended to address and satisfy WNY's RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, hazardous constituents, pollutants, or contaminants at or from all areas that were addressed under the "Final Administrative Order on Consent," USEPA Docket Number RCRA-III-010-TH, issued pursuant to section 7003 of RCRA, 42 U.S.C. § 6973 (the Order) or that will be addressed under future Corrective Action Permits. This Agreement is not intended to limit any requirements under RCRA or any other law or regulation to obtain permits. This Agreement is not intended to encompass response to spills of hazardous substances from ongoing operations unless those spills occur in conjunction with CERCLA removal actions or remedial actions pursuant to this Agreement.

5.4 The scope of this Agreement extends to the entire Site, as listed in the Federal Register proposing the Site for the National Priority List (NPL). The Site cannot be removed from the NPL unless it is determined, in accordance with CERCLA/SARA, the NCP, and this Agreement, that the Navy has implemented all appropriate response actions and the Site no longer poses a threat to human health or the environment. All response actions at the Site shall occur in discrete locations called Site-Screening Areas or Operable Units (OU) identified at the Site pursuant to this Agreement.

5.5 Any Response Action in progress on the Effective Date of this Agreement shall be subject to the obligations and procedures of this Agreement.

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

VI. FINDINGS OF FACT

6.1

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

A. The Washington Navy Yard ("WNY") is a military installation and is currently located on approximately 66.3 acres of land in the southern portion of Washington, DC. Coverage of the Facility with buildings and other impervious surfaces is predominant. Approximately 2.7 acres of parkland are the only substantially vegetated areas in a largely urban setting. The original WNY was gradually built up to approximately 126.8 acres with the addition of filled land in response to the expansion of operations during the peak production era. The WNY has always been owned and operated by the United States Navy. Industrial development and ordnance production were the prevalent activities at the WNY from its establishment on October 2, 1799. The Yard's original mission was the construction and maintenance of naval vessels. By the 1860s its mission had shifted to ordnance production and in 1886 it was redesignated as the United States Naval Gun Factory. At its peak in World War II there were 25,000 people employed at the Naval Gun Factory. In 1959 the installation was redesignated as the United States Naval Weapons Plant. During 1961 to 1962 industrial activity at the installation ceased, and it slowly was transitioned into a supply and administrative facility. Currently WNY consists of administrative supply and storage buildings, residences, training facilities and museums. The western portion of the WNY (60.5 acres) was transferred to the General Services Administration (GSA) in 1963.

The WNY is located in southeast Washington, D.C., at 9th and M Streets. It is bordered by the Anacostia River to the south, 11th Street to the east, M Street to the north, and the Southeast Federal Center to the west. The surrounding geographical area includes approximately thirty-nine percent residential, three percent commercial, seven percent industrial, and fifty-one percent government land uses, by acreage. The neighborhood of Capitol Hill begins only a few blocks from the WNY. Adjacent neighborhoods (north of M Street, west of South Capitol Street, and east of the Anacostia River) are inhabited by minority and low-income people. The neighborhoods within the six postal Zip Codes surrounding the WNY are home to approximately 190,000 people, who are approximately 89.5% percent African-American, 9.4% white, and 1.2% of other races, according to the 1990 Census. People of Hispanic origin, counted in those categories, represented 0.9% of the area's residents. West of the Anacostia River, in the Capitol Hill and Waterside Mall areas, median incomes ranged from \$36,000 to \$38,000 as of the 1990 Census. East of the Anacostia River, median incomes ranged from \$21,600 to \$25,000. Public housing in the area includes the Carroll Apartments, the Arthur Capper Elderly Dwelling and the now-vacant Arthur Capper Family Dwellings west of the River; and the Barry Farm Dwellings, Stanton Dwellings, Woodland Terrace, Valley Green, Knox Hill, and others east of the River. Additionally, St. Elizabeth's Hospital, numerous churches, and elementary, middle, and high schools comprise the affected area, which includes most of the District of Columbia's political subdivisions of Wards 7 and 8, and parts of Wards 6 and 2.

The WNY is located in Ward 6. The brick wall, which averages ten feet in height along two of the WNY borders, several major highways, roads, and the 11th Street Bridge have long provided physical barriers between Naval operations and the neighboring communities. Other significant military activities located along the banks of the Anacostia River, within several miles of the WNY, include Fort Lesley J. McNair (home of the National Defense University and the U.S. Army's Military District Washington), the U.S. Marine Corps Barracks, Bolling Air Force Base, Naval Station Anacostia, Naval Research Laboratory, and Camp Simms (District of Columbia National Guard). Other past

and present industrial facilities are located along the Anacostia River in the vicinity of the WNY. The shore of the Anacostia River opposite the WNY is lined with parklands, including Anacostia Park and the Anacostia Field House. There are several yacht and boating clubs on the Anacostia River within a mile of the WNY.

B. The Navy is a generator of hazardous waste and the owner and/or operator of the WNY facility located at 901 M Street, S.E., Washington, DC, as part of the Naval District Washington ("NDW").

C. On February 13, 1985, the Navy submitted to EPA a Notification of Hazardous Waste Activity ("Notification") for the NDW, which is located at the Washington Navy Yard, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930. In the Notification, the Naval District Washington identified the WNY as being a generator of hazardous wastes and polychlorinated biphenyls ("PCBs"). WNY was assigned EPA identification number DC9 17 002 4310.

D. The 1988 Preliminary Assessment Report for WNY, prepared by Naval Energy and Environmental Support Activity, ("NEESA") indicates the presence of petroleum releases.

E. A 1993 Preliminary Assessment (PA) Report for the WNY was conducted by Baker Environmental, Inc. under the Atlantic Division, Naval Facilities Engineering Command (LANTFDIV) Comprehensive Long-Term Environmental Action Navy (CLEAN) Program. The purpose of the PA was to identify potential contamination within the Navy Yard utilizing historical documents and maps, personnel interviews and discussions with state and federal agencies. The PA identified sixteen (16) areas of concern requiring further study based on past industrial and hazardous waste handling activities at the WNY.

F. In September 1996, the Department of the Navy, Engineering Field Activity, Chesapeake, Naval Facilities Engineering Command, Washington, D.C. submitted to EPA a final report entitled, SITE INVESTIGATION - WASHINGTON NAVY YARD, WASHINGTON, D.C.; prepared by Baker Environmental, Inc. ("SI"). The SI addressed the following thirteen (13) sites: Building 22 (Site 01); Building 33 (Site 02); Building 40/41 (Site 03); Building 46 [includes Buildings 46, 108 and 66/67] (Site 04); Building 73 [includes Buildings 28, 73, 104, 143 and 176] (Site 05); Building 116 [includes Buildings 116/118 and 197] (Site 06); Building 126 (Site 07); Building 211 (Site 08); Building 219 [includes Buildings 219 and 220] (Site 09); Building 290 (Site 13); Building 292 (Site 14); the Former Incinerator Site (Site 11) and Admirals Row, which includes Quarters B through H, K through P, R through W, Y, Leutze Park and Building 1 (Site 10); one (1) Area of Concern (AOC) (AOC Building 201); and the Anacostia River immediately adjacent to the Facility and base-wide monitoring wells.

G. A "Final Administrative Order on Consent" for the WNY pursuant to section 7003 of RCRA, 42 U.S.C. § 6973 (the Order) became effective on July 16, 1997. The Order states, at IV. O., that "EPA has determined that there may be an imminent and substantial endangerment to human health and/or the environment due to releases of solid wastes, hazardous wastes and/or hazardous constituents at/or from the Facility." The Order states, at V. E., that the "Navy, at the Facility, has contributed to the handling, storage, treatment and disposal of solid wastes and/or hazardous wastes, which may present an imminent and substantial endangerment to human health or the environment." The Order states, at III. B.: "The Parties understand that the Washington Navy Yard (hereinafter Facility) will be proposed for listing on the National Priorities List (NPL). The Parties further understand that EPA will pursue listing the Facility on the NPL at the earliest possible time. Once the Facility is proposed for placement on the NPL, the Parties will negotiate an Interagency Agreement/Federal Facilities Agreement (IAG/FFA) as is required by [the] Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 120(e)(2), 42 U.S.C. 9620(e)(2). Upon finalization, the final signed IAG/FFA will supersede this Order, which will then terminate, and the response activities undertaken pursuant to this Order will continue under the auspices of CERCLA and the Defense Environmental Restoration Program (DERP)."

H. In September and October of 1997 the Navy removed contaminated soil and sediments (containing PCBs, dioxins, heavy metals and polyaromatic hydrocarbons) from Site 6 (Coal Storage Area Adjacent to Building 116) and PCB-contaminated soil from Site 14 (Building 292). The Draft "Final Closure Report" on the removal actions was submitted to EPA on February 19, 1999.

I. In March, 1998, the U.S. EPA proposed that WNY be added to the National Priorities List (NPL). Effective August 27, 1998, WNY was added to the NPL. 63 F.R. 40182 (1998).

J. By virtue of the Facility's listing on the National Priority List, the Agency for Toxic Substances and Disease Registry has informed the District of Columbia that the Agency will perform a public health assessment of the Facility.

K. Site Descriptions:

These Site Descriptions may differ from the descriptions in Subsection 6.1.F, because they are based on information developed since the Site Investigation Report.

Operable Unit 1 - Basewide Groundwater

The basewide groundwater will be investigated as a single unit for the entire Washington Navy Yard (WNY). Various industrial operations have occurred at the facility since its establishment in 1799. More than one-third of the land that is currently WNY was formed by filling operations adjacent to the Anacostia River in various phases since 1799. Solvents, metals, PCBs, pesticides, PAHs, dioxins, and other chemicals have been identified on the Washington Navy Yard. The following sites and other potential sources may be present and impacting the groundwater at WNY. There are no known potable water sources existing on or near the WNY.

Site 1 - Building 22

Site 1 is comprised of a multi-storied brick building, Building 22, and the soils directly adjacent to the building. Surrounding areas consist of pavement, concrete and other buildings. It is the location of a former foundry for the manufacture of brass cannons, shells, and shot. Other machinery has also been constructed where Building 22 currently is located. Activities in this building included a 6-inch gun shop, miscellaneous shops, an erecting shop, a general machine shop and a laundry facility.

Based upon historical and current processes and suspected past waste disposal practices, residues from the processes listed above may have contributed to the contamination of the soil surrounding Building 22. Historically, it is known that heavy metals were used in ordnance production. Solvents, such as carbon tetrachloride, also were used for cleaning. Cyanide and phenols were used for cooling, while solvents and metals (lead, chromium, cadmium, and antimony) were used for paint-spraying. Perchloroethylene, carbon tetrachloride, dichloroethene, and vinyl chloride may be associated with laundry facility processes.

Site 2 - Buildings 33, 33A, 36, 37, 39, 109

Site 2 is a group of multi-storied brick structures that includes Buildings 33, 33A, 36, 37, 39, 109 and the adjacent soils. The surrounding areas consist of pavement, concrete and other buildings. Building 33 was constructed in 1855 as part of the major expansion of the manufacturing complex at the WNY. Building 33 has been converted from a gun carriage shop to a general machine shop, civil defense storage, "servemart" and storage/supply, and a general warehouse and is presently an office building. An acid room and flammable storage area existed in Building 33A, as well as a mechanical room, restroom and locker room. Potential hazardous substances associated with general machine shop operations may be assumed to include solvents, such as carbon tetrachloride, and metals used in paint-spraying may have contributed to the contamination of the soil and groundwater.

Site 3 - Building 40/41 Site 3, a sloped, grassy area, is the former location of Building 40/41, which was a multi-storied building. The surrounding areas consist of pavement, concrete and other buildings. Gun pits, the depths of which ranged from approximately 24 feet to 69 feet below the lower floor, were filled with rubble or granular material. Additionally, underground rooms beneath Dahlgren Avenue were left in place after demolition of building 40/41. Through the years, Building 40/41 was transformed from a gun shop to a plating shop, and then to offices until it was demolished in 1977. Typically, a large variety of heavy metals, acids, cleaners, and caustics are used during plating operations. These metals, acids, cleaners, and caustics may have contributed to the contamination of the soil at Site 3. The Fire Control School which operated in the building provided training in the operation and aiming of naval guns, and did not involve training in fighting fires.

Site 4 - Buildings 44, 46, 108, 67

Site 4 includes Buildings 44, 46, 108, 67 and the soil adjacent to these buildings. They are multi-storied, brick buildings. Surrounding areas consist of pavement, concrete and other buildings. Building 46 was used as a copper rolling mill, cartridge case shop, metal pressings shop, Navy Exhibit Center, offices, and warehouse. Currently, the building contains the Navy Exhibit Center, shop, and warehouse. Building 46 also contained waste channels, scale pits, and various other pits under the flooring of the building.

Building 108 was originally used in 1872 as an Anchor and Faggoting Shop. The building also was used for a cartridge case shop, chemical laboratory, seamen shop, offices, and storage. Based upon historic operational processes associated with Building 108, residues, such as solvents, phenols and metals, may be present. Wastes associated with the processes listed above may include solvents, phenols and metals. In addition, it should be noted that an industrial sewer line (designated as a river water line), apparently used for conveying industrial waste, ran north and south between Buildings 108 and 67.

The Building 67 site can be traced back to 1898. The building was used as a cartridge case shop, primer shop, furnace room, metal pressings shop, storage, and Navy Exchange Center. Acid pits were also located in the northern portion of this building.

The materials and wastes described may have contributed to the contamination found in the soil and groundwater at Site 4.

Site 5 - Building 73

Site 5 includes building 73 and the adjacent soils. Building 73 is a multi-storied brick building. Surrounding areas consist of pavement, concrete and other buildings. The Building 73 location can be traced back to 1845 when an ordnance laboratory was established on this site. The 1872 Plan of the WNY shows the area to be a vacant lot. The 1898 Plan indicates that underground storage tanks were present on this site. Building 73 was constructed during 1901-1902 and used as a specialized gun mount shop. The building also was utilized as a secondary mount shop, roughing shop, erecting shop annex, broadside mount shop annex, Shop 28 Annex 2, aluminum cleaning facility, welding and fabricating shop, storage, snack bar, and supply department. The aluminum cleaning facility contained ten above ground storage tanks consisting of iridite, alkaline for etching, degreasing tanks with sump pumps, deoxidizer tanks, and alkaline tanks for nonetching.

Historically, it is known that solvents, phenols, and metals were used in cleaning, cooling, and paint spraying activities. During the period when the building was utilized as an aluminum cleaning facility, a variety of wastes could have been generated from the processes associated with aluminum cleaning. Wastes from these operations may have contributed to the contamination found in the soil and groundwater at Site 5.

Site 6 - Buildings 116/118 and 197

Site 6 includes buildings 197, 116, and 118 and the adjacent soils. These are multi-storied brick buildings. Surrounding areas consist of pavement, concrete and other

buildings. Prior to construction of Building 197, an old scale pit, a fuel oil tank, Building 126, Building 127, and Building 150 were scheduled to be removed to facilitate the placement of the building's foundation. A gun pit situated 12 feet below the ground floor level was installed in the northern end of the building. The building was utilized as a gun assembly shop and currently is abandoned. It is known that solvents such as carbon tetrachloride were used for cleaning, while metals (lead, chromium, cadmium, and antimony) were used in paint-spraying operations. Fuel oils, greases, metals, and solvents may have contributed to the contamination found in the soil and groundwater at Site 6.

The area of buildings 116 and 118 can be traced back to 1904 as it was gradually filled in with fill of unknown composition prior to 1902. Building 116 has operated as the boiler house since its construction and Building 118 has operated as the WNY power plant. An ash sedimentation pit was located south of Building 116 which was converted to a coal storage area in later years.

Site 7 - Building 126

Site 7 includes Building 126 and the adjacent soils. Building 126 is a multi-storied brick building. Surrounding areas consist of pavement, concrete and other buildings. The Building 126 site can be traced back to 1939 when it was in operation as the receiving station laundry. Offices and the Naval Command System Support Activity also utilized this site. Solvents such as perchloroethylene, carbon tetrachloride, dichloroethene, and vinyl chloride associated with laundry processes may have contributed to the contamination found in soil and groundwater at Site 7.

Site 8 - Building 211

Site 8 includes Building 211 and the adjacent soils. Building 211 is a single-story building. Surrounding areas consist of the Anacostia River, grass, pavement, concrete and other buildings. Building 211 can be traced back to 1942 when it was utilized for paint and oil storage. In addition, it has been used to store other flammables and chemicals. Presently, Building 211 is a Chief Petty Officers Club. Based upon past activities and the possibility of spills, residues from the products stored on these premises may have contributed to the contamination found in the soils at Site 8.

Site 9 - Building 219/220

Site 9 includes Buildings 219 and 220 and the adjacent soils. Both Buildings 219 and 220 are multi-storied brick buildings. Surrounding areas consist of grass, pavement, concrete and other buildings. Building 219 can be traced back to 1944 when it was known as the Gauge Laboratory Building. The building also operated as offices, a chemical laboratory and the home of the Naval Weapons Quality Assurance Officer. During WNY personnel interviews, Building 219 was identified as a machine shop; however, the available development plans do not indicate this function.

Mercury, a material associated with typical gauge laboratories, may have been released. This building was constructed with wooden floors which would not have provided as substantial a barrier between the floor/wastes and the environment as a concrete floor, indicating a possible greater impact to soils from former spills. Contaminants from these buildings may have contributed to the contamination found in the soil and groundwater at Site 9.

Site 10 - Admirals Row

Admirals Row is the designation given to a group of buildings located along Warrington Avenue. These buildings currently are used as housing for officers of the Navy and include Quarters A, B, C, D, E, F, G, H, K, L, M, M-1, N, O, P, R, S, T, U, V, W, Y, Buildings 1, 59, 61, and Leutze Park. These buildings are multi-storied residences with adjacent areas consisting of grass, pavement, concrete and other buildings. Maintenance of these buildings with lead-based paints is believed to be the source of lead-contaminated soil.

Site 11 - Incinerators

A 1979 Naval Facilities Engineering Command drawing shows that three incinerators were removed along with the top 6 inches of soil. Prior to demolition, these former incinerators were located south of Building 166 and east of Building 218. The present day use of this site is as a parking lot. Adjacent areas to this location consist of pavement, concrete, and other buildings. Because of the unknown nature of the materials incinerated, contaminants from these operations may have contributed to the contamination found in the soil at site 11.

Site 13 - Building 290

Site 13 includes Building 290 and the soil adjacent to the building. It is located south of Admirals Row and north of Building 40/41. The building was suspected to house PCB-containing equipment in the past; however, it does not presently house PCB-containing equipment. PCBs have been found in the soil.

Site 14 - Building 292

Site 14 includes Building 292 and the adjacent soils. It is a small single story brick building. Surrounding areas consist of paved parking and other brick buildings. The building previously housed a PCB containing portable generator. The leaking generator is believed to have impacted the soils. Presently, there are no PCBs housed in this building.

Analytical results on a standing water sample from the building 292 basement did not indicate detectable concentrations of BTEX (benzene, toluene, ethylbenzene and xylene) or pesticides/PCB; only low levels of TPH (total petroleum hydrocarbons) were detected.

Site 16 - Building 71

The area defined as Site 16 is located in the south-central portion of the WNY, adjacent to the Anacostia River. Site 16 encompasses Building 71 and its current and former underground storage tanks; several existing monitoring wells; stormwater lines traversing the site; and an area where free-phase mercury was discovered in the subsurface. The stormwater lines that run through the site terminate at Outfalls 5 and 6.

At one time, thirteen underground storage tanks existed at Site 16, both within and surrounding Building 71. Beginning in 1993 and continuing until late March 1994, seven of these tanks were removed and the remaining six were abandoned in place in accordance with District of Columbia environmental regulations.

Building 201

This site includes Building 201 and the adjacent soils. It is a two-story concrete and brick building. It was constructed as a maintenance facility for automotive equipment and official Government cars. Building 201 was investigated because of past and current public works operations. Miscellaneous operations are suspected of contributing to the contamination found in site soil and groundwater.

VII. EPA DETERMINATIONS

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

- A. The United States Department of the Navy is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).
- B. The Washington Navy Yard is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9), and 10 U.S.C. Section 2701 et seq., and is subject to the Defense Environmental Restoration Program.
- C. The United States is the owner and operator of WNY as defined in Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. Sections 9601(20) and 9607(a)(1). The Navy is the DOD component charged with fulfilling the obligations of the owner and operator under CERCLA at WNY.
- D. There has been a release or a substantial threat of a release of hazardous substances, pollutants, contaminants, hazardous wastes or constituents at or from the Facility.
- E. The actions provided for in this Agreement are consistent with the NCP.
- F. The actions provided for in this Agreement are necessary to protect the public health or welfare or the environment.
- G. This Agreement provides for the expeditious completion of all necessary response actions.

VIII. DISTRICT OF COLUMBIA DETERMINATIONS

- 8.1 The following constitutes a summary of the determinations relied upon by the District of Columbia to establish its jurisdiction and authority to enter into this Agreement. None of the determinations shall be considered admissions to any person, related or unrelated to this Agreement, for purposes other than determining the basis of this Agreement or establishing the jurisdiction and authority of the Parties to enter into this Agreement.
- 8.2 The United States Department of the Navy is a "person" within the meaning of section 3 of the D.C. Hazardous Waste Management Act of 1977, D.C. Law 2-64, D.C. Code 6-702(5), and section 2 of the D.C. Water Pollution Control Act of 1984, D.C. Law 5-188, D.C. Code 6-912(17).
- 8.3 The WNY is an "onshore facility" within the meaning of section 2 of the D.C. Water Pollution Control Act of 1984, D.C. Law 5-188, D.C. Code 6-912(15).
- 8.4 The United States is the "owner" or "operator" of the WNY within the meaning of section 2 of the D.C. Water Pollution Control Act of 1984, D.C. Law 5-188, D.C. Code 6-912(16), a "generator" and "person responsible" within the meaning of section 3 of the D.C. Hazardous Waste Management Act of 1977, D.C. Law 2-64, D.C. Code, sections 6-702(3A) and (5A).
- 8.5 There has been a release or substantial threat of a release of polychlorinated biphenyls, hazardous substances, pollutants, contaminants, hazardous wastes or constituents at or from the facility to the waters of the District.
- 8.6 The District of Columbia has in effect a public health advisory regarding consumption of fish from the waters of the Anacostia and Potomac Rivers.
- 8.7 The actions provided for in the Agreement are consistent with the D.C. Water Pollution Control Act of 1984 and the D.C. Hazardous Waste Management Act of 1977.
- 8.8 By virtue of the WNY being placed on the NPL, the Agency for Toxic Substances and Disease Registry has informed the District of Columbia of its intent to conduct a public health assessment.

8.9 The actions provided for in this Agreement are necessary to protect the public health and welfare of the environment, and provides for the expeditious completion of necessary response actions.

8.10 The District of Columbia will use the DDMOA signed by the District on May 9, 1994, as a mechanism for funding for its participation in the Navy environmental restoration activities performed at the Site pursuant to this Agreement.

IX. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

9.1 The Parties intend to integrate the Navy's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA Section 101 et seq., 42 U.S.C. Section 9601 et seq.; satisfy the corrective action requirements of RCRA Sections 6001, 3008(h) and 3004(u) and (v), and 7003, 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), and 6973; and meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations, to the extent required by CERCLA Section 121, 42 U.S.C. Section 9621, and applicable State law.

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

9.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at WNY 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 Navy for on-going hazardous waste management activities at the Site, EPA and/or the District of Columbia shall reference and incorporate any appropriate provisions, including appropriate Schedules (and the provisions for extension of such Schedules), of this Agreement into such permit. With respect to those portions of this Agreement incorporated by reference into permits, the Parties intend that judicial review of the incorporated portions shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

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

X. WORK TO BE PERFORMED

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

B. Appendix A contains the current list of Operable Units. Any Party may propose that a portion of the Site be designated as a distinct Operable Unit. If all Parties agree, it is not necessary to complete the Site Screening Process (SSP) prior to designating

an Operable Unit. This proposal must be in writing to the other Parties, and must stipulate the reasons for such a proposal. The proposal should be discussed by all Project Managers within forty-five (45) days of the receipt of the written notice. Dispute resolution may be invoked if the Parties are not in agreement on the proposal of a specific Operable Unit. If dispute resolution is not invoked by the Parties within thirty (30) days after the Project Managers' discussion concerning the proposal or if the need for an Operable Unit is established through dispute resolution, the portion of the Site proposed shall be an Operable Unit as that term is defined in Section II - DEFINITIONS, of this Agreement.

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

D. The Navy shall develop, implement and report upon the Site-Screening Areas (SSAs) as defined herein, and listed in Appendix B to this Agreement, in order to satisfy its obligations under RCRA/CERCLA integration. The Site-Screening Process (SSP), outlined in Subsection 10.3 of this Agreement, is intended to provide a simplified investigative method whereby identified RCRA units and CERCLA Areas of Concern can be evaluated to determine whether Remedial Investigations are required for these areas. Additional SSP investigations may be initiated at areas later identified by the Parties. The SSP investigation(s) shall be conducted in accordance with an SSP Work Plan as agreed to by the Parties.

E. SSP Reports(s) shall be subject to the review and comment procedures described in Section XI - CONSULTATION. The SSP investigation(s) shall be conducted in accordance with the requirements set forth in Subsection 10.3, and the Deadlines established therein and set forth in Section XII - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN.

Work Plan Development for Existing RI/FS Areas

10.2 The Navy submitted a draft Final Work Plan for the completion of a RCRA Facility Investigation (RFI) for Sites 4, 6 and 14, base-wide groundwater, and the near-shore sediments of the Anacostia River. This RFI Work Plan satisfies the requirement for submittal of an RI/FS Work Plan under CERCLA. Upon final approval by EPA and the District of Columbia, the Schedule and Deadlines included in the Final RFI Work Plan shall be incorporated into the Site Management Plan in accordance with Section XII - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement. The Work Plan for RI/FS(s) for remaining sites covered by this Agreement, which are listed in Appendix A, will be submitted according to the Schedule and Deadlines contained in the Site Management Plan.

Site-Screening Areas

10.3 A. Determination of Site-Screening Areas: When a Party to this Agreement determines that an area on the Site which has not previously been identified as an area which may pose a threat, or potential threat, to public health, welfare, or the environment, does pose such a threat, or potential threat, such Party shall notify in writing the other Parties of such determination. Notification of the other Parties under this Subsection shall at a minimum include the location of such area on the Site and the reason(s) the Party believes such an area poses a threat, or potential threat, to public health, welfare, or the environment. The Parties shall have forty-five (45) days from the date of receipt of notification to discuss the proposal and to agree whether such area shall be addressed under this Agreement as an SSA. If an agreement on whether to address such an area under the Agreement cannot be reached within forty-five (45) days from the date of receipt of notification, any Party can initiate the dispute resolution process pursuant to Subsection 21.4 of this Agreement. If dispute resolution is not invoked within forty-five (45) days from the date of receipt of

notification, or if an SSA is established through the dispute resolution process, the proposed SSA will be addressed as an SSA in accordance with this Section.

B. Any area on the Site which is established as an SSA pursuant to the procedures described in this Section after the Effective Date of this Agreement shall be added to the list of SSAs found in Appendix B as an additional SSA to be investigated and possibly remediated pursuant to the requirements of this Agreement. For any SSAs established pursuant to this Section after the Effective Date of this Agreement, the Navy shall, in the next draft Amended Site Management Plan, propose Deadlines for the submittal of an SSP Work Plan(s). This Deadline(s) shall be approved in accordance with Section XII - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN and adopted in the Site Management Plan.

C. Appendix B contains a list of Site Screening Areas (SSAs) at the WNY which the Parties agree may pose a threat, or potential threat to human health and the environment. The Navy shall submit to the EPA and the District of Columbia SSP Work Plan(s) which shall outline the activities necessary to determine if there have been releases of hazardous substances, pollutants, contaminants, hazardous wastes, or hazardous constituents to the environment from the SSAs. The scope of the SSPs shall be determined by the Parties. The SSP Work Plan(s) shall include a proposed Deadline for the submittal of an SSP Report(s). The Schedule and Deadlines included in the final SSP Work Plan will be incorporated into the Site Management Plan in accordance with Section XII - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

(1) In planning SSPs, the Navy shall consider current CERCLA and RCRA Guidance to determine if there have been releases of hazardous substances, pollutants, contaminants, hazardous wastes or hazardous constituents to the environment from the SSAs. Upon conclusion of an SSP, the Navy shall submit to the EPA and the District of Columbia a draft SSP Report which shall provide the basis for a determination that either: (1) an RI/FS be performed on the area addressed by the SSP or, (2) the area does not pose a threat, or potential threat to public health, welfare, or the environment and therefore the area should be removed from further study under this Agreement.

(2) Unless otherwise agreed to by the Parties, the Parties shall determine which (if any) of the SSAs listed in Appendix B or established pursuant to Subsection 10.3 will require an RI/FS within sixty (60) days of receipt by the Parties of the final SSP Report(s).

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

(4) The Parties shall designate Operable Units for those SSAs that are to proceed with an RI/FS. If the Parties cannot agree on the determination of whether an SSA(s) shall proceed to an RI/FS, dispute resolution may be invoked in accordance with Section XXI- DISPUTE RESOLUTION. If an RI/FS is required, the Navy shall, within the next draft Amended Site Management Plan, propose to EPA and the District of Columbia a Deadline for the submission of the RI/FS Work Plan for each Operable Unit. The Schedule and Deadlines included in the final RI/FS Work Plan(s) will be incorporated into the next update of the Site Management Plan and will be the enforceable Schedule for the submittal of the draft RI/FS.

Areas of Concern

10.4 A. Appendix C contains a list of areas at the WNY that have been listed as Areas of Concern (AOC). These areas will undergo a document evaluation, which involves a thorough review of all existing or easily obtainable documentation and information on the identified sites. If the Parties agree, in writing, the evaluation could also include obtaining discrete samples from the AOC without the development of a Work Plan. If the Parties cannot agree on whether discrete sampling can be performed at an AOC without the development of a Work Plan, then the AOC document evaluation will continue without the performance of sampling. The document evaluation

will also involve assessing information concerning the handling of hazardous wastes at each AOC, or actions taken at each AOC, or actions that will be occurring under other regulatory programs. Based on this evaluation, a decision will be made by the Project Managers which AOCs will proceed to the Site Screening Process (SSP) as SSAs, and which AOCs will require no further action and can be closed-out. For those AOCs which the Parties agree will not proceed to the Site Screening Process, the Navy shall prepare, with assistance from EPA and the District of Columbia, a brief AOC Close-Out document.

B. EPA and the District of Columbia shall review all information submitted by the Navy in support of the AOC document evaluation and shall provide a response to the Navy as to whether the information provided is sufficient to close-out the AOC unit(s). The response shall be forwarded from EPA and the District of Columbia to the Navy within thirty (30) days of receipt of the supporting documentation. In cases involving complex, numerous or unusually lengthy reports, the EPA and the District of Columbia may extend the thirty (30) day comment period for an additional twenty (20) days by written notice to the Navy prior to the end of the thirty (30) day period. Within 120 days of the Effective Date of this Agreement, the final determination of which AOCs will become SSAs and which AOCs shall be closed-out. Those AOCs which are not agreed upon by the Parties to be closed-out will proceed to the SSP. If the Parties agree, in writing, the document evaluation for specific AOCs may be extended beyond the 120-day finalization Deadline. If the Navy submits supporting documentation to EPA and the District of Columbia in such a manner that the thirty (30) day review and response time for EPA and the District of Columbia extends beyond the 120-day finalization date, the finalization date will automatically be extended to allow for the full thirty (30) days for review and discussion.

C. For those AOCs which all Parties agree should proceed to the SSP, the Navy shall include those AOCs in the next draft amended Site Management Plan as SSAs and propose Deadlines for submittal of SSP Work Plans as prescribed in Subsection 10.3.B.

Remedial Investigation and Feasibility Study

10.5 A. The Navy agrees it shall develop, implement and report upon a Remedial Investigation (RI) for areas identified in Subsections 10.2 and 10.3.C.(1), (2), and (4). RIs shall be conducted in accordance with the requirements and Schedules set forth in the approved Work Plan and Site Management Plan. RIs shall meet the purposes set forth in Section IV - PURPOSE, of this Agreement. A Baseline Risk Assessment shall be a component of the RIs. Final Site clean-up level criteria will only be determined following completion of the Baseline Risk Assessment.

B. The Navy agrees it shall develop, implement and report upon a Feasibility Study (FS) for areas subject to an RI. The FS shall be conducted in accordance with the requirements and Schedules set forth in the approved RI/FS Work Plan and Site Management Plan. The FS shall meet the purposes set forth in Section IV - PURPOSE, of this Agreement.

Procedures for Interim Remedial Actions

10.6 A. The Navy shall implement those Interim Remedial Actions (IRAs) necessary to prevent, minimize, or eliminate risks to human health and the environment caused by the release of hazardous substances, pollutants, or contaminants. An IRA is identified, proposed, and implemented prior to a final remedial action. An IRA shall attain ARARs to the extent required by CERCLA or the NCP and be consistent with and contribute to the efficient performance of a final remedial action(s) taken at an area or Operable Unit. An IRA must be protective of human health and the environment, and comply with CERCLA, the NCP, and State laws to the extent that they are legally applicable, or relevant and appropriate requirements in accordance with Section 121 of CERCLA, and this Agreement.

B. When a Party to this Agreement determines that an IRA is necessary for an area(s) within the Facility, such Party shall notify, in writing, the other Parties, of the proposal. The Proposal Notification to the other Parties under this Subsection shall

at a minimum include the location of such area(s) on the Facility and the reason(s) the Party believes an IRA is required. Any Party may propose an IRA for those Operable Unit(s) or SSAs most suitable for an IRA.

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

D. After the determination that an IRA is required under this Agreement, the Navy shall, in the next draft Amended Site Management Plan, submit to EPA and the District of Columbia proposed Deadlines for the submission of Work Plan(s) for the performance of a Focused Feasibility Study (FFS) for the identified area(s). The Deadlines will be finalized in accordance with Section XII, DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN. Each FFS Work Plan shall contain a proposed Deadline for the submittal of the FFS. The Schedule and Deadlines included in the approved, final FFS Work Plan will immediately be incorporated in the Site Management Plan. The FFS shall include a limited number of proposed IRA alternatives. To the extent possible, the FFS shall provide an assessment of the degree to which these alternatives were analyzed during their development and screening. The Navy shall develop, implement and report upon each FFS in accordance with the requirements set forth in the final FFS Work Plan. The Navy shall follow the steps outlined in Subsections 10.7B through 10.14.

Records of Decision and Plans for Remedial Action

10.7 A. This Section shall apply to selection of remedial actions and any disputes relating thereto.

B. Within thirty (30) days after finalization of an RI and FS or FFS, the Navy shall submit a draft Proposed Plan to EPA and the District of Columbia for review and comment as described in Section XI - CONSULTATION, of this Agreement. Within seven (7) days after receiving EPA acceptance and the District of Columbia's comments on the Proposed Plan, the Navy shall publish its Proposed Plan for thirty (30) days of public review and comment. During the public comment period, the Navy shall make the Administrative Record available to the public and distribute the Proposed Plan. The Navy shall hold a public information meeting during the public comment period to discuss the preferred alternative for each Remedial Action. Copies of all written and oral public comments received will be provided to the Parties. Public review and comment shall be conducted in accordance with Section 117(a) of CERCLA, 42 U.S.C. Section 9617(a), and applicable EPA and State Guidance.

C. Following public comment, the Navy, in consultation with EPA and the District of Columbia, will determine if the Proposed Plan should be modified based on the comments received. These modifications will be made by the Navy and the modified documents will be reviewed by EPA and the District of Columbia. The Parties may recommend that additional public comment be solicited if modifications to the Proposed Plan substantially change the remedy originally proposed to the public. The determination concerning whether a Proposed Plan should be modified or whether additional public comment is necessary is subject to the dispute resolution provisions of this Agreement, Section XXI - DISPUTE RESOLUTION.

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

E. At a minimum, EPA and the Navy, in consultation with the District of Columbia, shall have thirty (30) days to attempt to select a remedy following the Navy's submission of a draft ROD.

F. The selection of a remedy that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria or limitation is one basis on which the District of Columbia may determine not to concur with a final remedial action plan. In accordance with CERCLA Section 121(f)(3)(A), 42 U.S.C Section 9621(f)(3)(A), at least thirty (30) days prior to the publication of the Navy's final remedial action plan, if the Navy proposes to select a remedy that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria or limitation, the Navy shall provide an opportunity for the District of Columbia to concur or not concur in the selection of such plan. If the District of Columbia concurs or does not act within thirty (30) days of notification by the Navy of pending publication of the final remedial action plan, the remedial action may proceed. If the District of Columbia does not concur, it may act pursuant to Section 121(f)(3)(B) of CERCLA, 42 U.S.C. Section 9621(f)(3)(B).

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

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

Remedial Design and Remedial Action

10.8 A. The Site Management Plan shall include a Target Date for submission of a preliminary/conceptual Remedial Design; a Target Date for submission of a prefinal Remedial Design; and a Deadline for the final Remedial Design, which documents shall be prepared in accordance with this Agreement and applicable Guidance issued by EPA. The Remedial Design shall provide the appropriate plans and specifications describing the intended remedial construction and shall include provisions necessary to ensure that the remedial action will achieve ARARs and performance standards identified in the ROD.

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

C. After the final design document is approved, pursuant to Section XI - CONSULTATION, the Navy shall begin performance of the Remedial Action in accordance with the final Remedial Design and the RA Work Plan. The Remedial Action shall be completed in accordance with the approved final Remedial Design and RA Work Plan and all applicable EPA and District of Columbia Guidance.

Finalization of Remedial Actions

10.9 The Navy agrees that it shall submit to EPA and the District of Columbia a Remedial Action Completion Report in accordance with the Schedule in the Site Management Plan following the completion of the Remedial Action for each Operable Unit. The Remedial Action Completion Report shall outline in specifics the Remedial Action(s) taken and shall detail, and provide an explanation for, any activities that were not conducted in accordance with the final RD and/or RA Work Plan(s). In addition, in accordance with the Schedule provided in the Site Management Plan after the completion of the Remedial Action for each Operable Unit, the Navy shall submit a

draft Long-Term Remedial Action Monitoring Plan (if necessary), and a draft Operation and Maintenance Plan to the EPA and the District of Columbia for review. Both the Long-Term Remedial Action Monitoring Plan(s) and the Operation and Maintenance Plan(s) finalized under this Agreement shall contain Schedules for completion of the Work described therein, and these Schedules shall be incorporated and enforceable in the Site Management Plan.

Accelerated Operable Unit

10.10 A. Accelerated Operable Units (AOUs), as defined in Section II - DEFINITIONS, will follow a streamlined remedial process as set forth below. Any Party may propose in writing that an Operable Unit (OU) be conducted as an AOU. The Party proposing an AOU shall be responsible for drafting an AOU proposal which shall clearly define the purpose, scope and goals of the AOU. The Navy shall evaluate all proposed AOUs.

B. Within thirty (30) days of receipt of notification, any Party may request a meeting of the Parties to assist in expediting selection of an AOU. If dispute resolution is not invoked within thirty (30) days following receipt of a proposal for an AOU by the Parties, or thirty (30) days after the meeting, or if the need for an AOU is established through Section XXI - DISPUTE RESOLUTION, the proposed AOU shall be incorporated into the Site Management Plan as an AOU. The Navy agrees to pursue additional funding within ten (10) days to initiate the AOU(s).

C. Within fifteen (15) days after the determination that an AOU is required under this Agreement, the Navy shall submit to EPA and the District of Columbia proposed Deadlines for the submission of Work Plan(s) for the performance of an AOU Focused Feasibility Study (FFS) for the identified AOU(s). Each AOU FFS Work Plan shall contain a proposed Deadline for submittal of the AOU FFS and Proposed Plan. The Schedule and Deadlines included in the final AOU FFS Work Plan will be incorporated in the next draft Amended Site Management Plan. The Navy shall develop, implement and report upon each AOU FFS in accordance with the requirements set forth in the final AOU FFS Work Plan. The Navy shall follow the steps outlined in Subsections 10.7B. through 10.9.

Supplemental Response Action

10.11 The Parties recognize that subsequent to finalization of a ROD, a need may arise for one or more supplemental response actions to remedy continuing or additional releases or threats of releases of hazardous substances, pollutants or contaminants at or from the Site. If such release or threat of release presents an immediate threat to public health or welfare or the environment, it shall be addressed pursuant to Section XIX - REMOVAL AND EMERGENCY ACTIONS. If such release or threat of release does not present an immediate threat to public health or welfare or the environment, it shall be addressed pursuant to Subsections 10.12 through 10.16.

10.12 A supplemental response action shall be undertaken only when:

A. A determination is made that:

(1) As a result of the release or threat of release of a hazardous substance, pollutant or contaminant at or from the Site, an additional response action is necessary and appropriate to assure the protection of human health or the environment; or,

(2) There is or has been a release of hazardous waste or hazardous constituents into the environment and corrective response action is necessary to protect human health or the environment; and,

B. Either of the following conditions is met for any determination made pursuant to Subsection 10.12 A., above:

(1) For supplemental response actions proposed after finalization of the ROD, but prior to Certification of Completion of Remedial Action, the determination must be

based upon conditions at the Site that were unknown at the time of finalization of the ROD or based upon new information received in whole or in part by EPA following finalization of the ROD; or

(2) For supplemental response actions proposed after Certification of Completion of Remedial Action ("Certification"), the determination must be based upon conditions at the Site that were unknown at the time of Certification or based upon new information received in whole or in part by EPA or the District of Columbia following Certification.

10.13 If, subsequent to ROD signature, any Party concludes that a supplemental response action is necessary, based on the criteria set forth in Subsection 10.12, such Party shall promptly notify the others of its conclusion in writing. The notification shall specify the nature of the modification needed and the new information on which it is based. The Project Managers shall confer and attempt to reach consensus on the need for such an action within thirty (30) days of receipt of the notification. If the Project Managers have failed to reach consensus within this thirty day period, any Party may notify the other Parties in writing within ten (10) days thereafter that it intends to invoke dispute resolution. If notification of intent to invoke dispute resolution has not been provided within ten (10) days, then no action will occur. If the Project Managers are still unable to reach consensus within fourteen (14) days of receipt of the notice invoking dispute resolution, the question of the need for the supplemental response action shall be resolved through dispute resolution.

10.14 If the Project Managers agree, or if it is determined through dispute resolution, that a supplemental response action is needed based on the criteria set forth in Subsection 10.12, the Navy shall propose a Deadline for submittal of the Supplemental Work Plan(s) and a Schedule for performance of the Work thereunder to the EPA and District of Columbia in the next draft Amended Site Management Plan.

10.15 After finalization of a Supplemental Work Plan, the Navy shall conduct a Supplemental Response Action RI/FS. Following finalization of the Supplemental Response Action RI/FS, the procedures described in Subsections 10.7 through 10.9 shall be followed.

Certification of Completion of Remedial Action

10.16 A. When the Navy determines that the final Remedial Action(s) for a given Operable Unit has been completed in accordance with the requirements of this Agreement, it shall so advise EPA and the District of Columbia in writing, and shall schedule and conduct a close-out inspection to be attended by the Navy, EPA and the District of Columbia. Within thirty (30) days of each close-out inspection, the Navy shall submit an Operable Unit Close-Out Inspection Report, signed by the Navy's signatory authority or designee, certifying that the Remedial Action(s) has been completed in full satisfaction of the requirements of this Agreement, and a request for Certification of the Completion of the Remedial Action. The Close-Out Inspection Report shall contain a brief summary of the Operable Unit, the Remedial Action(s) undertaken for this Operable Unit, the post-remedial activities planned for the Operable Unit, and any noteworthy observations made during the close-out inspection. Within ninety (90) days of EPA's receipt of the Navy's request for Certification, EPA, in concurrence with the District of Columbia, shall advise the Navy in writing that:

(1) EPA and the District of Columbia certify that the Remedial Action has been completed in accordance with CERCLA, the NCP, and this Agreement, based on conditions known at the time of Certification; or

(2) EPA or the District of Columbia denies the Navy's request for Certification. Each Party that denies the Navy's request for Certification shall prepare and forward to the Navy, within the 90 day period, its own written statement of the basis of its denial and the additional work needed for Remedial Action completion and certification.

B. If, within ninety (90) days of EPA's receipt of the Navy's request for Certification, EPA or the District of Columbia fail to respond to the Navy's request in accordance with Subsection 10.16.A., the Navy may invoke dispute resolution directly to the DRC to obtain a response to its request in accordance with Subsection 10.16.A.

C. If EPA or the District of Columbia deny the Navy's request for Certification that a Remedial Action has been completed in accordance with this Agreement, the Navy may invoke dispute resolution within twenty (20) days of receipt of the written denial to review the determination on Certification or additional work needed. If the denial of Certification is upheld in dispute resolution, the Navy will perform the requested additional Work.

D. If dispute resolution is not invoked, or if a denial of Certification is upheld in dispute resolution, the Navy shall, in the next draft Amended Site Management Plan submitted after receipt of the written denial of Certification, propose a Deadline for the submittal of a draft Supplemental Work Plan. The draft Supplemental Work Plan shall contain a Schedule for completion of the additional Work required which will be incorporated into the Site Management Plan. After performing the additional Work, the Navy may resubmit a request for Certification to EPA and the District of Columbia. EPA and the District of Columbia shall then grant or deny Certification pursuant to the process set forth in this Section.

XI. CONSULTATION

Review and Comment Process for Draft and Final Comments

11.1 Applicability:

The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either Primary or Secondary Documents. The Navy will normally be responsible for issuing Primary and Secondary Documents to EPA and the District of Columbia. 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 Sections 11.2 through 11.10 below.

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

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

A. Primary Documents include those documents that are major, discrete portions of RI/FS or RD/RA activities. Primary Documents are initially issued by the Navy in draft subject to review and comment by EPA and the District of Columbia. Following receipt of comments on a particular draft Primary Document, the Navy will respond to the comments received and issue a draft final Primary Document subject to dispute resolution. The draft final Primary Document will become the final Primary Document thirty (30) days after issuance if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

B. Secondary Documents include those documents that are discrete portions of the Primary Documents and are typically input or feeder documents. Secondary Documents are issued by the Navy in draft subject to review and comment by EPA and the District of Columbia. Although the Navy will respond to comments received, the draft Secondary Documents may be finalized in the context of the corresponding draft final Primary

Documents. A Secondary Document may be disputed at the time the corresponding draft final Primary Document is issued.

11.3 Primary Documents:

A. Prior to the Effective Date of this Agreement, the Navy has completed and transmitted the following Primary Documents to EPA and the District of Columbia for review and comment:

- (1) Final Preinvestigation Evaluation of Corrective Measures Technologies Report
- (2) Final Site 16 RFI Work Plan
- (3) Update 1, Final Corrective Action Management Plan for the RCRA Facility Investigation and Removal Actions
- (4) Final Work Plan for the RCRA Facility Investigation
- (5) Community Relations Plan for the RCRA Facility Investigation

B. All Primary Documents shall be prepared in accordance with the NCP and applicable EPA Guidance. The Navy shall complete and transmit drafts of the following Primary Documents to EPA and the District of Columbia for review and comment in accordance with the provisions of this Section:

- (1) Site Screening Process Work Plans
- (2) Site Screening Process Reports
- (3) RI/FS (including Baseline Risk Assessment) and FFS Work Plans
- (4) Remedial Investigation Reports (including baseline Risk Assessments)
- (5) FS and FFS Reports
- (6) Proposed Plans
- (7) Final Remedial Designs
- (8) Remedial Action Work Plans
 - Remedial Action Sampling Plan
 - Remedial Action Construction Quality Assurance Plan
 - Remedial Action Environmental Monitoring Plan
- (9) Remedial Action Completion Reports
- (10) Operation and Maintenance Plans
- (11) Site Management Plan

C. Only the draft final Primary Documents identified above shall be subject to dispute resolution in accordance with Section XXI - DISPUTE RESOLUTION of this Agreement. The Navy shall complete and transmit draft Primary Documents in accordance with the Schedule and Deadlines established in Section XII - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

D. The Community Relations Plan and the Long-Term Remedial Action Monitoring Plans will be considered Primary Documents for submission and as Secondary Documents for review and comment.

11.4 Secondary Documents:

A. All Secondary Documents shall be prepared in accordance with the NCP and applicable EPA Guidance. The Navy shall complete and transmit drafts of the following

Secondary Documents to EPA and the District of Columbia for review and comment in accordance with the provisions of this Section:

- (1) Health and Safety Plans
- (2) Non-Time Critical Removal Action Plans (40 C.F.R. §300.415(b)(4)(ii))
- (3) Pilot/Treatability Study Work Plans
- (4) Pilot/Treatability Study Reports
- (5) Engineering Evaluation/Cost Analysis Report
- (6) Well Closure Methods and Procedures
- (7) Preliminary/Conceptual Remedial Designs, or Equivalents
- (8) Pre-Final Remedial Designs
- (9) Periodic Review Assessment Reports
- (10) Removal Action Memorandums

B. Although EPA and the District of Columbia may comment on the draft Secondary Documents listed above, such documents shall not be subject to dispute resolution except as provided by Subsection 11.2 hereof. Target Dates shall be established for the completion and transmission of draft Secondary Documents pursuant to Section XII - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

11.5 Meetings of the Project Managers on Development of Documents:

The Project Managers shall meet approximately every ninety (90) days, and confer by telephone at least every thirty (30) days, except as otherwise agreed by the Parties, to review and discuss the development of Primary and Secondary Documents. Prior to preparing any draft document specified in Subsections 11.3 and 11.4 above, the Project Managers shall meet or confer by telephone to discuss the document in an effort to reach a common understanding, to the maximum extent practicable, with respect to the content of draft documents.

11.6 Identification and Determination of Potential ARARs:

A. For those Primary Documents or Secondary Documents that consist of, or include, ARAR determinations, the Project Managers shall meet prior to the issuance of a draft report, to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. The District of Columbia shall identify all potential District of Columbia ARARs as early in the remedial process as possible consistent with the requirements of CERCLA Section 121(d)(2)(A)(ii), 42 U.S.C. Section 9621(d)(2)(A)(ii), and the NCP. The Navy shall consider any District of Columbia ARARs and written interpretations of ARARs provided by the District of Columbia. Draft ARAR determinations shall be prepared by the Navy in accordance with CERCLA Section 121(d)(2), 42 U.S.C. Section 9621(d)(2), the NCP, and pertinent Guidance issued by EPA, that are not inconsistent with CERCLA and the NCP.

B. In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances, pollutants and contaminants at a site, the particular actions proposed as a remedy and the characteristics of a site. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be reexamined throughout the RI/FS process until a ROD is issued.

11.7 Review and Comment on Draft Documents:

A. The Navy shall complete and transmit each draft Primary Document to EPA and the District of Columbia on or before the corresponding Deadline established pursuant to Section XII - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement for the issuance of the document. The Navy shall complete and transmit the draft Secondary Document in accordance with the Target Dates established for the issuance of such documents.

B. Unless the Parties mutually agree to another time period, all draft documents, except the Site Management Plan, the prefinal Remedial Design, and the final Remedial Design shall be subject to a sixty (60) day period for review and comment. The Site Management Plan shall be reviewed and commented on in accordance with Sections XII - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN and XIII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN, or as agreed to by the Parties. The Parties recognize that time periods for review and comment on the draft Remedial Design and Remedial Action Work Plans may need to be expedited in order for the Navy to satisfy the requirement of Section 120(e)(2) of CERCLA, 42 U.S.C. Section 9620(e)(2). The prefinal Remedial Design shall be subject to a forty-five (45) day period for review and comment. The final Remedial Design will be subject to a two (2) week period for review and comment by the Parties.

In the event that the final Remedial Design differs substantially from the prefinal Remedial Design, EPA or the District of Columbia may extend the two (2) week review and comment period for an additional two (2) weeks by providing written notice to the Navy prior to the end of the initial two (2) week comment period. Review of any document by EPA and the District of Columbia may concern all aspects of the document (including completeness) and should include, but not be limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, and any pertinent policy or Guidance issued by EPA or the District of Columbia. Comments by EPA and the District of Columbia shall be provided with adequate specificity so that the Navy may respond to the comment and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Navy, EPA or the District of Columbia shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, the EPA or the District of Columbia may extend the sixty (60) day comment period for an additional twenty (20) days by written notice to the Navy prior to the end of the sixty (60) day period. On or before the close of the comment period, EPA and the District of Columbia shall transmit their written comments to the Navy.

C. The review period for documents shall not begin until the submission date specified in the Site Management Plan.

D. In the event documents not scheduled in the current Site Management Plan are determined by mutual agreement of the program managers to be necessary, review periods, Deadlines, and Target Dates shall be established and shall be incorporated into the amended Site Management Plan.

E. Representatives of the Navy shall make themselves readily available to EPA and the District of Columbia during the comment period for purposes of informally responding to questions and comments on draft documents. Oral comments made during such discussions need not be the subject of a written response by the Navy at the close of the comment period.

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

G. Following the close of the comment period for a draft document, the Navy shall give full consideration to all written comments on the draft document submitted during the comment period. Within sixty (60) days of the close of the comment period on a

draft Secondary Document, the Navy shall transmit to EPA and the District of Columbia its written response to comments received within the comment period. Within sixty (60) days of the close of the comment period on a draft Primary Document, the Navy shall transmit to EPA and the District of Columbia a draft final Primary Document, which shall include the Navy's response to all written comments received within the comment period. While the resulting draft final document shall be the responsibility of the Navy, it shall be the product of consensus to the maximum extent possible.

H. The Navy may extend the sixty (60) day period for either responding to comments on a draft document or for issuing the draft final Primary Document for an additional twenty (20) days by providing timely notice to EPA and the District of Columbia. In appropriate circumstances, this time period may be further extended in accordance with Section XIV - EXTENSIONS, hereof.

11.8 Availability of Dispute Resolution on Draft Final Primary Documents:

A. Dispute resolution shall be available to the Parties for draft final Primary Documents as set forth in Section XXI - DISPUTE RESOLUTION.

B. When dispute resolution is invoked on a draft final Primary Document, Work may be stopped in accordance with the procedures set forth in Section XXI - DISPUTE RESOLUTION.

11.9 Finalization of Documents:

The draft final Primary Document shall serve as the final Primary Document if no Party invokes dispute resolution regarding the document or, if invoked, at the completion of the dispute resolution process should the Navy's position be sustained.

If the Navy's determination is not sustained in the dispute resolution process, the Navy shall prepare, within not more than thirty-five (35) days, a revision of the draft final document which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section XIV - EXTENSIONS, hereof.

11.10 Subsequent Modification of Final Document:

Following finalization of any Primary Document pursuant to Subsection 11.9 above, any Party to this Agreement may seek to modify the document, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Subsections A. and B. below.

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

B. In the event that a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke the dispute resolution process to determine if such modification shall be conducted. Modification of a document shall be required only upon a showing that:

- (1) The requested modification is based on significant new information; and
- (2) The requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment.

C. Nothing in this Subsection shall alter EPA's or the District of Columbia's ability to request the performance of additional work which was not contemplated by this

Agreement. The Navy's obligation to perform such work must be established by either a modification of a report or document or by amendment to this Agreement.

XII. DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN

12.1 The Site Management Plan or SMP for the Site (also known as the Corrective Action Management Plan or CAMP) is attached to this Agreement as Appendix D. The SMP and each annual Amendment to the SMP shall be Primary Documents. Milestones established in a SMP or established in a final Amendment to a SMP remain unchanged unless otherwise agreed to by the Parties or unless directed to be changed pursuant to the agreed dispute resolution process set out in Subsections 13.5 or 13.6. In addition, if an activity is fully funded in the current FY, Milestones associated with the performance of Work and submittal of Primary Documents associated with such activity (even if they extend beyond the current FY) shall be enforceable.

12.2 The SMP includes proposed actions for both CERCLA responses and actions which would otherwise be handled pursuant to RCRA corrective actions per Section IX - STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION, and outlines all response activities and associated documentation to be undertaken at the Facility. The SMP incorporates all existing Milestones contained in approved Work Plans, and all Milestones approved in future Work Plans immediately become incorporated into the SMP.

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

12.4 The SMP and its annual Amendments include:

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

12.4.2 A listing of all currently identified Site Screening Areas (SSAs), Operable Units (including Accelerated Operable Units (AOUs)), Interim Remedial Actions, Supplemental Response Actions, and Critical and Non-Time Critical Removal Actions covered or identified pursuant to this Agreement;

12.4.3 Activities and Schedules for response actions covered by the SMP, including at a minimum:

- Identification of any Primary Actions;
- All Deadlines;
- All Near Term Milestones;
- All Out Year Milestones;
- All Target dates;
- Schedule for initiation of Remedial Designs, Interim Response Actions, Non-Time Critical Removal Actions, AOUs, and any initiation of other planned response action(s) covered by this Agreement; and,

- All Project End Dates.

12.5 The Navy shall submit an Amendment to the SMP on an annual basis as provided in Section XIII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN. All Amendments to the SMP shall conform to all of the requirements set forth in this Section.

12.6 The Milestones established in accordance with this Section and Section XIII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN remain the same unless otherwise agreed by the Parties, or unless changed in accordance with the dispute resolution procedures set out in Subsections 13.5 and 13.6. The Parties recognize that possible bases for requests for changes or extensions of the Milestones include but are not limited to: (i) the identification of significant new site conditions at this installation; (ii) reprioritization of activities under this Agreement caused by changing priorities or new site conditions elsewhere in the Navy; (iii) reprioritization of activities under this Agreement caused by budget adjustments (e.g., rescissions, inflation adjustments, and reduced Congressional appropriations); (iv) an event of force majeure; (v) a delay caused by another Party's failure to meet any requirement of this Agreement; (vi) a delay caused by the good faith invocation of dispute resolution or the initiation of judicial action; (vii) a delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and Deadline or Schedule; and (viii) any other event or series of events mutually agreed to by the Parties as constituting good cause.

12.7 The Deadlines established in the SMP and its Amendments shall be published by EPA and the District of Columbia.

XIII. BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN

13.1 The Navy, as a Federal agency, is subject to fiscal controls, hereinafter referred to as the Future Years Defense Plan (FYDP). The planning, programming, and budgeting process, hereinafter referred to as the POM process, is used to review total requirements for DoD programs and make appropriate adjustments within the FYDP for each program while adhering to the overall FYDP control. The Parties recognize that the POM process is a multi-year process. The Parties also agree that all Parties should be involved in the full cycle of POM activities as specified in this Agreement. Further, the Parties agree that each Party should consider the factors listed in Subsection 12.3, including Federal fiscal constraints as well as each of the other factors, in their priority-setting decisions. Initial efforts to close any gap between cleanup needs and funding availability shall be focused on the identification and implementation of cost savings.

Facility-Specific Budget Building

13.2 In order to promote effective involvement by the Parties in the POM process, the Parties will meet at the Project Manager level for the purpose of (1) reviewing the FYDP controls; (2) developing a list of requirements/Work to be performed at the Site for inclusion in the Navy POM process; and, (3) participating in development of the Navy submission to the President's proposed budget, based on POM decisions for the year currently under consideration. Unless the Parties agree to a different time frame, the Navy agrees to notify the other Parties within ten (10) days of receipt, at the Project Manager level, that budget controls have been received. Unless the Parties agree to a different time frame or agree that a meeting is not necessary, the Parties will meet, at the Project Manager level, within five (5) days of receiving such notification to discuss the budget controls. However, this consultation must occur at least ten (10) days prior to the Navy's initial budget submission to the Naval Facilities Engineering Command ("NAVFAC"). In the event that the Project Managers cannot agree on funding levels required to perform all Work outlined in the SMP, the Parties agree to make reasonable efforts to informally resolve these disagreements, either at the immediate or secondary supervisor level; this would also include discussions, as necessary, with NAVFAC. If agreement cannot be reached informally within a reasonable period of time, the Navy shall resolve the

disagreement, if possible with the concurrence of EPA and the District of Columbia, and notify each Party. If all Parties do not concur in the resolution, the Navy will forward through NAVFAC to the Navy Headquarters its budget request with the views of the Parties not in agreement and also inform Navy Headquarters of the possibility of future enforcement action should the money requested not be sufficient to perform the Work subject to disagreement. In addition, if the Navy's budget submission to NAVFAC relating to the terms and conditions of this Agreement does not include sufficient funds to complete all Work in the existing SMP, such budget submission shall include supplemental reports that fully disclose the Work required by the existing SMP, but not included in the budget request due to fiscal controls (e.g., a projected budget shortfall). These supplemental reports shall accompany the cleanup budget that the Navy submits through its higher Headquarters levels until the budget shortfall has been satisfied. If the budget shortfall is not satisfied, the supplemental reports shall be included in the Navy's budget submission to the DoD Comptroller. The Deputy Under Secretary of Defense (Environmental Security) shall receive information copies of any supplemental reports submitted to the DoD Comptroller.

Navy Budget for Clean Up Activities

13.3 The Navy shall forward to the other Parties documentation of the budget requests (and any supplemental reports) for the Site, as submitted by the Navy to NAVFAC, and by NAVFAC to the Navy Headquarters, within 14 days after the submittal of such documentation to the Navy Headquarters by NAVFAC. If the Navy proposes a budget request relating to the terms and conditions of this Agreement that impacts other installations, discussions with other affected EPA Regions and States regarding the proposed budget request need to take place.

Amended SMP

13.4 No later than June 15 of each year after the initial adoption of the SMP, the Navy shall submit to the other Parties a draft Amendment to the SMP. When formulating the draft Amendment to the SMP, the Navy shall consider funding circumstances (including OMB targets/guidance) and "risk plus other factors" outlined in Subsection 12.3 to evaluate whether the previously agreed upon Milestones should change. Prior to proposing changes to Milestones in its annual Amendment to the SMP, the Navy will first offer to meet with the other Parties to discuss the proposed changes. The Parties will attempt to agree on Milestones before the Navy submits its annual Amendment by June 15, but failure to agree on such proposed changes does not modify the June 15 date, unless agreed by all the Parties. Any proposed extensions or other changes to Milestones must be explained in a cover letter to the draft Amendment to the SMP. The draft Amendment to the SMP should reflect any agreements made by the Parties during the POM process outlined in this Section. Resolution of any disagreement over adjustment of Milestones pursuant to this subsection shall be resolved pursuant to Subsection 13.5.

13.5.1 The Parties shall meet as necessary to discuss the draft Amendment to the SMP. The Parties shall use the consultation process contained in Section XI - CONSULTATION, except that none of the Parties will have the right to use the extension provisions provided therein. Accordingly, comments on the draft Amendment will be due to the Navy no later than 30 days after receipt by EPA and the District of Columbia of the draft Amendment. If either EPA or the District of Columbia provide comments and are not satisfied with the draft Amendment during this comment period, the Parties shall meet to discuss the comments within 15 days of the Navy's receipt of comments on the draft Amendment. The draft final Amendment to the SMP will be due from the Navy no later than 30 days after the end of the EPA and District of Columbia comment period. During this second 30-day time period, the Navy will, as appropriate, make revisions and re-issue a revised draft herein referred to as the draft final Amendment. To the extent that Section XI - CONSULTATION contains time periods differing from these 30-day periods, this provision will control for consultation on the Amendment to the SMP.

13.5.2.1 If the Navy proposes, in the draft final Amendment to the SMP, modifications of Milestones to which either EPA or the District of Columbia have not agreed, those

proposed modifications shall be treated as a request by the Navy for an extension. Milestones may be extended during the SMP review process by following Subsections 13.4 through 13.7. All other extensions will be governed by Section XIV - EXTENSIONS. The time period for EPA and the District of Columbia to respond to the request for extension will begin on the date EPA and the District of Columbia receive the draft final Amendment to the SMP, and EPA and the District of Columbia shall advise the Navy in writing of their respective positions on the request within thirty days. If EPA and the District of Columbia approve of the Navy's draft final Amendment, the document shall then await finalization in accordance with Subsections 13.5.3 and 13.6. If EPA denies the request for extension, then the Navy may amend the SMP in conformance with EPA and District of Columbia comments or seek and obtain a determination through the dispute resolution process established in Section XXI - DISPUTE RESOLUTION within 21 days of receipt of notice of denial. Within 21 days of the conclusion of the dispute resolution process, the Navy shall revise and reissue, as necessary, the draft final Amendment to the SMP. If EPA or the District of Columbia initiates a formal request for a modification to the SMP to which the Navy does not agree, EPA or the District of Columbia may initiate dispute resolution as provided in Section XXI - DISPUTE RESOLUTION with respect to such proposed modification. In resolving a dispute, the persons or person resolving the dispute shall give full consideration to the bases for changes or extensions of the Milestones referred to in Subsection 12.6 asserted to be present, and the facts and arguments of each of the Parties.

13.5.2.2 Notwithstanding Subsection 13.5.2.1, if the Navy proposes, in the draft final Amendment to the SMP, modifications of Project End Dates which are intended to reflect the time needed for implementing the remedy selected in the Record of Decision but to which either EPA or the District of Columbia have not agreed, those proposed modifications shall not be treated as a request by the Navy for an extension, but consistent with Section XXI - DISPUTE RESOLUTION, EPA or the District of Columbia may initiate dispute resolution with respect to such Project End Date.

13.5.2.3 In any dispute under this Section, the time periods for the standard dispute resolution process contained in Subsections 21.2, 21.5, and 21.6 of Section XXI - DISPUTE RESOLUTION, shall be reduced by half in regard to such dispute, unless the Parties agree to dispute directly to the SEC level.

13.5.3 The Navy shall finalize the draft final Amendment as a final Amendment to the SMP consistent with the mutual consent of the Parties, or in the absence of mutual consent, in accordance with the final decision of the dispute resolution process. The draft final Amendment to the SMP shall not become final until 21 days after the Navy receives official notification of Congress' authorization and appropriation of funds if funding is sufficient to complete Work in the draft final SMP or, in the event of a funding shortfall, following the procedures in Subsection 13.6. However, upon approval of the draft final Amendment or conclusion of the dispute resolution process, the Parties shall implement the SMP while awaiting official notification of Congress' authorization and appropriation.

Resolving Appropriations Shortfalls

13.6 After authorization and appropriation of funds by Congress and within 21 days after the Navy has received official notification of Navy's allocation based on the current year's Environmental Restoration, Navy (ER,N) Account, the Navy shall determine if planned Work (as outlined in the draft final Amendment to the SMP) can be accomplished with the allocated funds. (1) If the allocated funds are sufficient to complete all planned Work for that fiscal year and there are no changes required to the draft final Amendment to the SMP, the Navy shall immediately forward a letter to the other Parties indicating that the draft final Amendment to the SMP has become the final Amendment to the SMP. (2) If the Navy determines within the 21-day period specified above that the allocated funds are not sufficient to accomplish the planned Work for the Site (an appropriations shortfall), the Navy shall immediately notify the Parties. The Project Managers shall meet within thirty (30) days to determine if planned Work (as outlined in the draft final Amendment to the SMP) can be accomplished through: 1) rescoping or rescheduling activities in a manner that does not cause

previously agreed upon Near Term Milestones and Out Year Milestones to be missed; or 2) developing and implementing new cost-saving measures. If, during this thirty (30) day discussion period, the Parties determine that rescoping or implementing cost-saving measures are not sufficient to offset the appropriations shortfall such that Near Term Milestones, Out Year Milestones, and Project End Dates should be modified, the Parties shall discuss these changes and develop modified Milestones. Such modifications shall be based on the "Risk Plus Other Factors" prioritization process discussed in Subsection 12.3, and shall be specifically identified by the Navy. The Navy shall submit a new draft final Amendment to the SMP to the other Parties within 30 days of the end of the 30 day discussion period. In preparing the revised draft final Amendment to the SMP, the Navy shall give full consideration to EPA and the District of Columbia input during the 30-day discussion period. If the EPA and the District of Columbia concur with the modifications made to the draft final Amendment to the SMP, EPA and the District of Columbia shall notify the Navy and the revised draft final Amendment shall become the final Amendment. In the case of modifications of Milestones due to appropriations shortfalls, those proposed modifications shall, for purposes of dispute resolution, be treated as a request by the Navy for an extension, which request is treated as having been made on the date that EPA receives the new draft final SMP or draft final Amendment to the SMP. EPA and the District of Columbia shall advise the Navy in writing of their respective positions on the request within 21 days. The Navy may seek and obtain a determination through the dispute resolution process established in Section XXI - DISPUTE RESOLUTION. The Navy may invoke dispute resolution within fourteen days of receipt of a statement of nonconcurrence with the requested extension. In any dispute concerning modifications under this Section, the Parties will submit the dispute directly to the SEC level, unless the Parties agree to utilize the standard dispute resolution process, in which case the time periods for the dispute resolution process contained in Subsections 21.2, 21.5, and 21.6 of Section XXI - DISPUTE RESOLUTION shall be reduced by half in regard to such dispute. Within 21 days after the conclusion of the dispute resolution process, the Navy shall revise and reissue, as necessary, the final Amendment to the SMP.

13.7 It is understood by all Parties that the Navy will work with representatives of the other Parties to reach consensus on the reprioritization of work made necessary by any annual appropriations shortfalls or other circumstances as described in Section 13.6. This may also include discussions with other EPA Regions and States with installations affected by the reprioritization; the Parties may participate in any such discussions with other States.

Public Participation

13.8 In addition to any other provision for public participation contained in this Agreement, the development of the SMP, including its annual Amendments, shall include participation by members of the public interested in this action. The Navy must ensure that the opportunity for such public participation is timely; but this Subsection 13.8 shall not be subject to Section XXII - STIPULATED PENALTIES.

13.8.1 The Parties will meet, after seeking the views of the general public, and determine the most effective means to provide for participation by members of the public interested in this action in the POM process and the development of the SMP and its annual Amendments. The "members of the public interested in this action" may be represented by inclusion of a restoration advisory board (RAB) or technical review committee (TRC), if they exist for the WNY, or by other appropriate means.

13.8.2 The Navy shall provide timely notification under Section 13.6, regarding allocation of ER,N, to the members of the public interested in this action.

13.8.3 The Navy shall provide opportunity for discussion under Sections 13.2, 13.5, 13.6, and 13.7 to the members of the public interested in this action.

13.8.4 The Navy shall ensure that public participation provided for in this Subsection 13.8 complies with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

XIV. EXTENSIONS

14.1 A timetable, Deadline or Schedule shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension as described in Subsection 14.2, below. Any request for extension by the Navy shall be submitted in writing and shall specify:

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

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

- A. An event of Force Majeure, as defined in Section XXIII - FORCE MAJEURE;
- B. A delay caused by another Party's failure to meet any requirement of this Agreement;
- C. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
- D. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and Deadline or Schedule; and
- E. Any other event or series of events mutually agreed to by the Parties as constituting good cause.

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

14.4 Within seven (7) days of receipt of a request for an extension of a timetable and Deadline or a Schedule, the other Parties shall advise the requesting Party in writing of their respective positions on the request. Any failure by the other Parties to respond within the seven (7) day period shall be deemed to constitute concurrence in the request for extension. If a Party does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

14.5 If there is consensus among the Parties that the requested extension is warranted, the requesting Party shall extend the affected timetable and Deadline or Schedule accordingly. If there is no consensus 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 a determination resulting from the dispute resolution process.

14.6 Within seven (7) days of receipt of a statement of nonconcurrence with the requested extension, the requesting Party may invoke dispute resolution.

14.7 A written, timely and good faith request by the Navy for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected timetable and Deadline or Schedule until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and the requested extension is denied, stipulated penalties may be assessed and may accrue from the date of the original timetable, Deadline or Schedule. Following the grant of

an extension, an assessment of stipulated penalties or an application for judicial enforcement may be sought only to compel compliance with the timetable and Deadline or Schedule as most recently extended.

XV. PROJECT MANAGERS

15.1 On or before the Effective Date of this Agreement, EPA, the Navy, and the District of Columbia shall each designate a Project Manager and notify the other Parties of the name and address of their Project Manager. The Project Managers shall be responsible for assuring proper implementation of all Work performed under the terms of the Agreement. To the maximum extent practicable, communications among the Navy, EPA, and the District of Columbia on all documents, including reports, comments and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Project Managers. The Parties may designate an Alternate Project Manager to exercise the authority of the Project Manager in his or her absence.

15.2 The Parties may change their respective Project Managers. Such change shall be accomplished by notifying the other Parties, in writing, within five (5) days of the change and prior to the new Project Manager exercising his or her delegated authority.

15.3 The Parties' Project Managers shall meet or confer informally as necessary as provided in Section XI - CONSULTATION, of this Agreement. Although the Navy has ultimate responsibility for meeting its respective Deadlines, the EPA and the District of Columbia Project Managers shall endeavor to assist in this effort by scheduling meetings to review documents and reports, discussing any Guidance that pertains to the Work, overseeing the performance of environmental monitoring at the Site, reviewing SSP, RI/FS or RD/RA progress, and attempting to resolve disputes informally. At least one week prior to each scheduled quarterly Project Manager meeting, the Navy will provide to the EPA and the District of Columbia a draft agenda and summary of the status of the Work subject to this Agreement.

These status reports shall include, when applicable:

- A. identification of all data received and not previously provided by the Navy during the reporting period consistent with the limitations of Subsection 33.1 (SAMPLING AND DATA/DOCUMENT AVAILABILITY);
- B. all activities completed pursuant to this Agreement since the last Project Manager meeting as well as such actions and plans which are scheduled for the upcoming ninety (90) days; and
- C. a description of any delays, the reasons for such delays, anticipated delays, concerns over possible timetable implementation or problems that arise in the execution of a Work Plan during the quarter and any steps that were or will be taken to alleviate the delays or problems.

The minutes of each Project Manager meeting will be prepared by the Navy according to a format agreed upon by the Parties and, with the meeting agenda, will be sent to all Project Managers within fourteen (14) days after the meeting. Any documents requested during the meeting will be provided in a timely manner, except for those documents for which express written notification is required.

15.4 Necessary and appropriate adjustments to Deadlines or Schedules may be proposed by any Party. The Party which requested the modification shall prepare a written memorandum detailing the modification and the reasons therefor and shall provide a copy of the memorandum at least seven (7) days prior to the Deadline to the other Parties for signature and return prior to the Deadline.

15.5 A Project Manager may also recommend and request minor field modifications to the Work performed pursuant to this Agreement, or in techniques, procedures or designs

utilized in carrying out this Agreement. The minor field modifications proposed under this Subsection must be approved orally by the Parties' Project Managers to be effective. No such Work modifications can be so implemented if an increase in contract cost will result without the authorization of the Navy Contracting Officer. If agreement cannot be reached on the proposed additional Work or modification to Work, dispute resolution as set forth in Section XXI - DISPUTE RESOLUTION, shall be invoked by the Navy, by submitting a written statement to the other Party in accordance with Section XXI - DISPUTE RESOLUTION. If the Parties agree to the modification, within five (5) business days following a modification made pursuant to this Section, the Project Manager who requested the modification shall prepare a written memorandum detailing the modification and the reasons therefor and shall provide or mail a copy of the memorandum to the Project Managers of the other Parties for signature and return.

15.6 Modifications of Work not provided for in Subsections 15.4 and 15.5 of this Section must be approved by the Parties' Project Managers to be effective. If agreement cannot be reached on the proposed modification to Work, dispute resolution as set forth in Section XXI - DISPUTE RESOLUTION, shall be used. Within five (5) business days following a modification made pursuant to this Section, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefor and shall provide or mail a copy of the memorandum to the Project Managers of the other Parties for signature and return.

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

15.8 The Parties shall transmit Primary and Secondary Documents and all notices required herein to the persons specified in Subsection 15.9 below by the Deadline established under Section XII - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN. Time limitations shall commence upon receipt. The Navy shall provide to the EPA and the District of Columbia seven (7) and five (5) copies, respectively, of each Primary and Secondary Document.

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

A. For the Navy:

Commanding Officer, Atlantic Division
Naval Facilities Engineering Command
Code 1823
1510 Gilbert Street
Norfolk, Virginia 23511-2699

B. For EPA:

EPA Region III (3H550)
Attn: Washington Navy Yard Project Manager
Federal Facilities Branch
1650 Arch Street
Philadelphia, PA 19103-2029

C. For the District of Columbia:

District of Columbia
Department of Health
Environmental Health Administration
Project Manager - Washington Navy Yard

Toxic Substances and Hazardous Materials
Suite 203
2100 Martin Luther King, Jr., Avenue, S.E.
Washington, D.C. 20020

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

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

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

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

B. Observing, taking photographs, and making such other reports on the progress of the Work as the Project Managers deem appropriate, subject to the limitations set forth in Section XVII - ACCESS hereof;

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

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

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

XVI. EXEMPTIONS

16.1 The Parties recognize that the President may issue an Executive Order, as needed to protect national security interests, regarding response actions at the Site, pursuant to Section 120(j) of CERCLA, 42 U.S.C. Section 9620(j). Such an Executive Order may exempt the Site or any portion thereof from the requirements of CERCLA for a period of time not to exceed one (1) year after the issuance of that Executive Order. This Executive Order may be renewed. The Navy shall obtain access to and perform all actions required by this Agreement within all areas inside those portions of the Site which are not the subject of or subject to any such Executive Order issued by the President.

16.2 The District of Columbia reserves any statutory right it may have to challenge any Executive Order or exemption specified in Subsection 16.1 relieving the Navy of its obligations to comply with this Agreement.

XVII. ACCESS

17.1 The EPA and the District of Columbia and their representatives shall have the authority to enter the Site at all reasonable times for the purposes consistent with

provisions of this Agreement. Such authority shall include, but not be limited to: inspecting records; logs, contracts, and other documents relevant to implementation of this Agreement; reviewing and monitoring the progress of the Navy, its contractors, and lessees in carrying out the activities under this Agreement; conducting, with prior notice to the Navy, tests which EPA or the District of Columbia deem necessary; assessing the need for planning additional remedial response actions at the Site; and verifying data or information submitted to EPA and the District of Columbia. The Navy shall honor all reasonable requests for access to the Site made by EPA or the District of Columbia, upon presentation of credentials showing the bearer's identification and that he/she is an employee or agent of the EPA or the District of Columbia. The Navy Project Manager or his/her designee will provide briefing information, coordinate access and escort to restricted or controlled-access areas, arrange for base passes, and coordinate any other access requests which arise. The Navy shall use its best efforts to ensure that conformance with the requirements of this Subsection do not delay access.

17.2 The rights granted in Subsections 17.1 and 17.4 to EPA and the District of Columbia regarding access shall be subject to regulations and statutes, including WNY's security regulations, as may be necessary to protect national security information ("classified information") as defined in Executive Order 12356, and comply with WNY's health and safety requirements. Such requirements shall not be applied so as to unreasonably hinder EPA or the District of Columbia from carrying out their responsibilities and authority pursuant to this Agreement.

17.3 The Navy shall provide an escort whenever EPA or the District of Columbia requires access to restricted areas of WNY for purposes consistent with the provisions of this Agreement. EPA and the District of Columbia shall provide reasonable notice to the Navy Project Manager or his or her designee to request any necessary escorts for such restricted areas. The Navy shall not require an escort to any area of this Site unless it is a restricted or controlled-access area. Upon request of the EPA or the District of Columbia, the Navy shall promptly provide a written list of current restricted or controlled-access areas.

17.4 The EPA and the District of Columbia shall have the right to enter all areas of the Site that are entered by contractors performing Work under this Agreement.

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

17.6 The Navy shall ensure that all response measures, ground water rehabilitation measures and remedial actions of any kind which are undertaken pursuant to this Agreement on any areas which: a) are presently owned by the United States and which are occupied by the Navy or leased by the Navy to any other entity or b) are in any manner under the control of the Navy or any lessees or agents of the Navy, shall not be impeded or impaired in any manner by any transfer of title or change in occupancy or any other change in circumstances of such areas.

17.7 Nothing herein shall be construed as limiting EPA's or the District of Columbia's statutory authority for access or information gathering.

XVIII. PERMITS

18.1 The Navy shall be responsible for obtaining all federal, State and local permits which are necessary for the performance of all Work under this Agreement.

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

18.3 When the Navy proposes a response action, other than an emergency removal action, to be conducted entirely onsite, which in the absence of Section 121(e)(1) of CERCLA and the NCP would require a federal, State or local permit, the Navy shall include in its Draft ROD or removal memorandum:

- A. Identification of each permit which would otherwise be required;
- B. Identification of the standards, requirements, criteria, or limitations which would have had to have been met to obtain each such permit; and
- C. An explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified immediately above.

18.4 Subsection 18.2 above is not intended to relieve the Navy from the requirement(s) of obtaining a permit whenever it proposes a response action involving the shipment or movement of a hazardous substance, pollutant, or contaminant or hazardous waste off the Site or in any other circumstances where the exemption provided for at Section 121(e)(1), 42 U.S.C. Section 9621(e), does not apply.

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

18.6 The Navy agrees to notify EPA and the District of Columbia of its intention to propose modifications to this Agreement to obtain conformance with the permit, or lack thereof if a permit or other authorization which is necessary for implementation of this Agreement is not issued, or is issued or renewed in a manner which is materially inconsistent with the requirements of this Agreement.

Notification by the Navy of its intention to propose modifications shall be submitted within sixty (60) calendar days of receipt by the Navy of notification that: (1) a permit will not be issued; (2) a permit has been issued or reissued; or (3) a final determination with respect to any appeal related to the issuance of a permit has been entered. Within sixty (60) days from the date it submits its notice of intention to propose modifications to this Agreement, the Navy shall submit to EPA and the District of Columbia its proposed modifications to this Agreement with an explanation of its reasons in support thereof.

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

18.8 During any appeal by any Party of any permit required to implement this Agreement or during review of any proposed modification(s) to the permit, the Navy shall continue to implement those portions of this Agreement which can be reasonably implemented independent of final resolution of the permit issue(s) under appeal. However, as to Work that cannot be so implemented, any corresponding Deadline,

timetable, or Schedule shall be subject to Section XIV - EXTENSIONS, of this Agreement.

18.9 Nothing in this Agreement shall be construed to affect the Navy's obligation to comply with any RCRA permit(s) that the Facility may be issued in the future.

XIX. REMOVAL AND EMERGENCY ACTIONS

19.1 The Navy shall provide EPA and the District of Columbia with timely notice of any proposed removal action.

19.2 Nothing in this Agreement shall alter the Navy's, the District of Columbia's, or EPA's authority with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. Section 9604.

19.3 If during the course of performing the activities required under this Agreement, any Party identifies an actual or a substantial threat of a release of any hazardous substance, pollutant, or contaminant at or from the Site, that Party may propose that the Navy undertake removal actions to abate the danger and threat which may be posed by such actual or threatened release. All removal actions conducted on WNY shall be conducted in a manner consistent with this Agreement, CERCLA, Executive Order 12580, DERP, including provisions for timely notification and consultation with EPA and appropriate State and local officials, and the NCP and shall, to the extent practicable, contribute to the efficient performance of any long term remedial action with respect to the release(s) or threatened release(s) concerned. Such a proposal to undertake such actions by the Navy shall be submitted to the EPA and the District of Columbia and shall include:

- A. Documentation of the actual or threatened release at or from the Site;
- B. Documentation that the actions posed will abate the danger and threat which may be posed by release of hazardous substances, pollutants, or contaminants at or from the Site;
- C. Documentation that the action is consistent with the NCP, applicable State regulations, and, to the extent practicable, contributes to the efficient performance of any long-term remedial action with respect to the release or threatened release concerned;
- D. An Engineering Evaluation/Cost Analysis ("EE/CA"), or its equivalent, for Non-Time Critical Removal Actions. The EE/CA shall contain an analysis of removal alternatives for a site. The screening of alternatives shall be based on criteria as provided in CERCLA and the NCP, such as cost, feasibility, and effectiveness; and
- E. A Non-Time Critical Removal Action Plan and Target Date for the proposed action.

The EPA and the District of Columbia shall expedite all reviews of these proposals to the maximum extent practicable.

19.4 The opportunity for review and comment for proposed removal actions, as stated in Subsection 19.3 above, may not apply if the action is in the nature of an emergency removal taken because a release or threatened release may present an imminent and substantial endangerment to human health or the environment. The Navy may determine that review and comment, as stated in Subsection 19.3 above, is impractical. However, in the case of an emergency removal action, the Navy shall provide EPA and the District of Columbia with oral notice as soon as possible and written notice within forty-eight (48) hours after the Navy determines that an emergency removal is necessary. Within seven (7) days after initiating an emergency removal action, the Navy shall provide EPA and the District of Columbia with the written basis (factual, technical and scientific) for such action and any available documents supporting such

action. Upon completion of an emergency removal action, the Navy shall state whether, and to what extent, the emergency removal action varied from the description of the action in the written notice provided pursuant to this Section. Within thirty (30) days of completion of an emergency response action, the Navy will furnish EPA and the District of Columbia with an Action Memorandum addressing the information provided in the oral notification, whether and to what extent the action varied from the description previously provided, and any other information required by CERCLA or the NCP, and in accordance with EPA Guidance for such actions. Such actions may be conducted at anytime, either before or after the issuance of a ROD.

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

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

XX. PERIODIC REVIEW

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

20.2 If upon such review it is the conclusion of any of the Parties that additional action or modification of remedial action is appropriate at the Site in accordance with Sections 104 or 106 of CERCLA, 42 U.S.C. Sections 9604 or 9606, the Navy shall implement such additional or modified action in accordance with Section X - WORK TO BE PERFORMED, of this Agreement.

20.3 Any dispute by the Parties regarding the need for or the scope of additional action or modification to a remedial action shall be resolved under Section XXI - DISPUTE RESOLUTION of this Agreement and enforceable hereunder.

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

20.5 The EPA and the District of Columbia reserve the right to exercise any available authority to seek the performance of additional Work that arises from a Periodic Review, pursuant to applicable law.

20.6 The assessment and selection of any additional response actions determined necessary as a result of a Periodic Review shall be in accordance with Subsections 10.7 to 10.11.

20.7 Except for emergency response actions, which shall be governed by Section XIX - REMOVAL AND EMERGENCY ACTIONS, such response actions shall be implemented as a supplemental response action in accordance with Subsections 10.11 through 10.15.

20.8 When the final ROD for an Operable Unit contains the requirement for the development and implementation of a Long-Term Monitoring Plan because the selected remedial action results in any hazardous substance, pollutants or contaminants remaining at the Site, the Long-Term Remedial Action Monitoring Plan shall be submitted in accordance with Section XI - CONSULTATION.

XXI. DISPUTE RESOLUTION

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

21.2 Within thirty (30) days after: (1) issuance of a draft final Primary Document pursuant to Section XI - CONSULTATION of this Agreement, or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the other Party a written statement of dispute setting forth the nature of the dispute, the Work affected by the dispute, the disputing Party's position with respect to the dispute and the information the disputing Party is relying upon to support its position.

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

21.4 The Dispute Resolution Committee (DRC) will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA's representative on the DRC is the Hazardous Site Cleanup Division Director of EPA - Region III. The Navy's designated member is the Commander, Atlantic Division, Naval Facilities Engineering Command. The District of Columbia's representative on the DRC is the Assistant Deputy Director, Environmental Health Administration, Department of Health. Written notice of any delegation of authority from the Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section XV - PROJECT MANAGERS.

21.5 Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision signed by all Parties. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period, the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution.

21.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA's representative on the SEC is the Regional Administrator of EPA Region III, or his or her delegatee. The District of Columbia's representative on the SEC is the Deputy Director, Environmental Health Administration, Department of Health, or his or her delegatee. The Navy's representative on the SEC is the Assistant Secretary of the Navy (Installations and Environment) or his or her delegatee. In the event of a delegation, the positions presented by the delegates shall represent the positions of the Regional Administrator of EPA Region III, the Deputy Director of the Environmental Health Administration, and the Assistant Secretary of the Navy (Installations and Environment). Any documents issued by the SEC or its members pertaining to a dispute shall be issued by the Regional Administrator of EPA Region III and/or the Deputy Director, Environmental Health Administration and/or the Assistant Secretary of the Navy (Installations and Environment). Notice of any delegation of authority from a Party's designated

representative on the SEC shall be provided to the other Parties in writing before the delegation takes effect. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a unanimous written decision signed by all Parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days, the EPA Regional Administrator shall issue a written position on the dispute. The Secretary of the Navy or the Director of the Department of Health of the District of Columbia may, within twenty-one (21) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of U.S. EPA for resolution in accordance with all applicable laws and procedures. In the event that neither the Navy nor the District of Columbia elects to elevate the dispute to the Administrator within the designated twenty-one (21) day escalation period, the decision will become final and the Work will proceed in accordance with the Regional Administrator's written position with respect to the dispute.

21.7 Upon escalation of a dispute to the Administrator of EPA pursuant to Subsection 21.6 above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Secretary of the Navy and the Director of the Department of Health of the District of Columbia to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other Parties with a written final decision setting forth resolution of the dispute. The duties of the Administrator pursuant to this Paragraph may be delegated only to the EPA Assistant Administrator for Enforcement and Compliance Assurance. The duties of the Secretary of the Navy pursuant to this Paragraph may be delegated only to the Assistant Secretary of the Navy (Installations and Environment). The duties of the Director of the Department of Health pursuant to this Paragraph may be delegated only to the Deputy Director of the Environmental Health Administration.

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

21.9 When dispute resolution is in progress, Work affected by the dispute will immediately be discontinued if the Hazardous Site Cleanup Division Director for EPA Region III requests, in writing, that Work related to the dispute be stopped because, in EPA's opinion, such Work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. The District of Columbia may request the EPA Division Director to order Work stopped for the reasons set out above. To the extent possible, the Party seeking a Work stoppage shall consult with the other Parties prior to initiating a Work stoppage request. After stoppage of Work, if a Party believes that the Work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the Party ordering a Work stoppage to discuss the Work stoppage. Following this meeting, and further consideration of the issues, the EPA Division Director will issue, in writing, a final decision with respect to the Work stoppage. The final written decision of the U.S. EPA Hazardous Site Cleanup Division Director may immediately be subjected to formal dispute resolution.

Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

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

21.11 Resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution to any dispute arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this Agreement except as provided for in Section XXVII - DISTRICT OF COLUMBIA RESERVATION OF RIGHTS.

21.12 The District of Columbia reserves the right to maintain an action under CERCLA Section 121(f)(3)(B), 42 U.S.C. Section 9621(f)(3)(B) to challenge the selection of a remedial action that does not attain a legally applicable or relevant and appropriate requirement, standard, criteria or limitation.

XXII. STIPULATED PENALTIES

22.1 In the event that the Navy fails to submit a Primary Document, as listed in Section XI - CONSULTATION, to EPA and the District of Columbia pursuant to the appropriate timetable or Deadlines in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an interim or final remedial action, EPA may assess a stipulated penalty against the Navy. The District of Columbia may propose to EPA that such stipulated penalties be assessed. A stipulated penalty may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this Subsection occurs. The District of Columbia and the EPA agree that all stipulated penalties shall be shared equally.

22.2 Upon determining that the Navy has failed in a manner set forth in Subsection 22.1, EPA or the District of Columbia shall so notify the Navy in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Navy shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Navy shall not be liable for the stipulated penalty assessed by EPA if the failure is determined, through 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.

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

- A. The Facility responsible for the failure;
- B. A statement of the facts and circumstances giving rise to the failure;
- C. A statement of any administrative or other corrective action taken, or a statement of why such measures were determined to be inappropriate;
- D. A statement of any additional action taken by or at the Facility to prevent recurrence of the same type of failure; and
- E. The total dollar amount of the stipulated penalty assessed for the particular failure.

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

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

22.6 This Section shall not affect the Navy's ability to obtain an extension of a timetable, Deadline or Schedule pursuant to Section XIV - EXTENSIONS.

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

XXIII. FORCE MAJEURE

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

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

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

23.2 When circumstances, which may delay or prevent the completion of the Navy's obligation under this Agreement, are caused by a Force Majeure event, the Navy shall notify the EPA and the District of Columbia Project Managers orally of the circumstances within forty-eight (48) hours after the Navy first becomes aware of these circumstances. Within fifteen (15) days of the oral notification, the Navy shall supply to EPA and the District of Columbia in writing an explanation of the cause(s) of any actual or expected delay and the anticipated duration of any delay. The Navy shall exercise its best efforts to avoid or minimize any such delay and any effects of such delay.

XXIV. ENFORCEABILITY

24.1 EPA, the District of Columbia, and the Navy agree that:

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

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

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

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

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

24.3 Nothing in this Agreement shall be construed as a restriction or waiver of any rights EPA, the Navy or the District of Columbia may have under CERCLA, including, but not limited to, any rights under Sections 104, 106, 107, 113, 120, 121 and 310, 42 U.S.C. Sections 9604, 9606, 9607, 9613, 9620, 9621 and 9659, or any rights or defenses, including sovereign immunity, they may have under Federal or State law.

The Navy does not waive any rights it may have under SARA Section 211, 10 U.S.C. Section 2701 et seq., and Executive Order 12580.

24.4 The Parties agree to exhaust their rights under Section XXI - DISPUTE RESOLUTION, prior to exercising any rights to judicial review that they may have.

24.5 The Parties agree that EPA, the District of Columbia, and the Navy shall have the right to enforce the terms of this Agreement.

XXV. OTHER CLAIMS

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

25.2 Nothing in this Agreement shall constitute or be construed as a bar, or a discharge, or a release, from any claim, cause of action or demand in law or equity by or against any person, firm, partnership, or corporation not a signatory to this Agreement for any liability it may have arising out of, or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any

hazardous substances, hazardous waste, pollutants, or contaminants found at, taken to, or taken from the Site.

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

25.4 The EPA and the District of Columbia shall not be held as a party to any contract entered into by the Navy to implement the requirements of this Agreement.

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

25.6 This Agreement does not bar any claim for:

- A. natural resources damage assessments, or for damage to natural resources; or
- B. liability for disposal of any hazardous substances or waste material taken from WNY.

XXVI. RESERVATION OF RIGHTS

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

26.2 The Parties agree to exhaust their rights under Section XXI - DISPUTE RESOLUTION, prior to exercising any rights to judicial review that they may have.

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

XXVII. DISTRICT OF COLUMBIA RESERVATION OF RIGHTS

27.1 Notwithstanding any other section of this Agreement, the District of Columbia shall retain any statutory right it may have to obtain judicial review of any final decision of EPA, including, without limitation, any authority the District of Columbia may have under CERCLA §§ 113, 121(e)(2), 121(f)(3), and 310; 42 U.S.C. §§ 9613, 9621(e)(2), 9621(f)(3), and 9659; Section 7002 of RCRA, 42 U.S.C. §6972; Section XXIV - ENFORCEABILITY of this Agreement, and District of Columbia law, except that the District of Columbia expressly agrees to exhaust any applicable remedies provided in Section XI - CONSULTATION and Section XXI DISPUTE RESOLUTION of this Agreement, prior to exercising such rights.

27.2 In the event that the Navy's obligations under this Agreement are not fulfilled for six (6) consecutive months, the District of Columbia shall have the option of terminating all provisions of the Agreement affecting the District of Columbia's rights and responsibilities, and the District of Columbia may thereafter seek any appropriate relief. The District of Columbia will provide the other Parties with thirty (30) days notice of its intent to terminate.

XXVIII. PROPERTY TRANSFER

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

28.2 In accordance with Section 120(h) of CERCLA, 42 U.S.C. Section 9620(h) and 40 C.F.R. Part 373, the Navy shall include notice of this Agreement in any Host/Tenant Agreement or Memorandum of Understanding that permits any non-WNY activity to function as an operator on any portion of the Site.

XXIX. FUNDING

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

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

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

29.4 If appropriated funds are not available to fulfill the Navy's obligations under this Agreement, EPA and the District of Columbia reserve the right to initiate an action against any other person, or to take any response action, which would be appropriate absent this Agreement.

29.5 Funds authorized and appropriated annually by Congress under the Environmental Restoration, Navy (ER,N) appropriation in the Department of Defense Appropriations Act will be the source of funds for activities required by this Agreement consistent with 10 U.S.C. Chapter 160. However, should the ER,N appropriation be inadequate in any year to meet the total Navy's implementation requirements under this Agreement, the Navy will, after consulting with the other Parties and discussing the inadequacy with the members of the public interested in the action in accordance with Section XIII - BUDGET DEVELOPMENT AND AMENDMENT OF PLAN, prioritize and allocate that year's appropriation.

XXX. RECOVERY OF EPA EXPENSES

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

XXXI. QUALITY ASSURANCE

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

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

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

XXXII. RECORD PRESERVATION

32.1 Despite any document retention policy to the contrary, EPA and the Navy shall preserve, during the pendency of this Agreement and for a minimum of ten (10) years after its termination or for a minimum of ten (10) years after implementation of any additional action taken pursuant to Section XX - PERIODIC REVIEW, all records and documents in their possession which relate to actions taken pursuant to this Agreement. Each Party shall notify the other Parties at least forty-five (45) days prior to the proposed destruction or disposal of any such documents or records. Upon the request by any Party, the requested Party shall make available such records or copies of any such records unless withholding is authorized and determined appropriate by law. The Party withholding such records shall identify any documents withheld and the legal basis for withholding such records. No records withheld shall be destroyed until forty-five (45) days after the final decision by the highest court or administrative body requested to review the matter.

32.2 All such records and documents shall be preserved for a period of ten (10) years following the termination of any judicial action regarding the Work performed under CERCLA, which is the subject of this Agreement.

XXXIII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

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

33.2 At the request of any Party, a Party shall allow the other Parties or their authorized representatives to observe field work and to take split or duplicate samples of any samples collected pursuant to this Agreement. Each Party shall notify the other Parties by telephone not less than fourteen (14) days in advance of any scheduled sample collection activity unless otherwise agreed upon by the Parties. The Party shall provide written confirmation within three (3) days of the telephone notification.

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

XXXIV. PROTECTED INFORMATION

34.1. The Navy shall not withhold any physical, sampling, monitoring, analytical or historical data.

34.2. National Security Information:

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

B. Upon receipt from EPA or the District of Columbia of a request to meet with the classifying officer regarding access to classified information, the Navy shall, within ten (10) calendar days of such request, notify the requesting Party of the identity of the classifying officer and the level of classification of the information sought. If the document was classified by the Navy, the classifying officer and the representative of the requesting Party shall meet within twenty-one (21) calendar days following receipt of the request.

The purpose of the meeting shall be to seek a means to accommodate the requesting Party's request for access to information without compromising national security or violating security regulations. If no resolution is reached at the meeting, the Navy shall notify the requesting Party of the classifying officer's decision within fourteen (14) calendar days following the meeting. Failure to render a timely decision shall be construed as a denial which is appealable in accordance with 32 C.F.R. Part 159. Failure to respond is subject to dispute resolution under this Agreement.

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

XXXV. COMMUNITY RELATIONS

35.1 The Navy issued a Final RFI Community Relations Plan in April 1998. The Plan satisfies the requirement for a Community Relations Plan under CERCLA. This Plan will respond to the need for an interactive relationship with all interested community elements, both on and off WNY, regarding environmental activities conducted pursuant to this Agreement by the Navy. Any revision or amendment to the Community Relations Plan shall be submitted to EPA and the District of Columbia for review and comment.

35.2 Except in case of an emergency requiring the release of necessary information, and except in the case of an enforcement action, any Party issuing a press release with reference to any of the Work required by this Agreement shall use its best

efforts to advise the other Parties of such press release and the contents thereof upon issuance of such release.

35.3 The Parties agree to comply with all relevant EPA policy and Guidance on community relations programs and the public participation requirements of CERCLA, the NCP and other applicable, relevant and appropriate requirements, laws and regulations.

35.4 The Parties agree that Work conducted under this Agreement and any subsequent proposed remedial action alternatives and subsequent plans for remedial action at the Site arising out of this Agreement shall comply with all the Administrative Record and public participation requirements of CERCLA, including Sections 113(k) and 117, 42 U.S.C. Sections 9613(k) and 9617, the NCP, and all applicable Guidance developed and provided by EPA. This shall be achieved through implementation of the Community Relations Plan.

35.5 The Navy has established and is maintaining an administrative record at or near WNY available to the public, and another copy at a central location, in accordance with CERCLA Section 113(k), 42 U.S.C. Section 9613(k), Subpart I of the NCP, and applicable Guidance issued by EPA. The administrative record developed by the Navy shall be periodically updated and a copy of the Index will be provided to EPA and the District of Columbia. The Navy will provide to the EPA and the District of Columbia on request any document in the administrative record.

35.6 Pursuant to 10 U.S.C. Section 2705(c) and Section XXXVII - RESTORATION ADVISORY BOARD of this Agreement, the Navy has established a Restoration Advisory Board (RAB) for WNY. The purpose of the RAB is to afford a forum for cooperation between the Parties, local community representatives, and natural resource trustees on action and proposed actions at the Site.

XXXVI. PUBLIC COMMENT ON THIS AGREEMENT

36.1 Within fifteen (15) days after the execution of this Agreement (the date by which all Parties have signed the Agreement) or as soon thereafter to conform with RCRA integration requirements, EPA shall announce the availability of this Agreement to the public for their review and comment, including publication in at least two (2) major local newspapers of general circulation. Such public notices shall include information advising the public as to the availability and location of the administrative record discussed in Subsection 36.7. EPA shall accept comments from the public for forty-five (45) days after such announcement. Within twenty-one (21) days of completion of the public comment period, EPA shall transmit copies of all comments received within the comment period to the other Parties. Within thirty (30) days after the transmittal, the Parties shall review the comments and shall decide that either:

- A. the Agreement shall be made effective without any modifications; or
- B. the Agreement shall be modified prior to being made effective.

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

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

If EPA and the District of Columbia determine that no additional notice and comment are required, and the Parties agree on the Responsiveness Summary, EPA shall transmit

a copy of the modified Agreement to the Navy and the District of Columbia and shall notify them in writing that the modified Agreement is effective as of the date of the notification. If the Parties amend the Agreement within the sixty (60) days and EPA and the District of Columbia determine that additional notice and comment are required, such additional notice and comment shall be provided consistent with the provisions stated in Subsection 36.1 above.

If the Parties agree, after such additional notice and comment has been provided, that the modified Agreement does not require any further modification and if the Parties agree on the Responsiveness Summary, EPA shall send a copy of the mutually agreed upon modified Agreement to the Navy and the District of Columbia and shall notify them that the modified Agreement is effective. In either case, the Effective Date of the modified Agreement shall be receipt by the Navy from EPA of notification that the modified Agreement is effective.

36.4 In the event that the Parties cannot agree on the modifications or on the Responsiveness Summary within thirty (30) days after EPA's transmittal of the public comments, the Parties agree to negotiate in good faith for an additional fifteen (15) days before invoking dispute resolution. The Parties agree to have at least one meeting during that fifteen (15) day period to attempt to reach agreement.

36.5 If, after expiration of the times provided in Subsection 36.4, the Parties have not reached agreement on:

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

then the matters which are in dispute shall be resolved by the dispute resolution procedures of Section XXI - DISPUTE RESOLUTION, above. For the purposes of this Section, the Agreement shall not be effective while the dispute resolution proceedings are underway. After these proceedings are completed, the Final Written Decision shall be provided to the Parties indicating the results of the dispute resolution proceedings. Each Party reserves the right to withdraw from the Agreement by providing written notice to the other Parties within twenty (20) days after receiving from EPA the Final Written Decision of the resolution of the matters in dispute. Failure by a Party to provide such a written notice of withdrawal to EPA within this twenty (20) day period shall act as a waiver of the right of that Party to withdraw from the Agreement, and EPA shall thereafter send a copy of the final Agreement to each Party and shall notify each Party that the Agreement is effective. The Effective Date of the Agreement shall be the date of receipt of that letter from EPA to the Navy.

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

36.7 Existing records maintained by WNY which will be included in the administrative record such as reports, plans, and Schedules, shall be made available by the Navy for public review during the public comment period.

XXXVII. RESTORATION ADVISORY BOARD

37.1 The Navy has established a Restoration Advisory Board (RAB) which meets the requirements of 10 U.S.C. Section 2705(d), at Department of Defense Installations. The Parties shall participate in the RAB as follows:

- A. A WNY representative who shall co-chair the RAB;
- B. An EPA representative,
- C. A District of Columbia representative, and
- D. The Navy Project Manager.

Representatives from the following organizations are presently serving as members of the RAB:

- E. Fairlawn Citizens Association, Inc.
- F. Citizens Advisory Committee to the Chesapeake Bay Program
- G. Anacostia Coordinating Council
- H. North Lincoln Park Neighborhood Associates
- I. District of Columbia Preservation League
- J. EarthJustice Legal Defense Fund
- K. District of Columbia Public School System

37.2 The co-chairs shall schedule quarterly meetings, or, at the request of individual members, more frequently as needed, of the RAB. If possible, meetings shall be held in conjunction with the meetings of the Project Managers. Meetings of the RAB shall be for the purpose of reviewing progress under the Agreement and for the following purposes:

- A. to facilitate early and continued flow of information between the community, WNY, and the environmental regulatory agencies in relation to restoration actions taken by WNY under the Installation Restoration Program,
- B. to provide an opportunity for RAB members and the public to review and comment on actions and proposed actions taken by WNY under the Installation Restoration Program, and,
- C. to facilitate regulatory and public participation consistent with applicable laws. Special meetings of the RAB may be held at the request of the members.

XXXVIII. EFFECTIVE DATE

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

XXXIX. AMENDMENT OF AGREEMENT

39.1 Except as provided in Section XV - PROJECT MANAGERS, this Agreement can be amended or modified solely upon written consent of the Parties. Such amendments or modifications shall be in writing, and shall become effective on the third business

day following the date on which the EPA signs the amendments or modifications. The Parties may agree on a different Effective Date. As the last signing Party, the EPA will provide notice to each signatory pursuant to Section XV - PROJECT MANAGERS, of the Effective Date.

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

39.3 During the course of activities under this Agreement, the Parties anticipate that statutes, regulations, Guidance, and other rules will change. Those changed statutes, regulations, Guidance, and other rules will be applied to the activities under this Agreement in the following manner:

A. Applicable statutes and regulations shall be applied in accordance with the statutory or regulatory language on applicability, and if applied to ongoing activities, shall be applied on the effective date provided. However, the Parties shall, to the extent practicable, apply them in such a way as to avoid as much as possible the need for repeating Work already accomplished.

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

C. Applicable policy or Guidance which is changed after the initiation of the Work in issue or after its completion shall be applied subject to Section XXI - DISPUTE RESOLUTION. The Party proposing application of such changed policy or Guidance shall have the burden of proving the appropriateness of its application. In any case, the Parties shall, to the extent practicable, apply any changed policy or Guidance in such a way as to avoid, as much as possible, the need for repeating Work already accomplished.

XXXX. SEVERABILITY

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

XXXXI. TERMINATION AND SATISFACTION

41.1 The provisions of this Agreement shall be deemed satisfied upon a consensus of the Parties that the Navy has completed its obligations under the terms of this Agreement. Following Certification of Completion of Remedial Action for all the Response Actions at the Site pursuant to Subsection 10.16 of Section X - WORK TO BE PERFORMED, any Party may propose in writing the termination of this Agreement upon a showing that the requirements of this Agreement have been satisfied. The obligations and objectives of this Agreement shall be deemed satisfied and terminated upon receipt by the Navy of written notice from EPA, with concurrence of the District of Columbia, that the Navy has demonstrated that all the requirements of this Agreement have been satisfied. A Party opposing termination of this Agreement shall provide a written statement of the basis for its denial and describe the actions necessary to grant a termination notice to the proposing Party within ninety (90) days of receipt of the proposal.

41.2 Any disputes arising from this Termination and Satisfaction process shall be resolved pursuant to the provisions of Section XXI - DISPUTE RESOLUTION, of this Agreement.

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

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

XXXXII. NATURAL RESOURCES TRUSTEES

42.1 The Navy and District of Columbia acknowledge that each is a natural resources trustee under CERCLA § 107(f), 42 U.S.C. § 9607(f), for natural resources under their respective trusteeships that may have been injured by the release or threatened release of hazardous substances at or from the WNY and that the scope of such respective trusteeships may overlap in some situations. To the extent appropriate and feasible, the Navy agrees to work with the District of Columbia, as early as possible and on a continuing basis, to characterize the scope, nature and extent of the natural resource injuries at the WNY, if any; to determine, as appropriate, the damages or restoration costs, if any, incurred or likely to be incurred as a result of injury to natural resources; and to integrate and coordinate these actions with work being conducted at the WNY by the Navy under CERCLA and this Agreement. The District of Columbia and the Navy shall meet at the request of either to discuss any relevant matters and to maximize cooperation and coordination of natural resources related activities. The Navy agrees to negotiate in good faith the question of its liability, if any, for natural resource costs incurred by the District of Columbia under CERCLA § 107(f), 42 U.S.C. § 9607(f), in its role as natural resource trustee. Nothing contained in this Subsection shall be interpreted to allow for the imposition of stipulated penalties under Section XXII - STIPULATED PENALTIES.


42.2 When exercising its rights as trustee, the District of Columbia agrees to act so as to not delay any Work being conducted by the Navy under CERCLA and this Agreement. Before proceeding with a Natural Resource Damage Assessment, based on information gathered pursuant to a preassessment screen and pursuant to the NCP, the District of Columbia will determine, to the extent possible, whether Navy Work carried out or planned at WNY does or does not remedy natural resource injury without further action. Before instituting any natural resource restoration actions, the District of Columbia shall ask the Navy to conduct such actions as part of the Work being conducted under CERCLA and this Agreement. Subject to limitations established in Section XXIX - FUNDING, the Navy shall conduct such restoration activities unless the Navy makes a written determination, within ninety (90) days of receiving the District of Columbia's request, that the requested activities will not be conducted as part of ongoing Work.

AUTHORIZED SIGNATURES

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

IT IS SO AGREED:

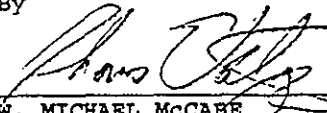
By



ROBERT B. PIRIE, JR.
Assistant Secretary of the Navy
(Installations & Environment)

Date 6/30/99

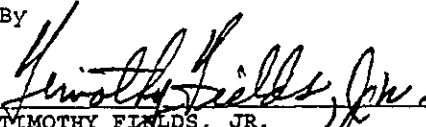
By



W. MICHAEL MCCABE
Regional Administrator
Environmental Protection Agency, Region III

Date 6/29/99

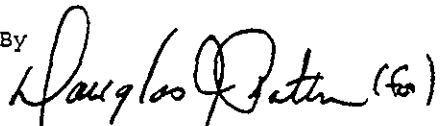
By



TIMOTHY FIELDS, JR.
Acting Assistant Administrator for
Solid Waste and Emergency Response
Environmental Protection Agency

Date 6/30/99

By



ANTHONY A. WILLIAMS
Mayor
District of Columbia

Date June 30, 1999

Appendix A

Sites and Operable Units

These SITES were listed as Sites in the RCRA Order.

<u>Site #</u>	<u>Description</u>	<u>Former Use</u>
1	Building 22	(Lead and Brass Foundry)
2	Buildings 33, 33A, 36, 37, 39, 109	(Gun Carriage Shop)
3	Building 40/41	(Gun and Metal Plating Shop)
4	Buildings 44, 46, 108, 67	(Cartridge Case Shop)
5	Building 73	(Gun Mount, Metal Cleaning, and Fabricating shop)
6	Buildings 116, 118, and 197	(Heating and former Power Plant, Gun Assembly Shop)
7	Building 126	(Laundry)
8	Building 211	(Paint and Oil Storage)
9	Buildings 219 and 220	(Gauge and Chemical Laboratory)
10	Admirals Row	(Flag, Captain, and Visiting Officer Housing)
11	Incinerators	(Former Incinerators removed in 1979)
13	Building 290	(Electrical Equipment)
14	Building 292	(Electrical Portable Generator)
16	Building 71	(Gasoline and Diesel Fuel Station)
17	Building 201	(Automotive Maintenance Facility)

<u>Operable Unit #</u>	<u>Description</u>	<u>Area</u>
1	Base-wide Groundwater	(Shallow Aquifer)

Appendix B

Site Screening Areas

<u>SSA #</u>	<u>Description</u>
1)	Building 106 (Forge Shore Pneumatic Plant)
2)	Building 212 (Cartridge Case Foundry)
3)	Building 130 (Ship Repair Shop)
4)	Building 183 (Dispensary)
5)	Building 207 (Liquid Storage)
6)	Building 223 (Garbage and Trash House)
7)	Former Leaking PCB Transformer Locations (Buildings 22, 104, 111, 154, 166, 184, and 200)

Appendix C

Areas of Concern

<u>AOC #</u>	<u>Description</u>
1)	Building 142 (Public Works Maintenance Shop)
2)	Building 154 (Ship Repair Shop; excluding leaking PCB transformers in Appendix B)
3)	Building 210 (Optical Shop and Laboratory)
4)	Building 112 (Polishing and Plating Shop)
5)	Former Potentially-leaking Transformer Locations (Buildings 76, 101, 169, 176, 196, 218)