UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

AND THE

STATE OF ARIZONA

AND THE

UNITED STATES DEPARTMENT OF THE AIR FORCE

IN THE MATTER OF:

U.S. Department of the Air Force
Air Force Plant 44
Arizona

FEDERAL FACILITY AGREEMENT
under CERCLA Section 120
Administrative
Docket Number: CERC-09-2009-0063FF

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U.S. Department of the Air Force Air Force Plant 44, Arizona	Federal Facility Agreement under CERCLA Section 120 Administrative Docket Number: CERC-09-2009-0063FF

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

I. JURISDICTION

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

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

1.2 EPA Region IX 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, 3008(h) and 3004(u) and (v), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), and Executive Order 12580.

1.3 The Air Force 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, 3008(h) and 3004(u) and (v), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. Section 4321, and the Defense Environmental Restoration Program (DERP), 10 U.S.C. Section 2701 *et seq.*

1.4 The Air Force 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, 3008(h), 3004(u) and (v), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), Executive Order 12580 and the DERP.

1.5 The Arizona Department of Environmental Quality (ADEQ) enters into this Agreement pursuant to CERCLA Sections 120(f) and 121(f), 42 U.S.C. Sections 9620(f) and 9621(f), RCRA Section 3006, 42 U.S.C. Section 6926, and the Arizona Waste Management Act, Arizona Revised Statutes Sections 49-104, 49-202 and 49-287. The implementation and execution of this Agreement is conducted pursuant to CERCLA Sections 120(f) and 121(f), 42 U.S.C. Sections 9620(f) and 9621(f), RCRA Section 3006, 42 U.S.C. Section 6926. The Air Force is not eligible or entitled to file any claims to recover costs from the state Water Quality Assurance Revolving Fund (WQARF) pursuant to A.R.S. Section 49-287. Any modifications to this Agreement shall be solely in accordance with the terms of this Agreement.

II. DEFINITIONS

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.

2.1 "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. AOUs are particularly appropriate where the size and complexity of the total remedial action would seriously delay implementation of independent parts of the action. AOUs 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 AOUs diminish the requirements for or delay the conduct of a total remedial action.

2.2 "ADEQ" shall mean the State of Arizona Department of Environmental Quality and its authorized employees and authorized representatives.

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

2.4 "Air Force" shall mean the United States Department of the Air Force, including the Aeronautical Systems Center (ASC) at Wright-Patterson Air Force Base for Air Force Plant 44, their employees, members, successors and authorized representatives, and assigns. The Air Force 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.

2.5 "Air Force Plant 44" shall mean property owned by the United States and operated by its contractors identified as Air Force Plant 44 located in Tucson, Arizona, and including all areas identified in Appendices A-E that are "south of Los Reales Road," as referenced in portions of this Agreement. "Air Force Plant 44" does not include the property "north of Los Reales Road."

2.6 "Applicable Arizona/State law" shall mean all State of Arizona laws administered by ADEQ determined to be applicable under this Agreement. The term shall include all State laws determined to be Applicable or Relevant and Appropriate Requirements (ARARs).

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

2.8 "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 other amendments thereto.

2.9 "Community Relations" shall mean the program to inform and involve the public in the installation restoration, CERCLA and RCRA processes and to respond to community concerns.

2.10 "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, Federal or State holiday shall be due on the following business day.

2.11 "Deadlines" shall mean the Near Term Milestones specifically established for the current fiscal year under the Site Management Plan. Deadlines are subject to stipulated penalties in accordance with Section XXI – STIPULATED PENALTIES.

2.12 "Deliverable Documents" shall mean those required documents listed as Primary and Secondary Documents under this Agreement.

2.13 "Documents" or "records" shall mean any documents, writings, correspondence, and all other tangible things on which information has been stored that relates to this Agreement or to any activities to be undertaken relating to this Agreement.

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

2.15 "Facility" shall mean that property owned by the United States and operated by the U.S. Department of the Air Force and its operator, known as Air Force Plant 44, in Tucson, Arizona, and including all areas identified in Appendices A-E. This definition is for the purpose of describing a geographical area and not a governmental entity

2.16 "Fiscal year" shall mean the time period used by the United States Government for budget management and commences on October 1 and ends on September 30 of the following calendar year.

2.17 "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 that does not need added investigation in order to progress forward in the remedial process.

2.18 "Guidance" shall mean any requirements or policy directives issued by EPA or the state of Arizona that are of general application to environmental matters and that are otherwise applicable to the Air Force's work under this Agreement.

2.19 "Interim Remedial Action" shall mean all discrete Remedial Actions, including, but not limited to, AOUs implemented prior to a final Remedial Action that are taken to prevent or minimize the release of hazardous substances, pollutants, or contaminants.

2.20 "Land Use Controls" or "LUCs" shall mean any restriction or administrative action, including engineering and institutional controls, arising from the need to reduce risk to human health and the environment.

2.21 "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.

2.22 "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.

2.23 "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).

2.24 "On-Site" shall have the meaning as defined in the NCP.

2.25 "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.

2.26 "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).

2.27 "Parties" shall mean the Air Force, ADEQ and EPA.

2.28 "Primary Actions" as used in these definitions 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 are sufficient information to be confident that the date for taking such action is implementable.

2.29 "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 Site. 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.

2.30 "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.

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

2.32 "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 basis for the selection of such remedy(ies). 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.

2.33 "Schedule" shall mean a timetable or plan that indicates the time and sequence of events.

2.34 "Site" shall include areas within Air Force Plant 44, and any other areas, where a hazardous substance, hazardous waste, hazardous constituent, pollutant, or contaminant from Air Force Plant 44 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 Air Force Plant 44 by motor vehicle.

2.35 "Site Management Plan" or "SMP" shall mean a planning document entitled "Air Force Plant 44, Arizona Site Management Plan," prepared specifically under Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN, which contains timetables, plans, or Schedules that indicate the times and sequences 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 Site. Milestones developed under the terms of this Agreement are listed in the SMP. Deadlines listed in the SMP are subject to stipulated penalties in accordance with Section XXI – STIPULATED PENALTIES.

2.36 "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 within the Air Force Plant 44 at which solid wastes have been routinely and systematically released.

2.37 "State" shall mean the State of Arizona, including all departments, offices and agencies thereof, as represented by ADEQ.

2.38 "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.

2.39 "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; (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 or before the due date to be considered as timely delivered.

2.40 "Work" shall mean all activities the Air Force is required to perform under this Agreement, except those required by Section XXXI – RECORD PRESERVATION.

2.41 "TIAASS Consent Decrees" means the consent decrees that govern remediation at the Tucson International Airport Area Superfund site, entered into by consent of federal and non-federal parties. In addition to any subsequent amendments or future consent decrees, these consent decrees include the consent decrees defined by Paragraphs 2.41.1, 2.41.2 and 2.41.3 of this Agreement.

2.41.1 "1991 Consent Decree," that consent decree previously entered into by the United States and other parties addressing groundwater remediation activities at the Tucson International Airport Area Superfund Site (No. CIV 90-587 TUC-RMB, D.C. Ariz., June 5, 1991).

2.41.2 "1993 Consent Decree Amendment," that amendment to the 1991 Consent Decree that was filed on August 6, 1993, in the D.C. Ariz.

2.41.3. "1999 Consent Decree," that amendment to the 1991 Consent Decree that was entered as No. CIV 99-313-TUC-WDB, D.C. Ariz., on June 17, 1999.

III. PARTIES BOUND

3.1 This Agreement shall apply to and be binding upon EPA, the state of Arizona, and the Air Force. Under this Agreement, the state of Arizona is acting pursuant to its power and duties under Section 120(f) and 121(f) of CERCLA, 42 U.S.C. Sections 9620(f) and 9621(f) and A.R.S. Sections 49-104, 49-202, and 49-287. The Air Force 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 or conveyance of any interest in real property affected by this Subsection 3.1 shall not relieve the Air Force of its applicable obligations under this Agreement.

3.2 The Air Force shall notify EPA and ADEQ of the identity and assigned tasks of each of its contractors performing Work under this Agreement on its selection and contract award. The Air Force 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:

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

4.1.2 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 State law; and

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

4.2 Specifically, the purposes of this Agreement are to:

4.2.1 Identify interim remedial action (IRA) alternatives, which are appropriate at the Site prior to the implementation of final remedial actions(s) for the Site. The IRA alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of IRAs to EPA and ADEQ pursuant to CERCLA and applicable State law. This process is designed to promote cooperation among the Parties in identifying IRA alternatives prior to selection of final IRAs.

4.2.2 Establish requirements for the performance of a RI to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of a FS for the Site to identify, evaluate and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA and applicable State law.

4.2.3 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 and applicable State law.

4.2.4 Implement the selected interim remedial and final remedial action(s) in accordance with CERCLA and applicable State law and meet the requirements of CERCLA Section 120(e)(2) for an interagency agreement among the Parties.

4.2.5 Ensure compliance, through this Agreement, with RCRA and other federal and State hazardous waste laws and regulations for matters covered herein.

4.2.6 Coordinate response actions at the Site with the mission and support activities at Air Force Plant 44.

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

4.2.8 Provide for State involvement in the initiation, development, selection, and enforcement of remedial actions to be undertaken at the Facility, including the review of all applicable data as it becomes available, and the development of studies, reports, and action plans; and to identify and integrate State ARARs into the remedial action process.

4.2.9 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 Air Force to meet the provisions of CERCLA, 42 U.S.C. Section 9601 et seq., and RCRA Section 3004(u) and (v) and 3008(h), as amended, 42 U.S.C. Sections 6924(u) and (v) and 6928(h).

5.2 This Agreement is intended to cover the investigation, development, selection, and implementation of response actions for 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 any of the Air Force's RCRA corrective action obligations at the Facility, which relate to the release(s) of hazardous substances, hazardous wastes, hazardous constituents, pollutants, or contaminants at or from all areas addressed under past or future corrective action permits. This Agreement is not intended to limit any requirements under RCRA or any other law or regulation to obtain permits, and is not intended to affect the treatment, storage, or disposal at Air Force Plant 44 of hazardous wastes. This Agreement is not intended to encompass any 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 Air Force Plant 44 portion of the Tucson International Airport Area Superfund site, as listed in the Federal Register proposing the Superfund site for the National Priorities List (NPL) and as provided for in this Agreement. A release at the Site cannot be deleted from the NPL unless it is determined, in accordance with CERCLA, the NCP, and this Agreement, that the Air Force has implemented all appropriate response actions for such release, and that the release at the Site no longer poses a threat to human health or the environment. All response actions at the Site shall occur in discrete locations termed IRP Sites, MMRP Sites or Operable Units (OUs). In addition, the scope of this agreement covers contamination that is on the TIAASS, and off Air Force Plant 44, where the source is located on Air Force Plant 44, including contamination that originated on Air Force Plant 44 that is co-mingled with any other source. As noted herein, the TIAASS Consent Decrees addresses the USAF's obligations for the comingled contamination addressed

pursuant to these Consent Decrees. This Agreement does not modify the obligations of the USAF pursuant to the TIAASS Consent Decrees.

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 expedite the initiation of response actions at the Site, including Accelerated Operable Units (AOUs) 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.

5.7 On July 17, 2008, EPA issued a Special Notice Letter pursuant to Section 122(e) of CERCLA, 42 U.S.C. Section 9622(e), to USAF and several private parties regarding 1,4-Dioxane (DX) contamination within the Tucson International Airport Area Superfund site north of Los Reales Road. Following this letter and subsequent meetings, EPA, USAF and the private parties anticipate amending the June 5, 1991 Consent Decree or executing a new consent decree in FY11 to include the remedial investigation and feasibility study of DX contamination north of Los Reales Road, and if selected in a subsequent record of decision, appropriate remedial design and action to address this DX contamination.

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 Air Force for any matters contained herein nor shall anything in this Agreement constitute an admission by the Air Force with respect to any finding of fact or any legal determination noted herein.

6.2 Respondent Air Force is a federal agency of the United States Government. The United States (through the Air Force) owns the real property at Air Force Plant 44; Air Force Plant 44 is operated by the plant operator. Air Force Plant 44 is located on flat terrain approximately fifteen miles south of downtown Tucson, Arizona, and encompasses 1,319 acres of land in Pima County. Air Force Plant 44 lies immediately south, west, and contiguous to the Tucson International Airport. Located to the west of Air Force Plant 44 are the Nogales railroad spur of the Southern Pacific Transportation Company, Nogales Highway (U.S. Route 89), private property, and the San Xavier Indian Reservation. Vacant land and light commercial property lie to the south. Air Force Plant 44 currently includes more than 100 buildings and structures with more than one million square feet of covered space, and employs more than 10,000 people. Areas within Air Force Plant 44 generally fall within five categories: 1) explosives storage, assembly, and testing; 2) inert assembly and support; 3) groundwater treatment; 4) industrial waste treatment; and 5) unused areas and land planned for future use.

6.3 At Air Force Plant 44, the Air Force's operating contractors used and disposed of metals, chlorinated solvents and other substances at Air Force Plant 44 since 1951. At Air Force Plant 44, trichloroethylene (TCE) was used in several degreasers and as a general-purpose solvent from the 1950s through the mid-1970s. By the mid-1970s, TCE was replaced with 1,1,1 trichloroethane (TCA) as the dominant solvent in use at Air Force Plant 44. In the late 1980s, TCA was discontinued in favor of limited freon use and aqueous degreasers.

6.4 Formulations of solvents used at Air Force Plant 44, specifically TCA, contained DX added by the solvent manufacturer to stabilize and to enhance the life of the solvents. The use of DX prevented solvents from breaking down in the presence of light, heat and oxygen, or from reacting with acids and metal salts during the degreasing process. DX was typically used with TCA in mixtures up to eight percent DX by volume.

6.5 From 1952 to the late 1960s or early 1970s, spent TCE and TCA was collected from the manufacturing area and disposed in drums into generally uncontrolled landfills at Air Force Plant 44. Liquid solvent wastes were discharged into unlined disposal channels and pits, as well as into various landfills at Air Force Plant 44. Waste solvents and other substances, including TCE, TCA and DX, have migrated from these disposal areas into groundwater at the Site.

6.6 In early 1981, the EPA and the Arizona Department of Health Services identified contaminants in the upper zone of the regional aquifer underlying the areas around the Tucson International Airport. In response to this, the Air Force began extensive groundwater investigations to determine if contamination existed under Air Force Plant 44 and, if so, to determine the extent of the contamination. In 1983, the EPA added the Tucson International Airport Area Superfund site, which includes Air Force Plant 44, to the NPL. Air Force Plant 44 occupies the southern end of the Tucson International Airport Area Superfund site as listed on the NPL, lying south of the east-west line of Los Reales Road.

6.7 The Air Force conducted initial investigations in 1981-1982 that determined that chromium and chlorinated solvents were present in the groundwater underlying Air Force Plant 44, which likely were the result of historic waste management and disposal practices at Air Force Plant 44 prior to 1977. A groundwater-monitoring program initiated in 1981 continues to the present time. In September 1987, the EPA conducted a RCRA Facility Assessment to identify and assess the potential for release of hazardous wastes from solid wastes management units (SWMUs) and to evaluate the need for further actions. The RCRA Facility Assessment was part of the process for approving an Industrial Wastewater Treatment Plant EPA Part B Permit application for Air Force Plant 44. The RCRA Facility Assessment listed 164 SWMUs. The Proposed EPA Part B Corrective Action Permit was published in October 1988, and required that only the 10 active SWMUs be investigated. The RCRA Corrective Action Permit, issued to the Plant operator, and to the owner, the USAF, allowed the work to follow the CERCLA process. The Air Force developed an RI work plan in 1991 prior to conducting an RI at a total of 10 historical locations and 13 corresponding SWMUs within Air Force Plant 44 to gather

additional information and characterize the nature and extent of contamination. The RI was required, as part of the RCRA Part B Permit, to adhere to conditions established by the EPA. The Air Force prepared a remedial investigation work plan in 1991, and a remedial investigation addendum 1992, to fulfill additional requirements of the RCRA Part B Permit and to identify the presence and characteristics of other potential contaminants. The intent of the remedial investigation also was to fulfill all legal requirements under the Defense Environmental Restoration Program, CERCLA and RCRA. Field work was conducted in 1991 and early 1992, primarily associated with locations with vadose zone contamination and not associated with regional aquifer investigations. In July 1992, the Air Force submitted an Interim Remedial Investigation Report for Air Force Plant 44. Supplemental Remedial Investigation field work in June and July 1992 was reported in a follow up attachment. Such additional investigations have expanded an initial 48-well system to almost 200 groundwater monitoring wells on and in the vicinity of Air Force Plant 44. In conjunction with other investigations regarding the Tucson International Airport Area Superfund site, EPA and the Air Force have determined that the groundwater contamination from Air Force Plant 44 combines with other contamination sources originating at the Tucson International Airport. This agreement addresses contamination south of Los Reales Road, which has been funded by the Air Force since the 1980s, as well as contamination that is on the TIAASS, and off Air Force Plant 44, where the source is located on Air Force Plant 44, including contamination that originated on Air Force Plant 44 that is co-mingled with any other source. As noted Section in 9.9, the TIAASS Consent Decrees address the USAF's obligations for the comingled contamination addressed pursuant to these Consent Decrees. This Agreement does not modify the obligations of the USAF pursuant to the TIAASS Consent Decrees.

6.8 Primary contaminants that have entered the groundwater and soils from Air Force Plant 44 include: TCE, TCA, DX, benzene, chromium, cadmium, lead and nickel. Sampling data from 2009 noted TCE in the groundwater at a maximum of 850 parts per billion (ppb), and DX at a maximum of 1,100 ppb.

6.9 Based on initial investigations and monitoring, in 1985 the Air Force issued a remedial action plan and ROD to construct a treatment system on Air Force Plant 44 to treat groundwater south of Los Reales Road. The Air Force constructed a pilot groundwater treatment plant, which operated until 1986 to confirm the feasibility of the treatment strategy. In April 1987, the Air Force activated a full-scale groundwater treatment plant, capable of treating over 5,000 gallons per minute. This system, located south of Los Reales Road, was designed to intercept and isolate contamination moving to the north of Los Reales Road, and includes extraction wells, a groundwater treatment plant to treat water contaminated primarily with TCE, and recharge wells and monitoring wells.

6.10 In 1994 the Air Force turned off the chromium treatment system because all the wells were below the chromium treatment standard except for one well. In 2000, three new extraction wells installed east of Building 801 exceeded the maximum chromium contamination level of 100 ppb. The Air Force installed a well head chromium treatment

system on the new wells. The treatment system operated until 2003 when the Air Force determined the well head treatment system was not effective because of the high cost and the treatment did not lower the influent chromium coming into the plant. The Air Force requested permission from the EPA and ADEQ to turn off the system; however the regulators denied the Air Force's request. The Air Force turned off the chromium treatment and continued to pump only from the wells that were below the chromium treatment level.

6.11 Groundwater testing in 2002 determined that DX, which was not previously identified as a contaminant of concern, was present in the groundwater under Air Force Plant 44. DX has a low Henry's Law constant (4.88×10^{-6} atmosphere-meter^3/mole), a moderate vapor pressure (38.0 millimeters of mercury at 25 °C) and a tendency to volatilize slowly, and is fully miscible in water. With these characteristics, DX is highly mobile in soil and groundwater, and does not significantly adsorb onto suspended sediments, and therefore is not effectively removed by groundwater treatment systems with air stripping and carbon adsorption.

6.12 Air Force Plant 44 is the most significant potential source of DX in the commingled plume north of Los Reales Road. Prior to the discovery of DX in Air Force Plant 44 groundwater, the Air Force sent water from its treatment system to reinjection wells. Because the Air Force's treatment system did not mitigate DX contamination, this practice spread DX into the commingled groundwater plume north of Los Reales Road. The groundwater contamination north of Los Reales Road is addressed through the Tucson Area Remediation Project (TARP), with treated water being served to roughly 9% of the Tucson Water service network. As an interim measure, in January 2004 the Air Force shut off selected injection and extraction wells throughout Air Force Plant 44 to maximize containment of the DX to the extent practicable and control migration north of Los Reales Road. This change was discussed with the EPA and ADEQ in quarterly meetings and approved by the agencies following presentation of the results of computer modeling, which demonstrated the effect of the pumping strategy on DX and TCE concentrations in the regional aquifer. Because of this modification in operation of the Air Force's treatment system, the system was not wholly effective at containing the contaminated groundwater plume from Air Force Plant 44, allowing some TCE and DX to migrate north into the TARP system.

6.13 On July 12, 2007, EPA issued an order pursuant to Section 1431 of the Safe Drinking Water Act (the SDWA Order) to the Air Force and its government contractor operating Air Force Plant 44. The SDWA Order required the respondents to install a new treatment system to better capture groundwater contaminants from Air Force Plant 44, including TCE and DX south of Los Reales Road. The Air Force completed the work required in the SDWA Order, and the enhanced treatment system was deemed operational and functional by EPA in September 2009. EPA closed the SDWA Order on September 29, 2009 via a Notice of Completion of Administrative Order for Response Action at the TIAASS.

6.14 The Parties have identified several areas within Air Force Plant 44 that have been subject to previous investigation and response. The background and status of the more significant areas are listed below. Additional areas within Air Force Plant 44 that have been the subject of previous investigations or responses to address DX and TCE on Air Force Plant 44, south of Los Reales Road, are stated in Appendix A.

6.14.1 Installation Restoration Program (IRP) Site 1 (USAF IRP Site Code: DP-01), includes the Ranch Site, which encompasses about 32 acres along the southern boundary of Air Force Plant 44, and two unlined trenches located in the northern half of Air Force Plant 44, which from approximately 1952 to 1955, the Air Force used as a general disposal area. The Air Force graded and covered the trenches with native soil in 1955. Liquids known to have been disposed of in the Ranch Site area include machining coolants and lubricants, TCE, methylene chloride, spent solvents (not otherwise specified), and paint sludges and thinners. Initial investigation at Site 1 showed elevated chlorinated VOCs and total petroleum hydrocarbons (TPH) in soil, as well as buried drums, which the Air Force removed in the early 1990s. The Air Force initiated a removal action with soil vapor extraction (SVE) with granular activated carbon as a response plan for Site 1. The Air Force installed the SVE system in the spring of 1996, and operated it from July 1996 through August 1997. The system removed approximately 6,888 pounds of VOCs before achieving the cleanup standard for VOCs defined in the applicable ROD. Following unsuccessful confirmation sampling, the Air Forced operated the system between March and July 1999, which removed the residual TCE. On September 30, 1997, EPA signed a ROD that selected this ongoing removal action as the final remedy for Site 1, and ADEQ and the Air Force, respectively, signed the ROD on January 6, 1998 and May 19, 1998. The Air Force submitted a Remedial Action Completion Report (RACR) in September 2000. In 2007 ADEQ revised the criteria for accepting soil cleanup of VOCs to allow direct soil vapor sampling for confirmation, rather than bulk soil analyses, as was used for Site 1. A project is underway to revise the RACR for Site 1 to reflect the latest regulatory changes.

6.14.2 IRP Site 2 (USAF IRP Site Code: DP-02), the Final Assembly and Checkout (FACO) Landfill, occupies 2.9 acres near the southeast corner of Air Force Plant 44. The Air Force used Site 2 from approximately 1955 until the late 1960s or early 1970s, for the disposal of flammable solvents; spent 1,1,1-trichloroethane; TCE; methylene chloride; machine coolants and lubricants; and paint sludges and thinners. Studies and excavations at Site 2 indicate that wastes were placed in six to eight unlined trenches or pits that were six to seven feet deep, and were subject to open burning in the trenches. Initial sampling showed elevated chlorinated VOCs remaining. In 1980, the Air Force placed a soil cover over the FACO landfill and seeded it for vegetation. The Air Force initiated a removal action for Site 2 using an SVE system with resin adsorption. The Air Force installed the SVE system in the spring of 1996 and operated it from August 1996 through November 2000. On September 30, 1997, EPA signed a ROD that selected this ongoing removal action as the final remedy for Site 2, and ADEQ and the Air Force, respectively, signed the ROD on January 6, 1998 and May 19, 1998. The system removed approximately 75,593 pounds of VOCs before achieving the cleanup standard for VOCs defined in the ROD. The Air Force submitted a RACR in September 2003. In 2007 ADEQ revised the

criteria for accepting soil cleanup of VOCs to allow direct soil vapor sampling for confirmation, rather than bulk soil analyses, as was used for Site 2. A project is underway to revise the RACR for Site 2 to reflect the latest regulatory changes.

6.14.3 IRP Site 3 (USAF IRP Site Code: DP-03), the Inactive Drainage Channel Disposal Pits, is a 78 acre area in the north-central quadrant of Air Force Plant 44, immediately under Buildings 815A, 826, 827A, and 827C. Site 3 includes former unlined solvent disposal pits that the Air Force excavated in the north and south halves of Site 3. Additionally, the Air Force used one area in the south half of Site 3 for the burial of containerized liquid wastes. Potential pit locations in the north and south portions of Site 3 are geographically distinct and have been considered as separate response areas. Initial investigation at Site 3 showed elevated chlorinated VOCs in the soil. The Air Force initiated a removal action for Site 3 using an SVE system with granular activated carbon. The Air Force installed the SVE system in the spring of 1996 and operated it from August 1996 through July 2004. On September 30, 1997, EPA signed a ROD that selected this ongoing removal action as the final remedy for Site 3, and ADEQ and the Air Force, respectively, signed the ROD on January 6, 1998 and May 19, 1998. The system removed approximately 13,081 pounds of VOCs before achieving the cleanup standard for VOCs defined in the ROD. The Air Force submitted a RACR in October 2006. In 2007 ADEQ revised the criteria for accepting soil cleanup of VOCs to allow direct soil vapor sampling for confirmation, rather than bulk soil analyses, as was used for Site 3. A project is underway to revise the RACR for Site 3 to reflect the latest regulatory changes.

6.14.4 IRP Site 4 (USAF IRP Site Code: WP-04), the Former Unlined Surface Impoundments, encompasses about 10 acres in the west-central portion of Air Force Plant 44 and consists of three former unlined impoundments, designated Site 4 East and West, in which the Air Force discharged treated and untreated industrial wastewater from approximately 1961 to 1977. The industrial wastewater consisted primarily of rinse water from plating processes, neutralized caustics, cooling tower blowdown, and some concentrated solutions of chromium. Sampling at Site 4 showed elevated metals (chromium, cadmium, and nickel) in the soil. In February 1996, the Air Force initiated a removal action for Site 4 that included soil excavation, stabilization, and off-Site disposal, beginning first at Site 4 East, and then in April 1997, at Site 4 West. The Air Force conducted the removal action for Site 4 East in conjunction with the closure of the 3 and 4 series surface impoundments under RCRA. In this action, the Air Force excavated, stabilized and disposed of approximately 13,949 tons of soil off-Site at a RCRA Class I landfill. On September 20, 1998, EPA signed a ROD for Site 4 that selected the ongoing removal action as the final, permanent remedy. On December 31, 1998, and April 13, 1999, ADEQ and the Air Force, respectively, signed the ROD. A Removal Action Completion Report was submitted in February 1998 for Site 4. Although this Removal Action Completion Report was staff-approved by EPA and ADEQ in March 1998, Site 4 is not yet formally closed by the agencies pending review and management approval by EPA and ADEQ of the Air Force documents submitted to solicit formal closure.

6.14.5 IRP Site 5 (USAF IRP Site Code: WP-05) is located in the central portion of Air Force Plant 44 around Building 801 and includes former sludge drying beds, an early industrial wastewater treatment plant, old pipelines that conveyed waste metals to sludge drying beds, and an old oil spreading area. The Air Force constructed the initially unlined sludge drying beds in the 1960s, but subsequently lined the sludge drying beds with plastic and bentonite. The Air Force used the beds until 1977, when it covered them with an asphalt parking lot. As a means of dust control, the Air Force spread waste oil directly south of Building 830. Sampling at Site 5 showed elevated metals (cadmium, chromium, copper and zinc) in the soil. In March 1997, the Air Force initiated a removal action for Site 5 that included soil excavation, stabilization, and off-Site disposal. In this action, the Air Force excavated, stabilized and disposed of approximately 5,033 tons of soil off-site at a RCRA permitted facility. Post-excavation soil sampling confirmed that no concentrations in remaining soil exceeded standards. The Air Force submitted a Removal Action Completion Report for the soil excavation work in August 1997.

In the late 1990s, the Air Force then expanded Site 5 westward in response to the identification of soil contamination related to former solvent vapor degreasers located in Building 801. These facilities used TCE, TCA and Freon 113 for degreasing and painting operations associated with weapons production. Supplemental investigation activities in 1998 identified VOC contamination in the deep vadose zone in the vicinity of Building 801. The Air Force implemented a remediation system for treatment of the VOCs in the vadose zone near Building 801, employing a Dual-Phase Extraction (DPE) system to remove both vapor and groundwater contamination. The Air Force installed one dual phase extraction well in September 1995, which it then expanded to more wells and operated until 2004. The first well removed an estimated 5,925 pounds of VOCs. The full DPE system removed an estimated total of 8,199 pounds of VOCs. On September 20, 1998, EPA signed a ROD for Site 5 that selected the ongoing removal action as the final, permanent remedy. On December 31, 1998, and April 13, 1999, ADEQ and the Air Force, respectively, signed the ROD. The Air Force submitted a revised RACR in September 2006. In 2007 ADEQ revised the criteria for accepting soil cleanup of VOCs to allow direct soil vapor sampling for confirmation, rather than bulk soil analyses, as was used for Site 5. EPA and ADEQ have denied the Air Force request to close Site 5 because of elevated levels of chromium east of Bldg 801 and their concern about the lack of characterization beneath Bldg 801. Bldg 801 is the largest manufacturing building and is the source of volatile organic compounds and chromium on the eastern edge of Site 5. Because of the impasse the Air Force is updating the Five-Year ROD review for Site 5.

6.14.6 IRP Site 6 (USAF IRP Site Code: SD-06) is located in the western portion of Air Force Plant 44 and consists of a system of open, unlined drainage channels/ditches that the Air Force used from 1955 until 1961 to transport industrial wastewater from Building 801 to areas west of the developed portion of Air Force Plant 44. In the early 1960s, the Air Force re-routed the drainage channels toward unlined surface impoundments within Site 4. The drainage channels/ditches received treated and untreated chromium

wastewater, neutralized acid solutions, and rinse-water. From 1962 to 1977, the drainage channels/ditches also received untreated liquid waste, including alkaline cleaning solutions, rinse water, paint booth wash, accidental spillage, accidental tank overflow, cooling tower blowdown, and condensate. Sampling at Site 6 showed elevated metals in the soil. In April 1997, the Air Force initiated a removal action for Site 6 that included soil excavation, stabilization, and off-Site disposal, beginning first in the eastern section, and then, in January 1998, in the western section. The second phase also addressed contamination at the Radar Test Range and a historical drainage channel underlying IRP Site 3. The Air Force conducted the removal action for Site 6 East in conjunction with the closure of the 3 and 4 series surface impoundments under RCRA. In this action, the Air Force excavated, stabilized and disposed of approximately 37,192 tons of soil off-Site at a RCRA Class I landfill. On September 20, 1998, EPA signed a ROD for Site 6 that selected the ongoing removal action as the final, permanent remedy. On December 31, 1998, and April 13, 1999, ADEQ and the Air Force, respectively, signed the ROD. The Air Force submitted Removal Action Completion Reports in September 1998 and February 2001 for Site 6 East and West, respectively. Although these Removal Action Completion Reports were staff-approved by EPA and ADEQ, Sites 6 East and West are not yet formally closed by the agencies pending review and management approval by EPA and ADEQ of the Air Force documents submitted to solicit formal closure.

6.14.7 IRP Site 7 (USAF IRP Site Code: FT-07), North FACO Fire Training Area, consists of an area about 0.25 acres in size located in the northeast corner of the plant property, which was identified as a SWMU in 1987. The Air Force investigated the practice for fire response training of dumping, igniting and extinguishing the contents of two 55-gallon drums containing alcohols and flammable solvents (including acetone and methyl ethyl ketone). Some fire training sessions also included metal and wood. On September 30, 1997, EPA signed a ROD that determined No Further Remedial Action Planned (NFRAP) for Site 7. ADEQ concurred on the NFRAP determination with signature of the ROD on May 19, 1998. The ROD was signed by the Air Force on August 6, 1998.

6.14.8 IRP Site 8 (USAF IRP Site Code: FT-08), the South FACO Fire Training Area and Magnesium Burn Area, occupies approximately 9 acres near the base of FACO water tower. The Air Force investigated the practice of magnesium burn and fire response training within Site 8. On September 30, 1997, EPA signed a ROD that determined No Further Remedial Action Planned (NFRAP) for Site 8. ADEQ concurred on the NFRAP determination with signature of the ROD on May 19, 1998. The ROD was signed by the Air Force on August 6, 1998.

6.14.9 IRP Site 9 USAF IRP Site Code: FT-09), the North and South FACO Fire Training Areas, occupies approximately 3.5 acres in the eastern section of the plant property between the North and South FACO. Site 9 was identified as a SWMU in 1987. The Air Force investigated the uses and contamination in Site 9. On September 30, 1997, EPA signed a ROD that determined No Further Remedial Action Planned (NFRAP) for

Site 9. ADEQ concurred on the NFRAP determination with signature of the ROD on May 19, 1998. The ROD was signed by the Air Force on August 6, 1998.

6.14.10 IRP Site 17 (USAF IRP Site Code: OT-12) is the Regional Groundwater. The first indications of groundwater contamination in areas near Air Force Plant 44 appeared in the early 1950s when elevated levels of chromium were detected in a municipal supply well adjacent to the plant and residents around the Tucson International Airport complained of foul-smelling water from private supply wells. In early 1981, EPA and the Arizona Department of Health Services identified VOCs and elevated levels of metals in the upper zone of the regional aquifer underlying areas around the Tucson International Airport, adjacent to Air Force Plant 44. Further investigations showed metals and chlorinated solvents in groundwater and soils with high contaminant concentration areas identified within Air Force Plant 44. A Remedial Action Plan and Record of Decision (Pre-SARA ROD) was submitted to the USEPA in November 1985 to address groundwater contamination. A large-scale (5,000 gpm design) groundwater extraction and treatment plant has been operating since 1986, and was replaced by an upgraded advanced oxidation process system in September 2009. An annual summary report is being prepared summarizing the reclamation well field and soil remediation operations. Electronic data are being submitted annually to the EPA and ADEQ. A Focused Remedial Investigation is being finalized. Supplemental well installation activities will be performed, including further investigation near EPA-03, which will be documented in a Supplemental Off-Site Well Report. A project is underway to perform a feasibility study, proposed plan, and record of decision for DX and TCE from Air Force Plant 44 for the regional groundwater.

6.14.11 IRP Site 14 (USAF IRP Site Code: OT-13), is the Shallow Groundwater Zone (SGZ), located in the northwest corner of Air Force Plant 44 with groundwater at depths of 100 feet beneath an area of approximately 70 acres. The subsurface material is contaminated with VOCs, DX, and chromium, and is a potentially continuing source to the regional aquifer. Investigations suggest that former disposal practices in Sites 3, 4, and 6 may have affected the SGZ. In 1997, the Air Force began an SGZ removal action that included the implementation of a DPE system, through which extracted water is pumped to Air Force Plant 44 ground water treatment system and vapors are captured in a vapor recovery unit. The DPE system removed approximately 3,672 pounds of TCE from extracted vapor and groundwater before being discontinued in November 2008. The system was designed to work in support of a bioremediation amendment system that was discontinued in May 1998, when the Air Force discovered that a shipment of methanol being injected as an amendment to stimulate bioactivity was contaminated with tetrachloroethylene (PCE). The Air Force's evaluation of the bioremediation system concluded that the DPE system was ineffective as implemented and has been shut down. All work performed to date at the SGZ has been completed as interim actions. A Remedial Process Optimization (RPO) study on the remediation systems at the SGZ is on-going. The RPO will assess the applicability of *in situ* chemical oxidation and *in situ* bioremediation pilot testing performed elsewhere at the Site and provide recommendations for additional remedial actions at the SGZ that may be required to achieve groundwater remediation standards. Specific RPO approaches include compiling

and evaluating existing data on the geology, hydrogeology, chemistry, and operational performance of the existing systems. Additionally, because the SGZ and the regional groundwater are hydrologically connected, the Air Force will incorporate Site 14 into the Regional Groundwater response.

6.14.12 IRP Site 15 (USAF IRP Site Code: DP-04), the Potential Trench Zone, occupies approximately 1 acre near the southeast corner of Air Force Plant 44. Site 15 was identified from aerial photographs as a previously unidentified disposal site during a RCRA Facility Investigation in 1987. The Air Force investigated the use and contamination in Site 15. On September 30, 1997, EPA signed a ROD that determined No Further Remedial Action Planned (NFRAP) for Site 15. ADEQ concurred on the NFRAP determination with signature of the ROD on May 19, 1998.

6.14.13 (a) Ten RCRA SWMUs were identified in EPA's Part B Corrective Action Permit of 1988. Three additional SWMUs were added in the 1991 Work Plan. Some of these SWMUs were located within the boundaries of IRP Sites and the investigation and corrective action requirements for these SWMUs have been/are being addressed under CERCLA actions for the analogous IRP as specified in the 1991 Remedial Investigation Work Plan. (b) Additional SWMUs requiring further investigation were deferred to the State Superfund program in 1999 when ADEQ completed the RCRA Corrective Action Analogous Review and are now addressed by this Agreement. Future and pending investigations and corrective actions, if required, for all outstanding SWMUs will follow the CERCLA process. The following SWMUs were determined to be active (i.e., in use) at the time of execution of this Agreement and are all subject to all applicable federal and state regulations:

93	Drum Holding Area
98	Triple Rinse Building
115	Building 833 Steam Cleaning Bay
117	New Waste Flammable Storage Building 827C
130-131	Wastewater Accumulation System
137	TCA Drums
158	Dumpsters throughout Facility
159	Loading Docks throughout Facility
160	Salvage and Maintenance Facility
161	Maintenance Facilities
H	New Chip Yard
I	Accumulated Tank for 827A Drainage

(c) SWMUs 58, 59, 60, 63, 64, 65, 67, and 68 that had previously been at Air Force Plant 44 were transferred to Air Force Plant 6 in Atlanta, Georgia in 2002, and thus are not covered by this Agreement.

(d) SWMUs 121-124 and 136 are not located on Air Force Plant 44 and are not subject to this Agreement. These SWMUs will continue to be addressed separately by the State and the respective operator.

6.14.14 The Department of Defense established the Military Munitions Response Program (MRP) under the Defense Environmental Restoration Program (DERP) to address sites with unexploded ordnance (UXO), discarded military munitions (DMM), and munitions constituents (MC) located on non-operational (e.g., closed, transferred or transferring) range lands. In support of the Military Munitions Response Program (MMRP), a Modified Comprehensive Site Evaluation Phase I was performed to: characterize the site; evaluate actual or potential release(s) of hazardous substance(s), pollutant(s), or contaminant(s) to migration/exposure pathways (e.g., groundwater, soil, air) from munitions response areas (MRAs); and to evaluate associated targets of concern. Based on a thorough review and analysis of historical maps data acquired during the Modified CSE Phase I, two sites were identified. The 1950s Pistol Range was identified on a Hughes Aircraft Company map dated December 11, 1961, located just south of the Site 2 FACO Landfill. It is discernable on a 1958 aerial photograph and evident on a 1966 aerial photograph; from 1958 to 1966 the pistol range appears largely unchanged. The 1980s Pistol Range lies north of the Site 2 FACO Landfill. It was determined that there is a potential for environmental impacts from MC to have occurred at the 1950s Pistol Range and the 1980s Pistol Range, with lead being the primary contaminant of concern. A CSE Phase II is currently underway (FY10) and a Remedial Investigation is programmed in FY12 at these two sites.

6.15 Appendix A to this Agreement is an initial list of IRP Sites for which an RI/FS must be completed in accordance with this Agreement. Appendix B is an initial list of Operable Units for which the RI/FS is complete and a Proposed Plan and/or a Record of Decision has been submitted in draft or issued. Appendix C is a list of sites being addressed under other environmental regulatory programs, with a notation of the documents that the Air Force has provided for EPA and ADEQ to review in consideration of formal closure. Appendix D is a list of sites that do not pose a threat or potential threat to public health, welfare, or the environment and require no further action under CERCLA. These sites will not be investigated further, unless new information leads the Parties to believe that the sites have released hazardous substances, hazardous waste, or hazardous constituents into the environment and therefore pose a threat or potential threat to human health or the environment. Appendix E lists initial sites at Air Force Plant 44 suspected to contain UXO, DMM, or MCs at which the Army Corps of Engineers is currently conducting or has conducted site inspections. Any Party to this Agreement may, after site inspection is complete at an MRP site, propose the site as an Operable Unit under this Agreement, using the procedures in Subsection 9.2.2.

6.16 A Unified Community Advisory Board (UCAB), which incorporates all Potentially Responsible Parties (PRPs) of the Tucson International Airport Area (TIAA) Superfund Site, has been meeting on a regular basis since 1995. Meetings are currently held quarterly and are commonly attended by community members, regulators, PRPs, and consultants. The USEPA co-chairs the UCAB with a community member. The Air Force has established an Air Force Plant 44 Administrative Record at Wright-Patterson Air Force Base, 1801 Tenth St and EPA houses an Information Repository at the El Pueblo Center, 101 W Irvington, Tucson AZ. A full Administrative Record for the TIAA

Superfund Site is kept by EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. In addition, many documents related to the site are located in ADEQ's Central Files, 1110 W. Washington Street, Phoenix, AZ 85007.

VII. EPA DETERMINATIONS

7.1 The following constitutes a summary of the determinations relied on 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.

7.2 The United States Department of the Air Force is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

7.3 Both the Facility and Air Force Plant 44 are 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.

7.4 The United States is the owner of Air Force Plant 44 as defined in Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. Sections 9601(20) and 9607(a)(1). The Air Force is the DoD component charged with fulfilling the obligations of the owner/operator under CERCLA at Air Force Plant 44. With respect to Air Force Plant 44, the Secretary of Defense has delegated to the Air Force the CERCLA authority vested in him by Executive Order 12580. The Air Force is also the "lead agency," as defined in 40 C.F.R. Section 300.5, for planning and implementing response actions under CERCLA at Air Force Plant 44.

7.5 There has been a release or a substantial threat of a release of hazardous substances, pollutants, contaminants, hazardous wastes or constituents at or from Air Force Plant 44.

7.6 The actions provided for in this Agreement are not inconsistent with the NCP.

7.7 The actions provided for in this Agreement are necessary to protect the public health, welfare, and the environment.

7.8 This Agreement provides for the expeditious completion of all necessary response actions.

VIII. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

8.1 The Parties intend to integrate the Air Force's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous

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

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

8.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at Air Force Plant 44 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 for Air Force Plant 44 for ongoing hazardous waste management activities at the Site, EPA and/or ADEQ shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. With respect to those portions of this Agreement incorporated by reference into permits, the Parties intend that judicial review of the incorporated portions shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

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

IX. WORK TO BE PERFORMED

9.1 The Parties recognize that background information exists and has been reviewed prior to developing the Work Plans required by this Agreement. The Air Force need not halt currently ongoing work but may be obligated to modify or supplement work previously done to 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.

9.2 Operable Units

9.2.1 The Air Force shall develop, implement and report on Remedial Investigation and Feasibility Studies (RI/FSs) for the Operable Units listed in Appendix A and new Operable Units established under Subsection 9.2.2. If an Operable Unit is modified under Subsection 9.2.3, and RI/FS work is appropriate for the modified Operable Unit, then the Air Force shall develop, implement and report on a RI/FS for the modified Operable Unit.

9.2.2 Any Party may propose that a new site within the Site be designated as an Operable Unit. The proposal must be in writing to the other Parties and must state the reasons for designating a new Operable Unit. The proposal shall be discussed by all Project Managers within forty-five (45) days 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 completion of the Project Managers' discussion concerning the proposal, or if the need for an Operable Unit is established through Dispute Resolution, the proposed new site shall be an Operable Unit, as that term is defined in Section II – DEFINITIONS of this Agreement.

9.2.3 A 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. The proposal shall be discussed by the Project Managers within forty-five (45) days of the written notice. Dispute Resolution may be invoked if the Parties are not in agreement on the proposal to modify a specific Operable Unit. If Dispute Resolution is not invoked within thirty (30) days after the Project Managers' discussion concerning the modification, 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.

9.2.4 In the Site Management Plan, the Air Force shall include a Schedule and Milestone(s) for submitting RI/FS Work Plan(s) for the Operable Units in Appendix A, except for those Operable Units for which RI/FS Work Plans have already been submitted. When a new Operable Unit is established under Subsection 9.2.2, the Air Force shall, in the next draft amendment to the Site Management Plan, propose a Milestone for submitting a RI/FS Work Plan for the new Operable Unit. When an Operable Unit is modified under Subsection 9.2.3, and RI/FS work is appropriate for the modified Operable Unit, the Air Force shall, in the next draft amendment to the Site Management Plan, propose a Milestone for submitting a RI/FS Work Plan for the modified Operable Unit. The RI/FS Work Plan(s) shall contain proposed Schedules and Milestone(s) for the submittal of the RI/FS Report(s). The Schedule(s) and Milestone(s) included in the Final RI/FS Work Plan(s) shall be incorporated into the Site Management Plan in accordance with Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement. The development of the FS(s) will proceed in accordance with Subsection 9.2.7 of this Agreement.

9.2.5 For those Operable Units that the Parties determine represent a negligible or minimal risk and are strong candidates for no action, the Air Force shall submit a concise FS statement indicating negligible or minimal risks were found and no action is warranted. If the Parties determine that no action is required, a no-action Proposed Plan will be prepared. A Schedule for completing a no-action Proposed Plan will be developed in accordance with Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

9.2.6 RIs shall be conducted in accordance with the requirements and Schedules set forth in the approved RI/FS Work Plan(s) 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.

9.2.7 The Air Force agrees it shall develop, implement and report upon a FS for areas subject to a RI. The FS shall be conducted in accordance with the requirements and Schedules set forth in the Site Management Plan. The FS shall meet the purposes set forth in Section IV – PURPOSE of this Agreement.

9.3 Procedures for Interim Remedial Actions

9.3.1 The Air Force shall implement those Interim Remedial Actions (IRA) necessary to prevent, minimize, or eliminate risks to human health and the environment caused by the release of hazardous substances, pollutants, or contaminants. An Interim Remedial Action 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.

9.3.2 When a Party to this Agreement determines that an Interim Remedial Action is necessary for any area(s) within the Site, such Party shall notify, in writing, the other Parties, of the proposal. The Proposal Notification to the other Parties under this Subsection 9.3.2 shall at a minimum include the location(s) of such area(s) within the Site and the reason(s) the Party believes an Interim Remedial Action is required. Any Party may propose an IRA for those Operable Unit(s) most suitable for an Interim Remedial Action.

9.3.3 Within thirty (30) days 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 that cannot be settled between the Parties within thirty (30) days from completion of the meeting, the dispute(s) shall be immediately brought to the Dispute Resolution Committee (DRC) pursuant to Section XX – DISPUTE RESOLUTION.

9.3.4 After the determination that an Interim Remedial Action is required under this Agreement, the Air Force shall, in the next draft amended Site Management Plan, submit to EPA and ADEQ proposed Milestone(s) for the submission of Work Plan(s) for the performance of a Focused Feasibility Study (FFS) for the identified area(s). The Milestone(s) will be finalized in accordance with Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN. The Schedule and Milestone(s) 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 Interim Remedial Action 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 Air Force shall develop, implement, and report upon each FFS in accordance with the requirements set forth in the final FFS Work Plan. The Air Force shall follow the steps outlined in Subsections 9.4.2 through 9.7.4 below.

9.4 Records of Decision and Plans for Remedial Action

9.4.1 This Subsection 9.4 shall apply to selection of remedial actions and any disputes relating thereto.

9.4.2 Within forty-five (45) days after finalization of a RI/FS or FFS, the Air Force shall submit a draft Proposed Plan to EPA and ADEQ for review and comment as described in Section X – CONSULTATION. Within fourteen (14) days after receiving EPA's acceptance and ADEQ's comments on the Proposed Plan, the Air Force shall publish its Proposed Plan for thirty (30) days of public review and comment. During the public comment period, the Air Force shall make the Proposed Plan and supporting analysis and information available to the public in the Administrative Record. The Air Force 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.

9.4.3 Following public comment, the Air Force, in consultation with EPA and ADEQ, will determine if the Proposed Plan should be modified based on the comments received. These modifications will be made by the Air Force and the modified documents will be provided to EPA and ADEQ for review. 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 XX – DISPUTE RESOLUTION.

9.4.4 The Air Force shall submit its draft ROD to EPA and ADEQ within forty-five (45) days following the close of the public comment period, including any extensions, on the Proposed Plan. The draft ROD will include a Responsiveness Summary, in

accordance with applicable EPA Guidance. Pursuant to CERCLA Section 120(e)(4)(A), 42 U.S.C. Section 9620(e)(4)(A), EPA and the Air Force, in consultation with ADEQ, shall make the final selection of the remedial action(s).

9.4.5 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 ADEQ 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 Air Force's final remedial action plan, if the Air Force proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria or limitation, the Air Force shall provide an opportunity for ADEQ to concur or not concur in the selection of such plan. If ADEQ concurs or does not act within thirty (30) days of receipt of notification by the Air Force of pending publication of the final remedial action plan, the remedial action may proceed. If ADEQ does not concur, it may act pursuant to Section 121(f)(3)(B) of CERCLA, 42 U.S.C. Section 9621(f)(3)(B).

9.4.6 If EPA and the Air Force are unable to reach agreement on the selection of the remedy, after exhausting the Dispute Resolution process set forth in Section XX – DISPUTE RESOLUTION, then the Administrator shall select the remedy in accordance with all applicable laws and procedures.

9.4.7 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 ADEQ has concurred or not concurred with the selection of the remedy.

9.5 Remedial Design and Remedial Action

9.5.1 The Site Management Plan shall include a Target Date for submission of a preliminary/conceptual Remedial Design (RD) (30 percent design report); a Target Date for submission of the 90 percent or pre-final Remedial Design; and a Deadline for the final Remedial Design. All design documents shall be prepared in accordance with this Agreement and applicable Guidance issued by EPA including *Principles and Procedures for Specifying Monitoring and Enforcement of Land Use Controls and Other Post-ROD Actions (as amended)*.

9.5.1.1 The RD 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.

9.5.1.2 The RD shall describe short and long-term implementation actions, and responsibilities for the actions, to ensure long-term viability of the remedy, which may include both Land Use Controls and an engineered portion (e.g., landfill caps, treatment

systems) of the remedy. The term "implementation actions" includes all actions to implement, operate, maintain, and enforce the remedy.

9.5.2 The Remedial Action (RA) Work Plan(s) shall at a minimum contain a Schedule for the completion of the Remedial Action, a Health and Safety Plan, a Sampling and Analysis Plan, and a Quality Assurance Project Plan, Remedial Action Specifications, Erosion Control and Sedimentation Plan, Decontamination Plan, Remedial Action Contingency Plan, and provisions for operation and maintenance, if necessary. The Schedule contained in the final RA Work Plan(s) will be immediately incorporated in the Site Management Plan.

9.5.3 After the final design document is approved, pursuant to Section X – CONSULTATION, the Air Force shall begin performance of the Remedial Action in accordance with the ROD, final Remedial Design and the RA Work Plan. The Remedial Action shall be completed in accordance with the ROD, approved final Remedial Design and RA Work Plan and all applicable EPA and State Guidance.

9.5.4 Following completion of remedial action at each OU and in accordance with the Schedule in the Site Management Plan, the Air Force shall prepare and submit to EPA and ADEQ a RACR to show that remedial action objectives for an OU have been achieved. The RACR shall provide an explanation for any activities that were not conducted in accordance with the final RD and/or RA Work Plan(s). In addition, for long-term remedies where it is anticipated that remedial action objectives will be achieved over a long period, the Air Force shall submit to EPA and ADEQ, according to the Schedule in the SMP, a RACR which shall document that physical construction is complete and the unit is operating as designed. The RACR(s) shall be prepared in accordance with this Agreement and the DoD and EPA Joint Guidance for Recommended Streamlined Site Closeout and NPL Deletion Process for DoD Facilities (2006).

9.6 Accelerated Operable Unit

9.6.1 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 Air Force shall evaluate all proposed AOUs.

9.6.2 Within thirty (30) days 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 XX – DISPUTE RESOLUTION, the proposed AOU shall be incorporated into the Site Management Plan as an AOU. The Air Force agrees to pursue additional funding within ten (10) days of establishment of the AOU in order to initiate the AOU.

9.6.3 Within fifteen (15) days after the determination that an AOU is required under this Agreement, the Air Force shall submit to EPA and ADEQ proposed Deadlines for the submission of Work Plan(s) for the performance of an AOU FFS for the identified AOU(s). Each AOU Focused Feasibility Study (FFS) Work Plan shall contain a proposed Deadline for submittal of the AOU FFS and Proposed Plan, which will be incorporated in the next Site Management Plan. The Air Force shall develop, implement and report upon each AOU FFS in accordance with the requirements set forth in the final AOU FFS Work Plan. The Air Force shall follow the steps outlined in Subsections 9.4.2 through 9.5.4.

9.7 Supplemental Response Action

9.7.1 The Parties recognize that subsequent to finalization of a ROD, a need may arise for one or more supplemental response actions to remedy continuing or additional releases or threats of releases of hazardous substances, pollutants, or contaminants at or from the Site. If such release or threat of release may present an immediate threat to public health or welfare or the environment, it shall be addressed pursuant to Section XVIII – 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 9.7.2 through 9.8.2.

9.7.2 A supplemental response action shall be undertaken only when:

9.7.2.1 A determination is made that:

9.7.2.1.1 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 ensure the protection of human health or the environment; or,

9.7.2.1.2 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,

9.7.2.2 Either of the following conditions is met for any determination made pursuant to Subsection 9.7.2.1, above:

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

9.7.2.2.2 For supplemental response actions proposed after EPA Certification, the determination must be based upon conditions at the Site that were unknown at the time of EPA Certification or based upon new information received in whole or in part by EPA or ADEQ following EPA Certification.

9.7.3 If, subsequent to ROD signature, any Party concludes that a supplemental response action is necessary, based on the criteria set forth in Subsection 9.7.2, 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 receiving such notification. If the Project Managers fail to reach consensus, any Party may notify the other Parties in writing within ten (10) days thereafter that it intends to invoke dispute resolution. If the Project Managers are still unable to reach consensus within fourteen (14) days of the issuance of notice invoking dispute resolution, the question of the need for the supplemental response action shall be resolved through dispute resolution.

9.7.4 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 9.7.2, the Air Force shall propose a Deadline for submittal of the Supplemental Work Plan(s) and a Schedule for performance of the Work there under to EPA and ADEQ in the next draft amended SMP.

9.7.5 After finalization of a Supplemental Work Plan, the Air Force shall conduct a Supplemental Response Action RI/FS. Following finalization of the Supplemental Response Action RI/FS, the procedures described in Subsections 9.4 and 9.5 shall be followed.

9.8 Construction Completion and Site Completion.

9.8.1 Construction Completion. The Air Force agrees that it shall provide written notice to EPA and ADEQ when physical construction of all remedial actions for all Operable Units is complete and will incorporate in the notice reference to the supporting RACRs.

9.8.2 Site Completion. Following completion of remedial action at the last Operable Unit and in accordance with the Schedule in the Site Management Plan, the Air Force shall prepare and submit to EPA and ADEQ a Remedial Action Completion Report (RACR) to show that remedial action objectives for all OUs have been achieved. The RACR shall provide an explanation for any activities that were not conducted in accordance with the final Remedial Design and/or RA Work Plan(s). The information provided therein shall document compliance with statutory requirements and provide a consolidated record of all remedial activities for all OUs at the Site in accordance with the DoD and EPA Joint Guidance, Recommended Streamlined Site Closeout and NPL Deletion Process for DoD Facilities. In order for the Site to be eligible for completion, the following criteria must be met:

9.8.2.1 Remedial Action Objectives specified in all RODs have been met, and all cleanup actions and other measures identified in the RODs have been successfully implemented;

9.8.2.2 The constructed remedies are operational and performing according to engineering specifications;

9.8.2.3 The Site is protective of human health and the environment;

9.8.2.4 Land use controls are in place as appropriate; and

9.8.2.5 The only remaining activities, if any, at the Site are long term management activities (which may include long-term monitoring).

9.8.3. Information provided for remedial action completion shall be signed by the Air Force's signatory authority or designee, certifying that remedial activities have been completed in full satisfaction of the requirements of this Agreement, and shall include a request for EPA certification of remedial action completion at the Site. Within ninety (90) days of EPA's receipt of the Air Force's request for certification of Site completion, EPA, in consultation with ADEQ, shall:

9.8.3.1 Certify that all response actions have been completed at the Site in accordance with CERCLA, the NCP and this Agreement, based on conditions known at the time of certification; or

9.8.3.2 Deny the Air Force's request for certification of Site completion, stating the basis of its denial from the standards identified in 9.8.2 and detailing the additional Work needed for completion and certification.

9.8.3.3 If EPA, in consultation with ADEQ, denies the Air Force's request for certification for Site completion in accordance with this Agreement, the Air Force may invoke dispute resolution in accordance with Section XX – DISPUTE RESOLUTION of this Agreement within twenty (20) days of receipt of the written denial of certification or determination that additional Work is necessary. If the denial of certification is upheld through the dispute resolution process, the Air Force will perform the requested additional Work.

9.8.3.4 If dispute resolution is not invoked, or if a denial of certification is upheld through dispute resolution, the Air Force shall, in the next draft amended Site Management Plan submitted after receipt of the written denial of certification or dispute resolution finding, propose a Deadline for the submittal of a draft Supplemental Work Plan. The draft Supplemental Work Plan shall contain a Schedule for completion of the additional Work required. This Schedule, once approved, will be incorporated in the Site Management Plan. After performing the additional Work, the Air Force may resubmit a request for certification to EPA as outlined in this Subsection 9.8.3. EPA, in consultation with ADEQ, shall then grant or deny certification pursuant to the process set forth in this Subsection 9.8.3.

9.9 As described briefly in Section 6.7, the TIAASS Consent Decrees address the current USAF's obligations for co-mingled contamination in the Site areas north of Los Reales

Road (OT12/Site 17 in Appendix A). Any such obligations that otherwise would be required by this Agreement are therefore suspended so long as the terms of the TIAASS Consent Decrees are satisfied. This Agreement does not modify the obligations of the USAF pursuant to the TIAASS Consent Decrees.

9.9.1 1,4-Dioxane work at OT12/Site 17, as identified in Appendix A includes a focused remedial investigation in the Site areas north of Los Reales Road, "Area A" as defined in the 1991 Consent Decree (Section I-M) (hereafter referred to as "the area north of Los Reales Road"). It is anticipated that the United States and the other parties to the TIAASS Consent Decrees will amend the 1991 Consent Decree, or enter a new consent decree, to include the investigation and, if needed, remediation of DX contamination in the area north of Los Reales Road. As of the date that such amendment to the 1991 Consent Decree or a new consent decree is judicially approved and while the terms of such a consent decree are enforceable against the parties to that consent decree, then the provisions of this Agreement shall be suspended with respect to the obligations covered by such decree, so long as the Air Force is in compliance with such obligations.

9.9.2 If the Air Force breaches its obligations under the TIAASS Consent Decrees (existing or as may be amended or newly created as described in Section 9.9.1) or an applicable Decree is vacated or terminated without the Air Force having achieved the cleanup goals defined in the applicable Consent Decree or an applicable final ROD, then the Air Force's obligations pursuant this Agreement shall be reinstated.

9.9.3 If the Air Force satisfies the terms of any applicable TIAASS Consent Decree (existing or future) as to obligations to address contamination north of Los Reales Road, then the satisfaction of that applicable Consent Decree likewise satisfies any equivalent obligations suspended under this Agreement as to contamination north of Los Reales Road.

9.9.4 In the event that there is a dispute between EPA and the Air Force concerning whether a particular required obligation is suspended by Paragraph 9.9, the Air Force's obligations under this Agreement shall not be suspended and the Air Force remains responsible for such obligations pending the resolution of the dispute in accordance with Section XX (Dispute Resolution). The Air Force agrees to perform whatever response may be required, if any, during the dispute process, and to comply with the ultimate decision resolving the dispute in accordance with Section XX (Dispute Resolution).

9.9.5 EPA's agreement to suspend any Air Force obligation in Paragraph 9.9 is conditioned upon: (1) the continued existence and effectiveness of an agreement enforceable by EPA in which Site contamination north of Los Reales Road is investigated and addressed in a manner consistent with the NCP; and (2) the timely and effective implementation of the agreement in which contamination north of Los Reales Road within the Site is investigated and addressed in a manner consistent with the NCP (anticipated to be through an applicable consent decree).

9.9.6 The Parties agree that in the event that one of the conditions listed in subsection 9.9.2 above is not met and the Air Force has not satisfied its obligations under an enforceable agreement, the Air Force shall resume responsibility for all suspended obligations under this Agreement. Such responsibilities shall include, but are not limited to (i) implementation of any selected response actions that have not yet been fully performed and (ii) completion of any investigations and preparation of any such deliverables not yet completed to reach a final response decision.

9.9.7 The effective date for the Air Force to resume its responsibilities pursuant to Section 9.9.2 and based on conditions in Section 9.9.5 not being met shall be the date upon which EPA provides written notice to the Air Force that any of the conditions listed in subsection 9.9.5 are not met.

9.9.8 If EPA determines that new information or new conditions warrant additional response actions under the terms of the applicable Consent Decree or this Agreement (Section 9.7 – Supplemental Response Action), EPA may select whether to seek the supplemental response actions under the terms of the applicable decree or this Agreement.

9.9.9 Within 30 days of the effective date as described in subsection 9.9.3.1 above, the Air Force will provide EPA and ADEQ with its schedule for the implementation of all response actions remaining to be performed on the Site. To the extent EPA, ADEQ and the Air Force do not agree on the Air Force's proposed implementation schedule, EPA or ADEQ may initiate Dispute Resolution pursuant to this Agreement.

X. CONSULTATION

10.1 Review and Comment Process for Draft and Final Documents, Applicability

10.1.1 The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either Primary or Secondary Documents. In accordance with CERCLA Section 120 and 10 U.S.C. Section 2705, the Air Force will normally be responsible for issuing Primary and Secondary Documents to EPA and ADEQ. 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 Subsections 10.2 through 10.10 below.

10.1.2. The designation of a document as "draft" or "final" is solely for purposes of consultation with EPA and ADEQ 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.

10.2 General Process for RI/FS and RD/RA Documents

10.2.1 Primary Documents include those documents that are major, discrete portions of RI/FS or RD/RA activities. Primary Documents are initially issued by the Air Force in draft subject to review and comment by EPA and ADEQ. Following receipt of comments on a particular draft Primary Document, the Air Force will respond to the comments received and issue a draft final Primary Document subject to dispute resolution. The draft final Primary Document will become the final Primary Document upon the earlier of (i) issuance of a "no additional comment letter" by EPA and ADEQ, (ii) thirty days after the period established for review of a draft final primary document if dispute resolution is not invoked, or (iii) modification by decision of the dispute resolution process. No additional comment letters shall state the document is ready for inclusion in the Administrative Record.

10.2.2 Secondary Documents include those reports that are discrete portions of the Primary Documents and are typically input or feeder documents. Secondary Documents are issued by the Air Force in draft, subject to review and comment by EPA and ADEQ. Although the Air Force will respond to comments received, the draft Secondary Documents may be finalized in the context of the corresponding Primary Documents. A Secondary Document may be disputed at the time the corresponding draft final Primary Document is issued.

10.3 Primary Documents

10.3.1 The Air Force shall complete and transmit draft reports for the following Primary Documents to EPA and ADEQ for review and comment in accordance with the provisions of this Section, except that the Site Management Plan shall be reviewed and commented on in accordance with Sections XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN and XII – BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN:

(1) RI/FS and FFS Work Plans including Sampling and Analysis Plan and Quality Assurance Project Plan (QAPP)

(2) Remedial Investigation Reports (including Risk Assessments for human health and the environment)

(3) FS and FFS Reports

(4) Proposed Plans

(5) Records of Decision

(6) Final Remedial Designs

(7) Remedial Action Work Plans

(8) Remedial Action Completion Reports

(9) Site Management Plan and each annual amendment

10.3.2 Only the draft final Primary Documents identified above (and their amendments) shall be subject to dispute resolution. The Air Force shall complete and transmit draft Primary Documents in accordance with the Schedule and Deadlines established in Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN.

10.3.3 Prior to the Effective Date of this Agreement, the Air Force has completed and transmitted the following draft Primary Documents listed below to EPA and the ADEQ for review and comment:

Remedial Action Completion Reports for:

Site 1
Site 2

10.4 Secondary Documents

10.4.1 All Secondary Documents shall be prepared in accordance with the NCP and applicable EPA Guidance. The Air Force shall complete and transmit drafts of the following Secondary Documents to EPA and ADEQ for review and comment in accordance with the provisions of this Section:

(1) Initial Remedial Action / Data Quality Objectives

(2) Non-Time-Critical Removal Action Plans (40 C.F.R. Section 300.415(b)(4)(ii))

(3) Pilot/Treatability Study Work Plans

(4) Pilot/Treatability Study Reports

(5) Engineering Evaluation/Cost Analysis Reports

(6) Preliminary/Conceptual Remedial Designs

(7) Prefinal Remedial Designs

(8) Well Closure Methods and Procedures

(9) Removal Action Memoranda

10.4.2 Although EPA and ADEQ may comment on the draft reports for the Secondary Documents listed above, such documents shall not be subject to dispute resolution except as provided by Subsection 10.2 hereof. Target Dates shall be established for the

completion and transmission of draft Secondary Documents pursuant to Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN.

10.5 Meetings of the Project Managers on Development of Documents

10.5.1 The Project Managers shall meet approximately every ninety (90) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site and on the Primary and Secondary Documents. Prior to preparing any draft report specified in Subsections 10.3 and 10.4 above, the Project Managers shall meet or confer by telephone to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft report.

10.6 Identification and Determination of Potential ARARs

10.6.1 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. ADEQ shall identify all potential State ARARs as early in the remedial process as possible consistent with the requirements of CERCLA Section 121 and the NCP.

10.6.2 The Air Force shall consider any written interpretations of ARARs provided by ADEQ. Draft ARAR determinations shall be prepared by the Air Force in accordance with CERCLA Section 121(d)(2), the NCP, and pertinent Guidance issued by EPA, that is not inconsistent with CERCLA and the NCP.

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

10.7 Review and Comment on Draft Documents

10.7.1 The Air Force shall complete and transmit each draft Primary Document to EPA and ADEQ on or before the corresponding Deadline established for the issuance of the document. The Air Force shall complete and transmit the draft Secondary Document in accordance with the Target Dates established for the issuance of such reports established pursuant to Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

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

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

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

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

10.7.6 Following the close of the comment period for a draft document, the Air Force shall give full consideration to all written comments on the draft document submitted during the comment period. Within sixty (60) days of the close of the comment period on a draft Secondary Document, the Air Force shall transmit to EPA and ADEQ 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 Air Force

shall transmit to EPA and ADEQ a Draft Final Primary Document, which shall include the Air Force's response to all written comments received within the comment period. While the resulting draft final document shall be the responsibility of the Air Force, it shall be the product of consensus to the maximum extent possible.

10.7.7 The Air Force may extend the 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 ADEQ. In appropriate circumstances, this time period may be further extended in accordance with Section XIII – EXTENSIONS.

10.8 Availability of Dispute Resolution for draft final Primary Documents:

10.8.1 Dispute resolution shall be available to the Parties for draft final Primary Documents as set forth in Section XX – DISPUTE RESOLUTION.

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

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

10.10 Subsequent Modification of Final Document

10.10.1 Following finalization of any Primary Document pursuant to Subsection 10.9 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 10.10.2 and 10.10.3 below.

10.10.2 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.

10.10.3 In the event that a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke dispute resolution to determine if such

modification shall be conducted. Modification of a document shall be required only upon a showing that:

10.10.3.1 The requested modification is based on significant new information; and

10.10.3.2 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.

10.10.4 Nothing in this Subsection 10.10 shall alter EPA's or ADEQ's ability to request the performance of additional work that was not contemplated by this Agreement. The Air Force's obligation to perform such work must be established by either a modification of a report or document or by amendment to this Agreement.

XI. DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN

11.1 This Agreement establishes a process for creating and amending the Site Management Plan (SMP). An initial SMP is attached as Appendix F to this Agreement. 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 12.5 or 12.6. In addition, if an activity is fully funded in the current Fiscal Year, Milestones associated with the performance of Work and submittal of Primary Documents associated with such activity (even if they extend beyond the current Fiscal Year) shall be enforceable.

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

11.3 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 (DoD Relative Risk Site Evaluation Model for IRP sites or the DoD Munitions Response Site Prioritization Protocol for MMRP sites); (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 Air Force.

11.4 The SMP and its annual amendments include:

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

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

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

11.4.3.1 Identification of any Primary Actions;

11.4.3.2 All Deadlines;

11.4.3.3 All Near Term Milestones;

11.4.3.4 All Out Year Milestones;

11.4.3.5 All Target dates;

11.4.3.6 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

11.4.3.7 All Project End Dates.

11.5 The Air Force shall submit amendments to the SMP on an annual basis as provided in Section XII – BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN. All amendments to the SMP shall meet all of the requirements set forth in this Section.

11.6 The Milestones established in accordance with this Section and Section XII – 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 12.5 and 12.6. 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 Air Force; (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 that 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.

11.7 The Deadlines established in the SMP and its amendments shall be published by EPA and ADEQ.

XII. BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN

12.1 The Air Force, 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 Program Objectives Memorandum (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 11.3, 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

12.2 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 Air Force POM process; and, (3) participating in development of the Air Force submission to the proposed President's budget, based on POM decisions for the year currently under consideration. Unless the Parties agree to a different time frame, the Air Force 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 thirty (30) days of receiving such notification to discuss the budget controls. However, this consultation must occur at least ten (10) days prior to the Air Force's initial budget submission to the Air Force Center for Engineering and the Environment Program Restoration Management Office (AFCEE R-PMO). 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 AFCEE R-PMO. If agreement cannot be

reached informally within a reasonable period of time, the Air Force shall resolve the disagreement, if possible with the concurrence of all Parties, and notify each Party. If all Parties do not concur in the resolution, the Air Force will forward through AFCEE R-PMO to the Air Force Headquarters its budget request with the views of the Parties not in agreement and also inform Air Force 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 Air Force's budget submission to AFCEE R-PMO 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 Air Force 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 Air Force's budget submission to the DoD Comptroller. The Deputy Under Secretary of Defense (Installations and Environment) shall receive information copies of any supplemental reports submitted to the DoD Comptroller.

Air Force Budget for Clean Up Activities

12.3 The Air Force shall forward to the other Parties documentation of the budget requests (and any supplemental reports) for the Site, as submitted by the Air Force to AFCEE R-PMO, and by AFCEE R-PMO to the Air Force Headquarters, within fourteen (14) days after the submittal of such documentation to the Air Force Headquarters by AFCEE R-PMO. If the Air Force 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

12.4 No later than June 15 of each year after the initial adoption of the SMP, the Air Force shall submit to the other Parties a draft amendment to the SMP. When formulating the draft amendment to the SMP, the Air Force shall consider funding circumstances (including OMB targets/guidance) and "risk plus other factors" outlined in Subsection 11.3 to evaluate whether the previously agreed upon Milestones should change. Prior to proposing changes to Milestones in its annual amendment to the SMP, the Air Force will first offer to meet with the other Parties to discuss the proposed changes. The Parties will attempt to agree on Milestones before the Air Force submits its annual amendment by June 15, but failure to agree on such proposed changes does not modify the June 15 date, unless agreed on 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 12.5.

12.5.1 The Parties shall meet as necessary to discuss the draft amendment to the SMP. The Parties shall use the consultation process contained in Section X – CONSULTATION, except that none of the Parties will have the right to use the extension provisions provided therein and comments on the draft amendment will be due to the Air Force no later than 30 days after receipt by EPA and ADEQ of the draft amendment. If either EPA or ADEQ 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 Air Force's receipt of comments on the draft amendment. The draft final amendment to the SMP will be due from the Air Force no later than 30 days after the end of the EPA and State comment period. During this second 30-day time period, the Air Force will, as appropriate, make revisions and re-issue a revised draft herein referred to as the draft final amendment. To the extent that Section X – CONSULTATION contains time periods differing from these 30 day periods, this provision will control for consultation on the amendment to the SMP.

12.5.2.1 If the Air Force proposes, in the draft final amendment to the SMP, modifications of Milestones to which either EPA or ADEQ have not agreed, those proposed modifications shall be treated as a request by the Air Force for an extension. Milestones may be extended during the SMP review process by following Subsections 12.4 through 12.7. All other extensions will be governed by Section XIII – EXTENSIONS. The time period for EPA to respond to the request for extension will begin on the date EPA receives the draft final amendment to the SMP, and EPA and ADEQ shall advise the Air Force in writing of their respective positions on the request within thirty days. If EPA and ADEQ approve of the Air Force's draft final amendment, the document shall then await finalization in accordance with Subsections 12.5.3 and 12.6. If EPA denies the request for extension, then the Air Force may amend the SMP in conformance with EPA and State comments or seek and obtain a determination through the dispute resolution process established in Section XX – DISPUTE RESOLUTION within 21 days of receipt of notice of denial. Within 21 days of the conclusion of the dispute resolution process, the Air Force shall revise and reissue, as necessary, the draft final amendment to the SMP. If EPA or ADEQ initiates a formal request for a modification to the SMP to which the Air Force does not agree, EPA or ADEQ may initiate dispute resolution as provided in Section XX – 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 11.6 asserted to be present, and the facts and arguments of each of the Parties.

12.5.2.2 Notwithstanding Subsection 12.5.2.1, if the Air Force 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 ADEQ have not agreed, those proposed modifications shall not be treated as a request by the Air Force for an extension, but consistent with Section XX – DISPUTE RESOLUTION, EPA or ADEQ may initiate dispute resolution with respect to such Project End Date.

12.5.2.3 In any dispute under this Section, the time periods for the standard dispute resolution process contained in Subsections 20.2, 20.5, and 20.6 of Section XX – DISPUTE RESOLUTION shall be reduced by half in regard to such dispute, unless the Parties agree to dispute directly to the SEC level.

12.5.3 The Air Force 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 Air Force receives official notification of Congress's 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 12.6. 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's authorization and appropriation.

Resolving Appropriations Shortfalls

12.6 After authorization and appropriation of funds by Congress and within 21 days after the Air Force has received official notification of the Air Force's allocation based on the current year's Environmental Restoration, Air Force (ER,AF) Account, the Air Force 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 Air Force 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 Air Force 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 Air Force 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 11.3, and shall be specifically identified by the Air Force. The Air Force 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 Air Force shall give full consideration to EPA and State input during the 30-day discussion period. If the EPA and State concur with the modifications made to the draft final amendment to the SMP, EPA and ADEQ shall notify the Air Force 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 Air Force 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 ADEQ shall advise the Air Force in writing of their respective positions on the request within 21 days. The Air Force may seek and obtain a determination through the dispute resolution process established in Section XX – DISPUTE RESOLUTION. The Air Force may invoke dispute resolution within fourteen days of receipt of a statement of non-concurrence 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 20.2, 20.5, and 20.6 of Section XX – DISPUTE RESOLUTION shall be reduced by half in regard to such dispute. Within 21 days after the conclusion of the dispute resolution process, the Air Force shall revise and reissue, as necessary, the final amendment to the SMP.

12.7 It is understood by all Parties that the Air Force 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 12.6. 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.

12.8 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 Air Force must ensure that the opportunity for such public participation is timely; but this Subsection 12.8 shall not be subject to Section XXI – STIPULATED PENALTIES.

12.8.1 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 or technical review committee, if they exist for Air Force Plant 44, or by other appropriate means.

12.8.2 The Air Force shall provide timely notification under Section 12.6, regarding allocation of ER,AF, to the members of the public interested in this action.

12.8.3 The Air Force shall provide opportunity for discussion under Sections 12.2, 12.5, 12.6, and 12.7 to the members of the public interested in this action.

12.8.4 The Air Force shall ensure that public participation provided for in this

Subsection 12.8 complies with Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.*

XIII. EXTENSIONS

13.1 A Schedule, Deadline or Milestone shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by the Air Force shall be submitted in writing and shall specify:

13.1.1 The Deadline or Milestone that is sought to be extended;

13.1.2 The length of the extension sought;

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

13.1.4 Any related Deadline or Milestone that would be affected if the extension were granted.

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

13.2.1 An event of Force Majeure;

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

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

13.2.4 A delay caused, or which is likely to be caused, by the grant of an extension in regard to another Deadline or Milestone; and

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

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

13.4 Within seven (7) days of receipt of a request for an extension of a Deadline or a Milestone, the other Parties shall advise the requesting Party in writing of their 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 non-concurrence an explanation of the basis for its position.

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

13.6 Within seven (7) days of receipt of a statement of non-concurrence with the requested extension, the Air Force may invoke dispute resolution.

13.7 A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected Deadline or Milestone 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 Deadline or Milestone. 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 Deadline or Milestone as most recently extended.

XIV. PROJECT MANAGERS

14.1 On or before the Effective Date of this Agreement, EPA, ADEQ and the Air Force, shall each designate a Project Manager and notify the other Parties of the name and address of its 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 between the Air Force, EPA and ADEQ on all documents, including reports, comments and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Project Managers. The Parties may designate an Alternate Project Manager to exercise the authority of the Project Manager in his or her absence.

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

14.3 The Parties' Project Managers shall meet or confer informally as necessary as provided in Section X – CONSULTATION. Although the Air Force has ultimate responsibility for meeting its respective Deadlines, EPA and ADEQ Project Managers shall endeavor to assist in this effort by scheduling meetings to review documents and reports, overseeing the performance of environmental monitoring at the Site, reviewing RI/FS or RD/RA progress, and attempting to resolve disputes informally. At least seven (7) days prior to each scheduled ninety (90) day meeting, the Air Force will provide to EPA and ADEQ Project Managers a draft agenda and summary of the status of the Work.

14.3.1 These status reports shall include, when applicable:

14.3.1.1 Identification of all data received and not previously provided by the Air Force during the reporting period consistent with the limitations of Subsection 32.1;

14.3.1.2 All activities completed pursuant to this Agreement since the last Project Manager meeting as well as such actions and plans that are scheduled for the upcoming ninety (90) days; and

14.3.1.3 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.

14.3.2 The minutes of each Project Manager meeting will be prepared by the Air Force and will be sent to all Project Managers within twenty-one (21) days after the meeting. Any documents requested during the meeting will be provided in a timely manner, except for those documents for which express notification is required.

14.4 Necessary and appropriate adjustments to a Deadline, Target Date or Milestone may be proposed by any Party. The Party that requested the modification shall prepare a written memorandum detailing the modification and the reasons therefore and shall provide a transmittal in a timely manner prior to the Deadline, Target Date or Milestone to the other Parties for signature and return.

14.5 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 used in carrying out this Agreement. The minor field modifications proposed under this Part must be approved orally by all 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 Air Force Contracting Officer. If agreement cannot be reached on the proposed additional work or modification to Work, dispute resolution as set forth in Section XX – DISPUTE RESOLUTION, shall be invoked by the Air Force, by submitting a written statement to the other Parties in accordance with Section XX – DISPUTE RESOLUTION. If all 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 transmittal detailing the modification and the reasons therefore and shall provide the transmittal to the Project Managers of the other Parties for signature and return.

14.6 Modifications of Work not provided for in Subsections 14.4 and 14.5 of this Section must be approved orally by all 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 Air Force Contracting Officer. If agreement cannot be reached on the proposed modification to Work, dispute resolution as set forth in Section XX – DISPUTE RESOLUTION, shall be used. 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 transmittal detailing the

modification and the reasons therefore and shall provide the transmittal to the Project Managers of the other Parties for signature and return.

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

14.8 The Parties shall transmit Primary and Secondary Documents and all notices required herein by next day mail, hand delivery, electronic transmittal or certified letter to the persons specified in Subsection 14.9 below by the Deadline established under Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN. Time limitations shall commence upon receipt. The Air Force shall provide to EPA a maximum of two (2) hard-copies and to ADEQ a maximum of two (2) copies of each Primary and Secondary Document, in addition to a CD-ROM disk version of each document for all Parties.

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

14.9.1 For the Air Force:
Aeronautical Systems Center/Acquisition Directorate,
Acquisition Environmental and Industrial Facilities
Division Environmental Restoration Branch
Attn: Air Force Plant 44 Project Manager
ASC/WNVR Building 8
1801 Tenth Street, Suite 2
Wright Patterson Air Force Base, OH 45433

14.9.2 For EPA:
U. S. Environmental Protection Agency Region 9
Attn: Air Force Plant 44 Project Manager
75 Hawthorne Street (SFD-6-2)
San Francisco, CA 94105

14.9.3 For ADEQ:
Arizona Department of Environmental Quality
Attn: Air Force Plant 44 Project Manager
Superfund Program
400 West Congress, Suite 433
Tucson, AZ 85701

14.10 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.

14.11 The Air Force Project Manager shall represent the Air Force with regard to the day-to-day field activities at the Site. The Air Force Project Manager or other designated representative shall be physically present at the Site or available to observe Work during implementation of all the Work performed at the Site pursuant to this Agreement. The

absence of EPA or ADEQ Project Managers from the Site shall not be cause for Work stoppage or delay, unless the Project Managers agree otherwise in writing.

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

14.12.1 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 (QA/QC);

14.12.2 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 XVI – ACCESS hereof;

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

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

14.13 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 Manager within three (3) business days of when the Party first became aware that the event might cause a delay. If the Party intends to seek an extension of a Deadline or Schedule because of the event, the procedures of Section XIII – EXTENSIONS, shall apply.

XV. EXEMPTIONS

15.1 The Parties recognize that the President may issue an order, as needed to protect national security interests, regarding response actions at Air Force Plant 44, pursuant to Section 120(j) of CERCLA, 42 U.S.C. Section 9620(j). Such an order may exempt Air Force Plant 44 or any portion thereof from the requirements of CERCLA for a period of time not to exceed one (1) year after the issuance of that order. This order may be renewed. The Air Force shall obtain access to and perform all actions required by this Agreement within all areas inside those portions of Air Force Plant 44, which are not the subject of or subject to any such order issued by the President.

15.2 ADEQ reserves any statutory right it may have to challenge any order or exemption specified in Subsection 15.1 relieving the Air Force of its obligation to comply with this Agreement.

XVI. ACCESS

16.1 EPA and ADEQ and/or 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 Air Force, and its contractors, in carrying out the activities under this Agreement; conducting, with prior notice to the Air Force, tests that EPA or ADEQ deem necessary; assessing the need for planning additional remedial response actions at the Site; and verifying data or information submitted to EPA and ADEQ. The Air Force shall honor all reasonable requests for access to the Site made by EPA or ADEQ, upon presentation of credentials showing the bearer's identification and that he/she is an employee or agent of EPA or ADEQ. The Air Force Project Manager or his/her designee will provide briefing information, coordinate access and escort to restricted or controlled-access areas, arrange for installation passes, and coordinate any other access requests, which arise. The Air Force shall use its best efforts to ensure that conformance with the requirements of this Subsection 16.1 do not delay access.

16.2 The rights granted in Subsections 16.1 and 16.4 to EPA and ADEQ regarding access shall be subject to regulations and statutes, including Air Force Plant 44 security regulations, as may be necessary to protect national security information ("classified information") as defined in Executive Order 12958, as amended, and comply with Air Force Plant 44's health and safety requirements. Such requirements shall not be applied so as to unreasonably hinder EPA or ADEQ from carrying out their responsibilities and authority pursuant to this Agreement.

16.3 The Air Force shall provide an escort whenever EPA or ADEQ requires access to restricted areas of Air Force Plant 44 for purposes consistent with the provisions of this Agreement. EPA and ADEQ shall provide reasonable notice to the Air Force Project Manager, or his or her designee, to request any necessary escorts for such restricted areas. The Air Force shall not require an escort to any area of Air Force Plant 44 unless it is a restricted, controlled-access area. Upon request of EPA or ADEQ, the Air Force shall promptly provide a written list of current restricted or controlled-access areas.

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

16.5 Upon a denial of any aspect of access, the Air Force 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 Air Force shall provide a written explanation for the denial. To the extent possible, the Air Force shall expeditiously provide a recommendation for accommodating the requested access in an alternate manner.

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

16.7 Nothing herein shall be construed as limiting EPA's or ADEQ's statutory authority for access or information gathering.

XVII. PERMITS

17.1 The Air Force shall be responsible for obtaining all Federal, State and local permits that are necessary for the performance of all Work under this Agreement, but may obtain any such permits through or in coordination with the plant operator or other contractors.

17.2 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-site, where such response actions are selected and carried out in accordance with CERCLA, are exempt from the procedural requirement to obtain Federal, State, or local permits. All activities must, however, comply with all the applicable or relevant and appropriate Federal and State standards, requirements, criteria, or limitations that would have been included in any such permit.

17.3 When the Air Force proposes a response action, other than an emergency removal action, to be conducted entirely on-site, which in the absence of Section 121(e)(1) of CERCLA, 42 U.S.C. Section 9621(e)(1), and the NCP would require a Federal, State or local permit, the Air Force shall include in its Draft ROD or removal memorandum:

17.3.1 Identification of each permit that would otherwise be required;

17.3.2 Identification of the standards, requirements, criteria, or limitations that would need to be met to obtain each such permit; and

17.3.3 An explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified immediately above.

17.4 Subsection 17.2 above is not intended to relieve the Air Force 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) of CERCLA, 42 U.S.C. Section 9621(e)(1), does not apply.

17.5 The Air Force shall notify EPA and ADEQ 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 Air Force shall apply for all such permits and provide EPA and ADEQ with copies of all such permits, applications, and other documents related to the permit process and final permits.

17.6 The Air Force agrees to notify EPA and ADEQ of its intention to propose modifications to this Agreement to obtain conformance with the permit, or lack thereof if a permit or other authorization that is necessary for implementation of this Agreement is not issued, or is issued or renewed in a manner that is materially inconsistent with the requirements of this Agreement. Notification by the Air Force of its intent to propose modifications shall be submitted within sixty (60) days of receipt by the Air Force 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 Air Force shall submit to EPA and ADEQ its proposed modifications to this Agreement with an explanation of its reasons in support thereof.

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

17.8 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 Air Force shall continue to implement those portions of this Agreement, which can be reasonably implemented independent of final resolution of the permit issue(s) under appeal. However, as to Work that cannot be so implemented, any corresponding Deadline, timetable, or Schedule shall be subject to Section XIII – EXTENSIONS.

17.9 Nothing in this Agreement shall be construed to affect the Air Force's obligation to comply with any RCRA permit(s) that Air Force Plant 44 may already have or will be issued in the future.

XVIII. REMOVAL AND EMERGENCY ACTIONS

18.1 The Air Force shall provide EPA and ADEQ with timely notice of any proposed removal action.

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

18.3 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 Air Force undertake removal actions to abate the danger and threat that may be posed by such actual or threatened release. All removal actions conducted on Air Force Plant 44 shall be conducted in a manner consistent with this Agreement, CERCLA, Executive

Order 12580, DERP, including provisions for timely notification and consultation with EPA, ADEQ and the appropriate 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. Prior to determining to undertake such actions, the Air Force shall submit to EPA and ADEQ:

18.3.1 Documentation of the actual or threatened release at or from the Site;

18.3.2 Documentation that the actions proposed will abate the danger and threat that may be posed by release of hazardous substances, pollutants, or contaminants at or from the Site;

18.3.3 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;

18.3.4 Prepare an Engineering Evaluation/Cost Analysis (EE/CA), or its equivalent for a removal action whenever a planning period of at least six months exists before on-site activities must be initiated (i.e., Non-Time Critical Removal Action). The EE/CA shall contain an analysis of removal alternatives for a response action. The screening of alternatives shall be based on criteria as provided in CERCLA and the NCP, such as cost, feasibility, and effectiveness;

18.3.5 A Non-Time-Critical Removal Action Plan and Target Date for the proposed action; and,

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

18.4 The opportunity for review and comment for proposed removal actions, as stated in Subsection 18.3 above, may not apply if the action is in the nature of an emergency removal taken because a release or threatened release may present an imminent and substantial endangerment to human health or the environment. The Air Force may determine that review and comment, as stated in Subsection 18.3 above, is impractical. However, in the case of an emergency removal action, the Air Force shall provide EPA and ADEQ with oral notice as soon as possible. A written notice shall be transmitted to all the Parties within forty-eight (48) hours after the Air Force determines that an emergency removal is necessary, which will include any deviations from the oral notice. Within seven (7) days after initiating an emergency removal action, the Air Force shall provide EPA and ADEQ 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 Air Force 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 sixty (60) days of completion of an emergency response action, the Air Force will furnish EPA and ADEQ with a Removal Action Memorandum addressing the information provided in the written 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.

18.5 If an imminent health hazard or an activity conducted pursuant to this Agreement that is creating a danger to the public health or welfare or the environment is discovered by any Party, the discovering Party will notify the other Parties and the Air Force 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 Air Force will expeditiously take appropriate measures to protect all persons affected.

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

XIX. PERIODIC REVIEW

19.1 Consistent with Section 121(c) of CERCLA, 42 U.S.C. Section 9621(c), Section 300.430(f)(4)(ii) of the NCP, and in accordance with this Agreement, if the selected remedial action results in any hazardous substance, pollutants or contaminants remaining at the Site at levels above that allowing for unlimited use and unrestricted exposure, the Parties shall review the remedial action for each Operable Unit at least every five (5) years after the initiation of the 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 Air Force shall report the findings of the review to EPA and ADEQ upon its completion. This report, the Periodic Review Assessment Report, shall be submitted to EPA and ADEQ for review and comment. Target Dates shall be established for the completion and transmission of the Periodic Review Assessment Report pursuant to Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN.

19.2 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 Air Force shall implement such additional or modified action in accordance with Section IX – WORK TO BE PERFORMED.

19.3 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 XX – DISPUTE RESOLUTION, enforceable hereunder.

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

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

19.6 ADEQ reserves the right to exercise any authority under State law to seek the performance of additional Work when it is determined that such additional Work is necessary.

19.7 The assessment and selection of any additional response actions determined necessary as a result of a Periodic Review shall be in accordance with Subsection 9.7. Except for emergency response actions, which shall be governed by Section XVIII – REMOVAL AND EMERGENCY ACTIONS, such response actions shall be implemented as a supplemental response action in accordance with Subsections 9.7.4 and 9.7.5.

XX. DISPUTE RESOLUTION

20.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section shall apply. All Parties to this Agreement shall make reasonable efforts to resolve disputes informally 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.

20.2 Within thirty (30) days after: (1) issuance of a draft final Primary Document pursuant to Section X – CONSULTATION; or (2) any action that leads to or generates a dispute, the disputing Party shall submit to the DRC a written statement of dispute setting forth the nature of the dispute, the Work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position.

20.3 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 as many times as are necessary to discuss and attempt resolution of the dispute.

20.4 The Dispute Resolution Committee (DRC) will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. EPA's representative on the DRC is the Superfund Division Director of EPA Region IX. ADEQ's representative on the DRC is the Waste Programs Division Director. The Air Force's designated member is the Director of the Air Force Center for Engineering and the Environment. Written notice of any delegation of authority from the Party's

designated representative on the DRC shall be provided to the all other Parties pursuant to the procedures of Section XIV – PROJECT MANAGERS.

20.5 Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to resolve unanimously the dispute and issue a written decision signed by all Parties. If the DRC is unable to resolve unanimously the dispute within this twenty-one (21) day period, the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution within seven (7) days after the close of the 21-day resolution process.

20.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. EPA's representative on the SEC is the Regional Administrator of EPA Region IX. ADEQ's representative on the SEC is the ADEQ Director. The Air Force's representative on the SEC is the Deputy Assistant Secretary of the Air Force (Energy, Environment, Safety and Occupational Health). The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision signed by all Parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days, the EPA Regional Administrator shall issue a written position on the dispute. The Secretary of the Air Force and the Director of ADEQ may, within fourteen (14) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event that the Air Force or Director of ADEQ elect not to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, the party shall be deemed to have agreed with Regional Administrator's written position with respect to the dispute.

20.7 Upon elevation of a dispute to the Administrator of EPA pursuant to Subsection 20.6, 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 Air Force and Director of ADEQ to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other Parties with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Section shall not be delegated.

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

20.9 When dispute resolution is in progress, Work affected by the dispute will immediately be discontinued if the Superfund Division Director for EPA Region IX 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. ADEQ 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 EPA Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

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

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

20.12 The state of Arizona reserves the right to maintain an action under 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 standard, requirement, criteria or limitation.

XXI. STIPULATED PENALTIES

21.1 In the event that the Air Force fails to submit a Primary Document, as listed in Section X – CONSULTATION, to EPA and ADEQ 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 that relates to an interim or final remedial action, EPA may assess a stipulated penalty against the Air Force. A stipulated penalty may be assessed in an amount not to exceed $5,000 for the first week (or part thereof), and $10,000 for each additional week (or part thereof) for which a failure set forth in this Subsection occurs. ADEQ and EPA agree that all stipulated penalties shall be shared equally.

21.2 Upon determining that the Air Force has failed in a manner set forth in Subsection 21.1, EPA or ADEQ shall so notify the Air Force in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Air Force shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Air Force shall not be liable for the stipulated penalty assessed by EPA if the failure is determined, through the dispute

resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

21.3 The annual reports required by CERCLA Section 120(e)(5) shall include, with respect to each final assessment of a stipulated penalty against the Air Force under this Agreement, each of the following:

21.3.1 The location or operation responsible for the failure;

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

21.3.3 A statement of any administrative or other corrective action taken, or a statement of why such measures were determined to be inappropriate;

21.3.4 A statement of any additional action taken by or at the location or operation to prevent recurrence of the same type of failure; and

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

21.4 In the event that stipulated penalties become payable by the Air Force under this Agreement, the Air Force will seek Congressional approval and authorization to pay such stipulated penalties in equal amounts to the Federal Hazardous Substances Superfund and to the State as directed by the State and consistent with Arizona law. Stipulated penalties assessed pursuant to this Section shall be payable only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the DoD. Any requirement for the payment of stipulated penalties under this Agreement shall be subject to the availability of funds, and no provision herein shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341.

21.5 In no event shall this Section give rise to a stipulated penalty in excess of the amount set forth in CERCLA Section 109.

21.6 This Section shall not affect the Air Force's ability to obtain an extension of a timetable, Deadline or Schedule pursuant to Section XIII – EXTENSIONS.

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

XXII. FORCE MAJEURE

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

22.1.1 Acts of God;

22.1.2 Fire;

22.1.3 War;

22.1.4 Insurrection;

22.1.5 Civil disturbance;

22.1.6 Explosion;

22.1.7 Unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance;

22.1.8 Adverse weather conditions that could not be reasonably anticipated;

22.1.9 Unusual delay in transportation;

22.1.10 Restraint by court order or order of public authority;

22.1.11 Inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the Air Force;

22.1.12 Delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and

22.1.13 Insufficient availability of appropriated funds, if the Air Force shall have made a timely request for such funds as a part of the budgetary process as set forth in Section XXVII – FUNDING.

22.2 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.

XXIII. ENFORCEABILITY

23.1 The Parties agree that:

23.1.1 Upon the Effective Date of this Agreement, any standard, regulation, condition, requirement or order that has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person pursuant to CERCLA Section 310, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under CERCLA Sections 310(c) and 109;

23.1.2 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 or Deadlines will be subject to civil penalties under CERCLA Sections 310(c) and 109;

23.1.3 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; and

23.1.4 Any final resolution of a dispute pursuant to Section XX – DISPUTE RESOLUTION that 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.

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

23.3 Nothing in this Agreement shall be construed as a restriction or waiver of any rights EPA or ADEQ may have under CERCLA, including but not limited to any rights under Sections 113, 120, 121 and 310, 42 U.S.C. Sections 9613, 9620, 9621 and 9659, or any rights, or defenses, including sovereign immunity, ADEQ may have under Federal or State law. The Air Force does not waive any rights it may have under CERCLA Section 120, SARA Section 211 and Executive Order 12580.

23.4 The Parties agree to exhaust their rights under Section XX – DISPUTE RESOLUTION, prior to exercising any rights to judicial review that they may have.

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

XXIV. OTHER CLAIMS

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

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

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

24.4 EPA and ADEQ shall not be held as a party to any contract entered into by the Air Force to implement the requirements of this Agreement.

24.5 The Air Force shall notify the appropriate Federal and State Natural Resource Trustees of potential damages to natural resources resulting from releases or threatened releases under investigation, as required by 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 Air Force is not released from any liability that it may have pursuant to any provisions of State and Federal law, including any claim for damages for destruction of, or loss of, natural resources.

24.6 This Agreement does not bar any claim for:

24.6.1 Natural resources damage assessments, or for damage to natural resources; or

24.6.2 Liability for disposal of any hazardous substances or waste material taken from the Site.

XXV. RESERVATION OF RIGHTS

25.1 Notwithstanding anything in this Agreement, EPA and ADEQ may initiate any administrative, legal or equitable remedies available to them, including requiring additional response actions by the Air Force in the event that: (a) conditions previously unknown or undetected by EPA or ADEQ arise or are discovered at the Site; or (b) EPA or ADEQ receives additional information not previously available concerning the premises that 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 ADEQ discovers the presence of conditions on the Site that may constitute an imminent and substantial danger to the public health, welfare, or the environment; or (e) the Air Force fails to meet any of its obligations under this Agreement; or (f) the Air Force fails or refuses to comply with any applicable requirements of CERCLA or RCRA or State laws or regulations; or (g) the Air Force, its officers, employees, contractors, or agents falsify information, reports, or data, or make a false representation or statement in a record, report, or document relating to the release of hazardous materials at the Site, and this information affects the determination of whether a remedial action is protective of human health and the environment. For purposes of this Subsection, conditions at the Site and information known to EPA and ADEQ shall include only those conditions and information known as of the date of the relevant response action decision document.

25.2 The Parties agree to exhaust their rights under Section XX – DISPUTE RESOLUTION, prior to exercising any rights to judicial review that they may have.

25.3 The Parties, after exhausting their remedies under this Agreement, reserve any and all rights, including the right to raise or assert any defense they may have under CERCLA, or any other law, where those rights are not inconsistent with the provisions of this Agreement, CERCLA, or the NCP. This Section does not create any right that EPA and the state of Arizona do not already have under applicable law.

XXVI. PROPERTY TRANSFER

26.1 No change or transfer of any interest in Air Force Plant 44 or any part thereof shall in any way alter the status or responsibility of the Parties under this Agreement. The Air Force agrees to give EPA and ADEQ sixty (60) days notice prior to the sale or transfer by the United States of any title, easement, or other interest in the real property affected by this Agreement. The Air Force 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.

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

XXVII. FUNDING

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

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

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

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

27.5 Funds authorized and appropriated annually by Congress under the ER,AF 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 Environmental Restoration, Air Force (ER,AF) appropriation be inadequate in any year to meet the Air Force's total implementation requirements under this Agreement, the Air Force 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 XII – BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN, prioritize and allocate that year's appropriation.

XXVIII. REIMBURSEMENT OF STATE SERVICES

28.1 The Air Force and ADEQ agree to use the Defense State Memorandum of Agreement (DSMOA), signed on March 13, 1991, in accordance with the Cooperative Agreements, for the reimbursement of services provided in direct support of the Air Force's environmental restoration activities at the Site pursuant to this Agreement.

XXIX. RECOVERY OF EPA EXPENSES

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

XXX. QUALITY ASSURANCE

30.1 The Air Force shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. The Air Force shall develop, in accordance with EPA Guidance, and EPA and ADEQ shall approve, a Generic Quality Assurance Project Plan (GQAPP) that shall be used as a component of each RI, FS, RD, and RA Work Plan(s), as appropriate. If additional detail is required, the Air Force shall develop a Site-specific Quality Assurance Project Plan. These work plans will be reviewed as Primary Documents pursuant to Section X – CONSULTATION. QA/QC Plans shall be prepared in accordance with applicable EPA Guidance, including the Uniform Federal Policy for Quality Assurance Project Plans (March 2005).

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

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

XXXI. RECORD PRESERVATION

31.1 Despite any document retention policy to the contrary, EPA and the Air Force 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 XIX – PERIODIC REVIEW, all records and documents in their possession that relate to actions taken pursuant to this Agreement. ADEQ shall preserve all records and documents in its possession that relate to actions taken pursuant to this Agreement in accordance with State law and policy. After the ten (10) year period, or for ADEQ at the expiration of its document retention period, 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.

31.2 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.

XXXII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

32.1 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 as needed in a timely manner.

32.2 At the request of any Party, a Party shall allow the other Parties or their authorized representatives to observe fieldwork 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.

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

XXXIII. PROTECTED INFORMATION

33.1 The Air Force shall not withhold any physical, sampling, monitoring, or analytical data.

33.2 National Security Information:

33.2.1 Any dispute concerning EPA and/or ADEQ access to national security information ("classified information"), as defined in Executive Order 12958, as amended, shall be resolved in accordance with Executive Order 12958, as amended, and other applicable law, including the opportunity to demonstrate that EPA and/or ADEQ representatives have proper clearances and a need to know, appeal to the Information Security Oversight Office, and final appeal to the National Security Council.

33.2.2 Upon receipt from EPA and/or ADEQ of a request to meet with the classifying officer regarding access to classified information, the Air Force shall, within ten (10) 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 Air Force, the classifying officer and the representative of the requesting Party shall meet within twenty-one (21) 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 Air Force shall notify the requesting Party of the classifying officer's decision within fourteen (14) days following the meeting. Failure to render a timely decision shall be construed as a denial. Failure to respond is subject to dispute resolution under this Agreement.

33.2.3 Nothing in this Subsection 33.2 is intended to, or should be construed as, superseding any law, regulation, or promulgated Air Force directive regarding access to, release of, or protection of national security information.

XXXIV. COMMUNITY RELATIONS

34.1 The Air Force has developed and is implementing a Community Relations Plan. This plan responds to the need for an interactive relationship with all interested community elements, both on and off Air Force Plant 44, regarding environmental response activities conducted pursuant to this Agreement by the Air Force. Any revision or amendment to the Community Relations Plan shall be submitted to EPA and ADEQ for review and comment.

34.2 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.

34.3 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 laws and regulations.

34.4 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.

34.5 The Air Force shall establish and maintain an Administrative Record at 1801 Tenth Street, Bldg 8, Wright-Patterson Air Force Base, Ohio. The Air Force also shall establish and maintain an Information Repository that is easily accessible to the public at or near Air Force Plant 44, in accordance with CERCLA Section 113(k) , 42 U.S.C. Section 9613(k), Subpart I of the NCP, and applicable EPA Guidance. Before the Effective Date of this Agreement, the Air Force established and began maintaining copies of an Administrative Record at http://edm-sepublic.daps.dla.mil/AESHAdmRec/, which is available to the public. The Administrative Record developed by the Air Force shall be periodically updated and a copy of the Index will be provided to EPA and ADEQ. The Air Force will provide to EPA and ADEQ on request any document in the Administrative Record. The Agencies can also download any document from the internet site.

34.6 Pursuant to 10 U.S.C. Section 2705(c), the Air Force in cooperation with other parties of the TIAA Superfund site has established the Unified Community Advisory

Board (UCAB). The purpose of the UCAB is to provide a forum for cooperation between the Parties, local community representatives, and natural resource trustees on actions and proposed actions at the TIAA Superfund Site. The Parties shall participate in the UCAB as follows:

34.6.1 The Air Force Project Manager(s), Air Force Plant 44;

34.6.2 An EPA representative;

34.6.3 An ADEQ representative; and

34.6.4 Representatives of other PRPs for the TIAA Superfund site.

The Parties shall encourage representatives from the following organizations to serve as members of the UCAB:

34.6.5 City of Tucson and

34.6.6 Local community.

34.7 The chair shall schedule quarterly meetings of the UCAB unless the Parties agree to meet more or less frequently. If possible, meetings shall be held in conjunction with the meetings of the Project Managers. Meetings and Status Updates of the UCAB shall be for the purpose of reviewing progress under the Agreement and for the following purposes:

34.7.1 To facilitate early and continued flow of information between the community, the Air Force, and the environmental regulatory agencies in relation to restoration actions taken at the TIAA Superfund Site under the Installation Restoration Program;

34.7.2 To provide an opportunity for UCAB members and the public to review and comment on actions and proposed actions under the Installation Restoration Program; and

34.7.3 To facilitate regulatory and public participation consistent with applicable laws.

34.8 Special meetings of the UCAB may be held at the request of the members.

XXXV. PUBLIC COMMENT ON THIS AGREEMENT

35.1 Within fifteen (15) days after the execution of this Agreement (the date by which all Parties have signed the Agreement), EPA shall announce the availability of this Agreement to the public for their review and comment. Such public notices shall include information advising the public as to availability and location of the Administrative Record as discussed in Subsection 34.5. 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:

35.1.1 The Agreement shall be made effective without any modifications; or

35.1.2 The Agreement shall be modified prior to being made effective.

35.2 If the Parties agree that the Agreement shall be made effective without any modifications, and if the Parties agree on the Responsiveness Summary, EPA shall transmit a copy of the signed Agreement to the 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 Air Force of the signed Agreement from EPA.

35.3 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 ADEQ, in consultation with the Air Force, will determine whether the modified Agreement requires additional public notice and comment pursuant to any provision of CERCLA. If EPA and ADEQ 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 Air Force and ADEQ 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 ADEQ determine that additional notice and comment are required, such additional notice and comment shall be provided consistent with the provisions stated in Subsection 35.1 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 Air Force and ADEQ and shall notify them that the modified Agreement is effective. In either case, the Effective Date of the modified Agreement shall be the date of receipt by the Air Force from EPA of notification that the modified Agreement is effective.

35.4 In the event that the Parties cannot agree on the modifications or on the Responsiveness Summary within thirty (30) days after the 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 15-day period to attempt to reach agreement.

35.5 If, after the times provided in Subsection 35.4, the Parties have not reached agreement on:

35.5.1 Whether modifications to the Agreement are needed; or

35.5.2 What modifications to the Agreement should be made; or

35.5.3 Any language, any provisions, any Deadlines, any Work to be performed or any content of the Agreement or any Appendices to the Agreement; or

35.5.4 Whether additional public notice and comments are required; or

35.5.5 The contents of the responsiveness summary, then the matters that are in dispute shall be resolved by the dispute resolution procedures of Section XX – DISPUTE RESOLUTION. 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. If ADEQ withdraws, and EPA and the Air Force agree to proceed, the Agreement shall be effective as to EPA and the Air Force. 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 Air Force.

35.6 At the start of the public comment period, the Air Force 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.

35.7 Existing records maintained by the Air Force regarding the Site that will be included in the Administrative Record such as reports, plans, and Schedules, shall be made available by the Air Force for public review during the public comment period.

XXXVI. EFFECTIVE DATE

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

XXXVII. AMENDMENT OF AGREEMENT

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

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

37.3 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 shall be applied to the activities under this Agreement in the following manner:

37.3.1 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;

37.3.2 Applicable policy or Guidance shall be applied as it exists at the time of initiation of the Work in issue; and

37.3.3 Applicable policy or Guidance that is changed after the initiation of the Work in issue or after its completion shall be applied subject to Section XX – 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.

37.3.4 Changes in ARARs are governed by Section 300.430(f)(1)(ii)(B)(1) of the NCP.

XXXVIII. STATE OF ARIZONA RESERVATION OF RIGHTS

38.1 Notwithstanding any other Section of this Agreement, ADEQ shall retain any statutory right it may have to obtain judicial review of any final decision of EPA including, without limitation, any authority ADEQ may have under CERCLA Sections 113, 121(e)(2), 121(f)(3) and 310, 42 U.S.C. Sections 9613, 9621(e)(2), 9621(f)(3), and 9659, Section 7002 of RCRA, Section XXIII – ENFORCEABILITY of this Agreement, and State law, except that ADEQ expressly agrees to exhaust any applicable remedies provided in Section X – CONSULTATION and Section XX – DISPUTE RESOLUTION of this Agreement, prior to exercising any such rights.

38.2 Notwithstanding anything in this Agreement, ADEQ reserves the right to initiate any administrative, legal, or equitable remedies available to it based upon: (a) the Air Force's failure or refusal to comply with any requirement of State laws or regulations required under this Agreement; or (b) except as provided in a ROD, past, present, or future disposal of hazardous substances or contaminants outside the boundaries of the Site; or (c) past, present, or future violations of Federal or State criminal law; or (d) violations of Federal or State law other than those addressed in this Agreement that occur during or after implementation of a RA; or (e) damages for injury to, destruction of, or loss of natural resources, and the cost of any natural resource damage assessments. ADEQ expressly agrees to exhaust any applicable remedies provided in Section X –

CONSULTATION, and Section XX – DISPUTE RESOLUTION, prior to exercising any such rights.

38.3 With regard to all matters not expressly addressed by this Agreement, ADEQ specifically reserves all rights to institute equitable, administrative, civil, and criminal actions for any past, present, or future violation of any statute, regulation, permit, or order, or for any pollution or potential pollution to the air, land, or waters of the state of Arizona.

38.4 In the event that the Air Force's obligations under this Agreement are not fulfilled for six consecutive months, ADEQ shall have the option of terminating all provisions of the Agreement affecting ADEQ's rights and responsibilities, and ADEQ may thereafter seek any appropriate relief. ADEQ, however, expressly agrees to exhaust any applicable remedies provided in Section X – CONSULTATION, and Section XX – DISPUTE RESOLUTION, prior to exercising any such rights. Thereafter, ADEQ will provide the other Parties with ten (10) days notice of its intent to terminate. This Section does not create any right that ADEQ does not already have under applicable law.

XXXIX. SEVERABILITY

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.

XL. TERMINATION AND SATISFACTION

40.1 The provisions of this Agreement shall be deemed satisfied upon a consensus of the Parties that the Air Force has completed its obligations under the terms of this Agreement. Following EPA Certification of all the response actions at the Site pursuant to Subsection 9.8 of Section IX – 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 Air Force of written notice from EPA, with concurrence of ADEQ, that the Air Force 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.

40.2 Any disputes arising from this Termination and Satisfaction process shall be resolved pursuant to the provisions of Section XX – DISPUTE RESOLUTION, of this Agreement.

40.3 Upon termination of this Agreement, the Air Force shall place a public notice announcing termination in two (2) local newspapers of general circulation.

40.4 This Section shall not affect the Parties' obligations pursuant to Section XIX – PERIODIC REVIEW or Section XXXI – RECORD PRESERVATION of this Agreement. In no event will this Agreement terminate prior to the Air Force's completion of the Work required by this Agreement.

AUTHORIZED SIGNATURES

The undersigned representative 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. This Agreement shall apply to and be binding upon EPA, ADEQ, and the Air Force.

IT IS SO AGREED:

By

Date 26 Aug 11

TIMOTHY K. BRIDGES
Deputy Assistant Secretary of the Air Force
(Environment, Safety, and Occupational Health)

AUTHORIZED SIGNATURES

The undersigned representative 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. This Agreement shall apply to and be binding upon EPA, ADEQ, and the Air Force.

IT IS SO AGREED:

By _____ Date 9/7/11

Henry Darwin, Director
Arizona Department of Environmental Quality

AUTHORIZED SIGNATURES

The undersigned representative 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. This Agreement shall apply to and be binding upon EPA, ADEQ, and the Air Force.

IT IS SO AGREED:

By

Keith Taka

Date 8/26/11

Keith Takata
Deputy Regional Administrator
Environmental Protection Agency, Region IX

Appendix A

Initial List of Installation Restoration Program Sites Requiring RI/FS

As of December 2010

IRP SITE CODE	IRP SITE No	SWMU No*	DESCRIPTION
OT12**	Site 17 (same as Site 12)	1-28***	Regional Aquifer and Groundwater Treatment Plant Tanks, Towers, and Filtration Systems
OT13**	Site 14 (same as Site 13)		Shallow Groundwater Zone (SGZ)

FOOTNOTES:

* All numbered SWMUs were identified in the 1988 RCRA Facility Assessment completed by EPA Region 9 and lettered SWMUs were identified by the plant operator.

** OT13 / Site 14 (same as Site 13) SGZ will be incorporated into OT-12 / Site 17 (same as Site 12) since the SGZ and Regional Aquifer are hydrologically connected.

*** SWMU numbers 1-28 refer to the Groundwater Treatment Plant and its components and do not apply to the regional aquifer, which is not a SWMU.

Appendix B

Installation Restoration Program Sites with Proposed Plan, Record of Decision, or Completed Remedial Action

As of December 2010

IRP SITE CODE	IRP SITE No	SWMU No*	DESCRIPTION	COMMENT
DP01	Site 1	100	Ranch Site – Inactive Landfill	ROD issued in 1998
DP02	Site 2	101	Final Assembly and Checkout (FACO) Inactive Landfill	ROD issued in 1998
DP03	Site 3	102, 109	Inactive Landfill, Inactive Burn Pit, West Fire Training Area	ROD issued in 1998
WP04	Site 4	103	Former Unlined Surface Impoundments, Former Wastewater Treatment Facility	ROD issued in 1999
WP05	Site 5	104	Former Sludge Drying Beds, Former Wastewater Treatment Facility	ROD issued in 1999
SD06	Site 6	157, 164	Historic Drainage Ditches and Channel	ROD issued in 1999

FOOTNOTE:

* All numbered SWMUs were identified in the 1988 RCRA Facility Assessment completed by EPA Region 9 and lettered SWMUs were identified by the plant operator.

Appendix C

Sites being Addressed under Other Regulatory Programs

As of December 2010

SWMU No*	DESCRIPTION
29	Lift Station Wet Well (Closed per Industrial Wastewater Treatment Plant (IWTP) Equipment Decontamination, Phase II (Project No. ACHA037C01) AFP44, 03 Feb 2005, Haley & Aldrich, Inc.)
45-54	IWTP Clarification System Process Tanks (Closed per Industrial Wastewater Treatment Plant (IWTP) Equipment Decontamination, Phase I, AFP44, April 2003, Engineering and Environmental Consultants, Inc. and Industrial Wastewater Treatment Plant (IWTP) Equipment Decontamination, Phase II (Project No. ACHA037C01) AFP44, 03 Feb 2005, Haley & Aldrich, Inc.)
55-72	IWTP Filtration and Sludge Dewatering System Process Tanks (Closed per Industrial Wastewater Treatment Plant (IWTP) Equipment Decontamination, Phase I, AFP44, April 2003, Engineering and Environmental Consultants, Inc. and Industrial Wastewater Treatment Plant (IWTP) Equipment Decontamination, Phase II (Project No. ACHA037C01) AFP44, 03 Feb 2005, Haley & Aldrich, Inc.)
114	Wastewater Pipeline Tunnel (Closed per Raytheon Industrial Waste Treatment Plant (IWTP) Equipment Decontamination, Phase III (Project No. ACHA04C002) and Tunnel and Piping Systems Decontamination Project (Project No. ACHA04C004) AFP44, December 2005, Engineering and Environmental Consultants, Inc.)
119	Chip Collection Tunnel (Closed per Soil Sampling and Evaluation Report, Old Chip Yard (SWMU 119), Haley & Aldrich, Inc., 2003, AFP44)
120	Freon Collection Area Building 801 (Closed per Final Report, Evaluate Inactive Containment Areas, Phases I and II (Project nos. ACHA037C04 and ACHA05C002), AFP44, March 2008, Engineering and Environmental Consultants, Inc.)
125-129	Wastewater and Waste Accumulation Systems (Closed per Decommissioning, Cleaning, and Confirmation Sampling Results, Building 810, Raytheon, Tucson, AZ, March 1999, Environmental Engineering Consultants, Inc. and Final Report, Evaluate Inactive Containment Areas, Phases I and II (Project nos. ACHA037C04 and ACHA05C002), AFP44, March 2008, Engineering and Environmental Consultants, Inc.)
132-134	Wastewater and Waste Accumulation Systems (Closed per Final Investigation of March 2000 Phase II Environmental Baseline Survey Category 6 and 7 Areas of Concern (Project No. ACHA017C02) AFP44, 2003, Secor International, Inc.)

135	Tank No.111 - Waste 1,1,1-TCA (Closed per Final Report, Evaluate Inactive Containment Areas, Phases I and II (Project nos. ACHA037C04 and ACHA05C002), AFP44, March 2008, Engineering and Environmental Consultants, Inc.)
162-163	Underground Tanks (Closed per Final Report, Evaluate Inactive Containment Areas, Phases I and II (Project nos. ACHA037C04 and ACHA05C002), AFP44, March 2008, Engineering and Environmental Consultants, Inc.; Documentation of Closure of the CAW and CAS Tanks, AF Plant 44, April 1996, Holmes & Narver, Inc.)
B	Washdown Sump at Bld 830 (Closed per Sampling and Evaluation Report of the Dry Wells, Leachfields, and Chip Yards, September 1999, Groundwater Consultants, Inc.)
D	Plating Shop Basement Sumps at Building 801 (Closed per Summary Report for In-Situ Remediation Pilot Testing at Solid Waste Management Unit D, December 2008, TN & Associates; Characterization of Well and Groundwater Conditions Following In-Situ Remedial Pilot Tests, Solid Waste Management Unit D, February 2009, Errol L. Montgomery & Associates, Inc.)
E	Etched Circuitry Basins and Sumps at Bld 801 (Closed per Investigation of March 2000 Phase II Environmental Baseline Survey Revised Category 6 and 7 Areas of Concern, September 2003, SECOR International Inc.)
F	Tank No.9 at Building 815 (Closed per Industrial Wastewater Treatment Plant (IWTP) Equipment Decontamination, Phase I, AFP44, April 2003, Engineering and Environmental Consultants, Inc)
G	Interim Chip Yard (Closed per Soil Sampling and Evaluation Report, Old Chip Yard (SWMU 119), Haley & Aldrich, Inc., 2003, AFP44: Sampling and Evaluation Report of the Dry Wells, Leachfields, and Chip Yards, AFP44, Groundwater Consultants, Inc Sept 1999)
J-O	3,000,000 gal IWTP Tanks (Closed per Industrial Wastewater Treatment Plant (IWTP) Equipment Decontamination, Phase II (Project No. ACHA037C01) AFP44, 03 Feb 2005, Haley & Aldrich, Inc.)

FOOTNOTE:

* All numbered SWMUs were identified in the 1988 RCRA Facility Assessment completed by EPA Region 9 and lettered SWMUs were identified by the plant operator.

EPA and ADEQ will review documents that the Air Force has submitted to support the closure of SWMUs listed in Appendix C, and formal approval by EPA and ADEQ management will be deemed to have achieved corrective action compliance as provided in this paragraph.

Appendix D

No Further Action Sites

IRP SITE CODE	IRP SITE No	SWMU No*	DESCRIPTION
		30-44	Holding Ponds – Surface Impoundments
		73-92	Brine Beds – Surface Impoundments
		94	Concentrated Alkaline Solution Holding Tank
		95	Concentrated Alkaline Solution Treatment Tank
		96	Concentrated Acid Waste Holding Tank
		97	Concentrated Acid Waste Treatment Tank
		99	Triple Rinse Drum Crusher
		105	Inactive Burn Pit
		106	Storage Tank West of Building 816
FT07	Site 7	107	North FACO Fire Training Area
FT08	Site 8	108, 110	South FACO Fire Training Area, Magnesium Disposal - Ignition Area
FT09	Site 9	111	Explosive Detonation Pit
		112	Trash Pile of General Debris
		113	Fill Material Area
		116	Past Waste Flammable Storage Building 829
		118	Mobile Waste Oil Containers

IRP SITE CODE	IRP SITE No	SWMU No*	DESCRIPTION
		138-155	Former Sludge Drying Beds
		156	Holding Tanks in Wastewater Treatment Facility
		A	Underground Container at Building 801
		C	Waste Brine Sump at Building 815A
DP04	Site 15		Potential Trench Site

FOOTNOTE:

* All numbered SWMUs were identified in the 1988 RCRA Facility Assessment completed by EPA Region 9 and lettered SWMUs were identified by the plant operator.

Appendix E

Initial Information on Sites Suspected to Contain UXO, DMM, or MCs

SITE Name	COMMENTS
1950s Pistol Range	CSE I Complete. Potential impacts from MC have occurred. Lead is the primary COC. CSE Phase II underway and a RI is programmed for FY11.
1980s Pistol Range	CSE I Complete. Potential impacts from MC have occurred. Lead is the primary COC. CSE Phase II underway and a RI is programmed for FY11

Appendix F

Air Force Plant 44 Initial Site Management Plan

Section 1: Actions Necessary to Mitigate any Immediate Threat to Human Health and the Environment

There are no actions necessary at this time to mitigate any immediate threats to human health and the environment. EPA and ADEQ have determined that there are no immediate threats to human health and the environment at Air Force Plant 44 due to the following previous actions completed by the Air Force: 1) implementation of the Remedial Action Plan and Record of Decision that required an extraction and treatment system to address groundwater contamination south of Los Reales Road, 2) replacement of the groundwater treatment technology to address emerging contaminants of concern, and 3) numerous soils remedies within Air Force Plant 44 that have been completed to address shallow contamination. Due to these efforts all immediate threats to human health and the environmental have been addressed at Air Force Plant 44.

Section 2: Listing of Currently Identified Sites Covered Pursuant to this Agreement

Soils IRP Sites

- Conceptual Site Model (CSM) development and refinement (Annual Report)

Site 14 / Shallow Groundwater Zone

- Addressed under Regional Groundwater

Site 17 / Regional Groundwater

- Conceptual Site Model (CSM) development and refinement (Annual Report)
- Site 2 FACO TCE source area evaluation of potassium permanganate (Annual Report)
- Site 3 Building 826 VOCs and 1,4-dioxane source area evaluation of potassium permanganate (Annual Report)
- Site 5 Building 801 Chromium investigation underneath east side of Building 801 (Annual Report)
- SGZ evaluation of source contribution (SGZ RPO)
- EPA-03 upgradient subsurface investigation (TARP FRI)
- Well field sampling optimization for upper and lower aquifer units (Annual Report)
- Extraction well field pumping/injection optimization (Annual Report)

RCRA Corrective Action SWMUs

- Investigations at SWMUs, as deemed necessary (TBD)

Military Munitions Response Program

- Investigation and removal actions at Pistol Ranges (Phase II Comprehensive Site Evaluation)

Section 3: Activities to be Completed for Response Actions

3.1 Identification of Primary Actions

3.1.1 Conceptual Site Model (CSM). A CSM will be developed based on existing data and information, to support site characterization and remediation decisions, including: data gap identification, characterization, on-going monitoring and remediation optimization, clean-up strategies, and long-term remediation. Components of the CSM include, but are not limited to, the following:

- A sufficient number of detailed hydrogeologic cross-sections to characterize the hydrogeologic framework controlling contaminant transport.
- Optimization of the monitoring well network in order to provide unit-specific data
- Unit-specific water level contour and contaminant contour maps.
- Unit-specific aquifer parameter characterization and aquifer hydraulic response information.
- Vertical and lateral source area delineation.
- Assessment of fate and transport of VOCs and 1,4-dioxane from Source Areas within the Site 14 Shallow Groundwater Zone.
- Definition of the transition from the Site 14 SGZ to the regional groundwater and the potential for vertical movement of contaminants.
- Identification of conduit well connections between the Upper and Lower Zones of the Regional Aquifer and the Upper and Lower Units of the Upper Zone of the Regional Aquifer.
- Capture zone analysis for the existing extraction well field.
- Updating and refining the CSM, at a minimum, on an annual basis, based on new characterization data, performance monitoring data, or any other relevant data or information.
- Obtaining, addressing, and incorporating comments on the CSM from the signatories to the FFA.

3.1.2 Hydraulic capture and containment of dissolved-phase groundwater contamination, originating from Air Force Plant 44, at Los Reales Road, including, but not limited to, the following:

- Development of a performance monitoring well network/transect along Los Reales Road, based on the CSM, using both existing and new monitor wells.
- Development of appropriate lines of evidence, based on the CSM, necessary for demonstrating consistent capture and containment of contaminated groundwater.

- Preparation of figures and graphs, based on the lines of evidence, to demonstrate consistent capture and containment of contaminated groundwater.
- Conducting additional characterization and remediation work to achieve this objective if the lines of evidence indicate capture and containment has not been consistently demonstrated, based on the CSM.
- Optimization of extraction well field pumping/injection utilizing capture zone evaluation.
- Obtaining and addressing comments on capture and containment from the signatories to the FFA.

3.1.3 Identification, characterization, and remediation, if feasible and practical, of Source Areas impacting regional aquifer water quality, including, but not limited to, the following:

- Development of criteria for identifying remaining possible Source Areas located above and below the water table, or potentiometric surface, of the regional aquifer, based on the CSM.
- Geographic identification of possible Source Areas and contaminants.
- Characterization of possible Source Areas, if feasible and practical, including, but not limited to: vertical and lateral extent of contamination, total contaminant mass, contaminant mass distribution, phase distribution of contaminants, contaminant mass flux out of Source Areas, hydrogeologic units impacted by contaminant mass flux, conduit wells impacted by contaminant mass flux.
- Incorporation of the Source Areas into the CSM.
- Development and evaluation of remedial strategies for known Source Areas in a Feasibility Study, including, but not limited to: modifying and/or abandoning conduit wells to prevent vertical spreading of contamination, progressively reducing mass and mass flux from Source Areas through in-situ technologies (i.e., Site 2 FACO TCE source area evaluation of potassium permanganate, Site 3 Building 826 VOCs and 1,4-dioxane source area evaluation of potassium permanganate, enhanced biodegradation, etc) and capturing contamination not addressed by in-situ technologies before off-property migration or impact to receptors using the existing extraction, treatment, and reinjection system, or alternative technologies and strategies, based on the CSM.
- Obtaining and addressing comments on Source Areas from the signatories to the FFA.

3.1.4 Regional aquifer cleanup within the Air Force Plant 44 project area, including, but not limited to, the following:

- Characterization of areas possibly contaminated above cleanup levels without sufficient unit-specific regional aquifer data to understand the extent and distribution of contamination (i.e., EPA-03 upgradient subsurface investigation), and to optimize the existing extraction, treatment, and reinjection remedy.
- Identification and modification and/or abandonment of wells providing a conduit for contamination to migrate between the Upper and Lower Zones of the Regional Aquifer and the Upper and Lower Units of the Upper Zone.

- Development of a unit-specific performance monitor well network, based on the CSM, using a combination of existing, modified, and new wells, to collect data that can be used to measure remediation progress.
- Optimize remediation using existing extraction, treatment, and reinjection system, based on the CSM.
- Identification of areas to remediate using technologies other than the existing extraction, treatment, and reinjection within the Air Force Plant 44, if practical, based on the CSM.
- Identification of possible alternative technologies and strategies to remediate the regional aquifer within the Air Force Plant 44.
- Design and implementation of alternative remedies, subject to concurrence from the signatories to the FFA, that meet ARARs.
- Monitoring the performance of alternative remedies to ensure protection of public health and the environment and compliance with ARARs.
- Obtaining and addressing comments on regional aquifer cleanup within the Air Force Plant 44 from the signatories to the FFA.

3.1.5 Investigations or corrective actions, if any, in accordance with the FFA for SWMUs listed in Section 6.14.13(a) and (b) of the FFA as determined on review of the documentation provided to support formal closure of these SWMUs, as follows:

- Development of a plan for initial site investigations that includes an environmental sampling program based on historical information.
- Completion of field efforts, if required, to determine nature and extent of contamination.
- Evaluation of data versus Regional Screening Levels and assessment of risks to human and ecological receptors.
- Development and implementation of alternatives, subject to supporting agency concurrence, to remediate site in compliance with ARARs.
- Design and implementation of remedies, subject to supporting agency concurrence, that to ensure protection of public health and the environment and meet ARARs.
- Obtaining and addressing comments on SWMUs from the signatories to the FFA.

3.1.6 Military Munitions Response Program investigations at 1950s Pistol Range and 1980s Pistol Range, including, but not limited to, the following:

- Development of a plan for initial site investigations that includes an environmental sampling program based on historical information.
- Completion of field efforts to determine nature and extent of contamination and to accomplish removal actions, if required.
- Obtaining and addressing comments on MMRP from the appropriate signatories to the FFA.

Site Management Plan's Enforceable / Potentially Enforceable Milestones and Other Submittals Table

This Site Management Plan applies to the Sites identified in Appendix A, C, and E. Background information on Sites is found in Section VI Findings of Fact.

Near-Term Milestones:

Task	Primary (P), Secondary (S), or Other (O) Document	Due Date
Draft Pistol Ranges Phase II Remedial Investigation Work Plan	P	Q3FY12

Out Year Milestones:

Task	Primary (P), Secondary (S), or Other (O) Document	Due Date
Draft AFP 44 Site wide ROD	P	Q1FY13

Other Submittals

Task	Primary (P), Secondary (S), or Other (O) Document	Due Date
Annual Electronic Data Submittal	O	Q1FY12
Summary of Reclamation Well Field and Soil Remediation Operations, Annual Update	O	Q3FY12 Annually
Annual Electronic Data Submittal	O	Q3FY12 Annually
AFP44 Chapter, TIAA Five-Year Review	O	Q4FY12