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FEDERAL FACILITIES AGREEMENT BETWEEN U S NAVY AND STATE OF FLORIDA
10/23/1990
U S NAVY

FEDERAL FACILITIES AGREEMENT

BETWEEN

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

FLORIDA DEPARTMENT OF ENVIRONMENTAL REGULATION,

FOR THE STATE OF FLORIDA

AND

UNITED STATES DEPARTMENT OF THE NAVY

FOR THE

UNITED STATES NAVAL AIR STATION

JACKSONVILLE

JACKSONVILLE, FLORIDA

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IV

FLORIDA DEPARTMENT OF ENVIRONMENTAL REGULATION

AND

THE UNITED STATES DEPARTMENT OF THE NAVY

IN THE MATTER OF:	)	FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120
The U.S. Department of the Navy Naval Air Station Jacksonville Jacksonville, Florida	)	U.S. EPA Administrative Docket Number: 90-04-FF FL. OGC Case Number: 90-0141

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:

A. The U.S. Environmental Protection Agency (U.S. EPA), Region IV, enters into those portions of this Agreement that relate to the Remedial Investigation/Feasibility Study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L.

99-499 (hereinafter jointly referred to as CERCLA/SARA or CERCLA) and Sections 6001, 3008(h), 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6961, 6928(h), 6924(u) and (v), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA/HSWA or RCRA) and Executive Order 12580;

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

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

D. The Navy enters into those portions of this Agreement that relate to remedial actions for operable units and final remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA; 42 U.S.C. § 9620 (e)(2), Sections 6001, and 3008(h) and, 3004(u) and (v) of RCRA; Executive Order 12580; and DERP.

E. The State of Florida (the State), acting through the Florida Department of Environmental Regulation (FDER) enters into this Agreement pursuant to Sections 120(f) and 121(f) of CERCLA/SARA, 42 U.S.C. §§9620(f) and 9621(f); Sections 6001 and 3006 of RCRA; and Chapters 376 and 403 Florida Statutes (F.S.), § 120.57(3) F.S., Florida Administrative Code (FAC) Rule 17-103.110.

II. PARTIES

The Parties to this Agreement are the U.S. EPA, the State and the Navy. The terms of this Agreement shall apply to and be binding upon the U.S. EPA and the State, and the Navy, its agents, employees, response action contractors for the Site and all subsequent owners, operators and lessees of Jacksonville. The Parties will notify each other of the identity, qualifications and assigned tasks of each of its contractors performing work under this Agreement upon their selection. This Section shall not be construed as an agreement to indemnify any person. For any contract in which a "pre-construction" conference or "pre-performance" conference is held, the Navy will provide notice of the the existence of this Agreement to the contractor. Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to bind legally such Party to this Agreement.

III. DEFINITIONS

Except as noted below or otherwise explicitly stated, the terms herein shall have their ordinary meaning unless otherwise defined in CERCLA/SARA.

In addition:

A. "Agreement" shall mean this document and shall include all Attachments to this document referred to herein. All such Attachments shall be appended to and made an integral and enforceable part of this document.

B. "Administrative Record" shall have the same meaning as defined in CERCLA. The official Administrative Record will be maintained at SOUTHNAVFACENGCOM, Charleston, South Carolina, and a copy of the Administrative Record will be maintained in a repository near the Facility.

C. "ARARs" means legally applicable or relevant and appropriate standards, requirements, criteria or limitations as those terms are used in CERCLA 121 (d)(2).

D. "CERCLA" means 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, Public Law 99-499.

E. "CERCLA Response/RCRA Corrective Action" means removal and remedial response activities conducted pursuant to both CERCLA and RCRA.

F. "Days" means federal business days unless otherwise specified in this Agreement.

G. "Documents" shall have the same meaning as reports in this Agreement.

H. "EPA" means the United States Environmental Protection Agency, its successors and assigns, and its duly authorized representatives, which may include its employees, agents, and contractors, as necessary.

I. "FAC" means Florida Administrative Code.

J. "Facility" shall mean the physical boundaries of NAS Jacksonville.

K. "Facility IR Manager" is the individual designated by NAS Jacksonville who will provide technical assistance and on-site coordination as necessary to implement the Navy's obligations under this Agreement.

L. "Feasibility Study" (FS) means the study which fully evaluates and develops remedial action alternatives to prevent or mitigate the migration or the release of hazardous substances and pollutants, or contaminants at and from the Site.

M. "FDER" means the Florida Department of Environmental Regulation which is entering into this Agreement on the behalf of the State of Florida.

N. "F.S." means Florida Statutes.

O. "Hazardous Substances" shall have the meaning set forth by Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14) and include hazardous constituents as defined by RCRA.

P. "HSWA" means the Resource Conservation and Recovery Act as codified at 42 U.S.C 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616.

Q. "Letter of Intent to Execute" means the document executed by the Parties prior to the release of this Agreement to the public for its review and comment.

R. "Navy" means the U. S. Department of the Navy as represented by its operating entities, the Naval Air Station Jacksonville, Jacksonville, Florida; Southern Division, Naval Facilities Engineering Command; and the Office of the Assistant Secretary of the Navy (Installations and Environment) (ASN I&E) as the signatory of this agreement.

S. "The National Contingency Plan" (NCP) means the plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. Section 9605, and codified at 40 C.F.R. Part 300, as amended.

T. "Operable Unit" means a discrete action that comprises an incremental step toward comprehensively addressing site problems. Each operable unit manages migration, or eliminates/mitigates a release, threat of release or pathway of exposure. Operable units may address specific geographical portions of the site, specific site problems, or initial phases of a response (removal/remedial) 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. Operable units will not impede implementation of subsequent actions including final response actions at the site.

U. "Parties" means the Navy, EPA, and FDER.

V. "Pollutant or Contaminant" shall have the same meaning as defined in 42 U.S.C. 9601 (33).

W. "Potential Source(s) of Contamination" (PSC) means hazardous substances contained in drums, tanks, surface impoundments, waste piles, landfills and contaminated media.

X. "Project Managers" are the individuals designated by the U. S. EPA, FDER and the Navy who oversee and provide technical assistance for the activities at the site.

Y. "Proposed Remedial Action Plan" (PRAP) means the report that is compiled prior to public notice and the responsiveness summary describing the remedy proposed for remediation of the Site.

Z. "Record of Decision" (ROD) means the public document that explains which alternative will be implemented for the final remedial actions and includes the basis for the selection of that remedy.

AA. "Release" shall be used as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22) and the RCRA permit.

BB. "Remedial Action" (RA) means the implementation of the Record of Decision consistent with the NCP and Section 101(24) of CERCLA.

CC. "Remedial Design" (RD) means all work undertaken to design the technical aspects of the remedial activities to be implemented at the Site.

DD. "Remedial Investigation" (RI) means the investigation conducted to determine fully the nature and extent of any and all releases or threats of release of hazardous substances, pollutants, contaminants, wastes or constituents and to gather necessary data to support the feasibility study.

EE. "Significant New Information" for the purposes of this Agreement means information that is of material assistance in protecting or evaluating impacts on the public health, welfare or the environment, or in evaluating the selection of response/corrective action alternatives which became known after a document was finalized.

FF. "Significant New Site Conditions" means those conditions of geology, hydrogeology or contamination that were not reasonably foreseeable or known at the time a Remedial Investigation (RI) was initiated.

GG. "Site" shall include NAS Jacksonville and any other areas contaminated by the migration of a hazardous substance, pollutant, contaminant, waste or constituent from NAS Jacksonville as discussed in Section IV of this Agreement.

HH. "Site Management Plan" (SMP) means the yearly plan submitted by the Navy with a list of PSC, priorities and schedule of actions to be taken for the current year and projections for subsequent year(s).

II. "Solid Waste Management Units" (SWMUs) means those units identified in the RCRA permit for the facility.

JJ. "Southern Division Naval Facilities Engineering Command" (SOUTHNAVFACENGCOM) means the Naval command that will designate the Navy Project Manager who is tasked to manage the fiscal and technical aspects of the Installation Restoration Program (IRP) at the site.

KK. "UST" means underground storage tank as defined in 40 CFR 280.

IV. SITE DESCRIPTION

A. For the purposes of this Agreement, the United States Naval Air Station, Jacksonville, is located on approximately 3,800 acres in south-central Duval County, Florida. It is approximately 9 miles south of downtown Jacksonville. The mission of NAS Jacksonville is to provide facilities, services and managerial support for the operation and maintenance of naval weapons and aircraft to activities and units of the operating forces as designated by the Chief of Naval Operations. Work in support of the base mission includes fuel storage and transportation systems and the overhaul, intermediate maintenance and repair of aircraft and engines. Maintenance activities at NAS Jacksonville over the years generated a variety of materials of which some were disposed of on the base. These include materials resulting from construction activities; municipal solid waste and municipal wastewater treatment plant sludge; and miscellaneous industrial wastes, including waste oils or solvents, paints, and spilled fuels. Current disposal practices are regularly surveyed for conformity to local, state, and federal regulations.

B. Three aquifers underlie the NAS Jacksonville Site: the Surficial, Intermediate and the Floridan. The aquifer of greatest concern at NAS Jacksonville is the Surficial. The Surficial aquifer is separated from the Floridan by the Hawthorn Formation. Drinking water is supplied on base via wells which tap the Floridan aquifer. Off base residents use both the municipal water system and the Intermediate aquifer as a drinking water source.

C. Several creeks and two small lake are on-Site. The St. Johns River is classified by the Florida Department of Environmental Regulation as Class III waters: recreation, propagation and management of fish and wildlife. While NAS Jacksonville is situated on the western bank of the St. John River, the surrounding area is urban.

D. Forty-two (42) Potential Sources of Contamination (PSC) have been identified within the Site and listed in Attachment A. The Parties will continually clarify the extent of the Site on the basis of additional investigations performed by the Navy to more accurately reflect the areas actually contaminated by hazardous substances, pollutants, contaminants or constituents, related in whole or in any part to NAS Jacksonville. If any additional PSC are discovered, Attachment A will be amended to reflect the new areas.

V. FINDINGS OF FACT

A. For the purposes of this Agreement, the following constitutes a summary of the findings upon which this Agreement is based. None of the facts related herein shall be considered admissions by any party. This Part contains findings of fact, determined solely by the Parties and shall not be used by any person related or unrelated to this Agreement for purposes other than determining the basis of this Agreement.

B. NAS Jacksonville was established in 1940 as an airfield, training center and aircraft maintenance facility.

C. In July 1983 Navy Energy and Environmental Support Activity (NEESA) produced an Initial Assessment Study or Preliminary Assessment (PA) that identified and assessed areas posing a potential threat to human health or to the environment due to possible contamination from past hazardous substance operations at NAS Jacksonville. The PA identified 38 PSCs on NAS Jacksonville, and recommended 10 for further investigation. NAS Jacksonville environmental personnel requested two additional PSCs be investigated, bringing the total to 40. The Navy completed and submitted a Verification Study or Site Inspection in December 1985 for 18 PSCs that were recommended for further action by either the PA or by FDER or by NAS Jacksonville personnel. The SI recommended 9 PSCs for additional investigation. In February 1986, the Navy completed and submitted a Characterization Study or Expanded Site Inspection (ESI) on these 9 PSCs. Two additional PSCs were identified while conducting the RCRA Facility Assessment, increasing the total number of PSCs to 42.

D. As a result of the assessments and inspections of 42 PSCs on the site, (a) on-site releases of hazardous substances have occurred in the past; (b) other on-site hazardous substance, pollutant, contaminant or constituent release may have occurred in the past; (c) other on-site hazardous substance, pollutant, contaminant or constituent release may be occurring and/or may occur in the future; and (d) other on-site hazardous substance, pollutant, contaminant or constituent release may require CERCLA response/RCRA corrective action.

E. On June 19, 1987, a permit was issued by the U.S. EPA to NAS Jacksonville under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976. The permit listed 42 Solid Waste Management Units (SWMU).

F. In accordance with Section 120(d)(2) of the Superfund Amendments and Reauthorization Act of 1986, U.S. EPA prepared a final Hazard Ranking System (HRS) Scoring Package. The HRS score determined for NAS Jacksonville made the facility eligible for the NPL. The facility was added to the NPL on December 21, 1989.

G. In April 1989, NAS Jacksonville developed a Technical Review Committee (TRC) whose members included U.S. EPA, FDER, local regulatory agencies and representatives from the local government and community. The TRC was developed to inform the public and the regulatory agencies of the Navy's actions at the Site and to receive comments on those actions. The first TRC meeting was held in May 1989.

H. Based upon the information above, the Parties agree that the following are applicable to the provisions of this agreement:

1. Work done and data generated prior to the effective date of this Agreement shall be retained and utilized as elements of the RI/FS and subsequent efforts pursuant to CERCLA and the RCRA analog to the maximum extent feasible without violating applicable or relevant and appropriate laws, regulations, or guidelines. The Parties acknowledge that the Navy is in the process of conducting some of the work to be performed pursuant to this Agreement. The Navy may proceed with currently ongoing work.

2. To the extent that modification to work completed/work in progress is necessary, such modification will be accomplished in accordance with this Agreement.

3. Appendix A, Part I lists those potential sources of contamination which have been identified as requiring an RI/FS. Appendix A, Part II lists those potential sources of contamination still undergoing site screening. The parties will make a determination at the conclusion of the site screening whether a further investigation or actions will be required under CERCLA/RCRA for the potential sources of contamination.

4. Some or all response actions required for hazardous substances, pollutants, contaminants or constituents that have migrated on-site from off-site locations may be the responsibility in whole or in part of one or more persons not

signatory to this Agreement pursuant to Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a).

5. The United States is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21), and the owner/operator of NAS Jacksonville as defined by Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. Sections 9601(20) and 9607(a)(1).

6. The Site (NAS Jacksonville) is a "Facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

7. Hazardous substances, pollutants, contaminants or constituents within the meaning of 42 U.S.C. Sections 9601(14), 9601(33) and 9604(a)(2), Section 1004(5) of RCRA, 42 U.S.C. Section 6903(5) and 40 C.F.R. Part 261 (1988), as amended, have been managed and/or disposed of at the Site.

8. There have been releases of hazardous substances, pollutants, contaminants or constituents into the environment at the Site within the meaning of 42 U.S.C. Sections 9601(22), 9604, 9606, and 9607 and Section 1004(5) of RCRA, 42 U.S.C. Section 9603(5) and 40 C.F.R. Part 261 (1988) as amended.

9. With respect to those releases and/or threats of release, the Navy is a responsible party within the meaning of 42 U.S.C. Section 9607.

VI. PURPOSE

A. The general purposes of this Agreement are to:

1. Ensure that the environmental impacts associated with past and present activities at the Site are

thoroughly investigated and appropriate CERCLA response/RCRA corrective alternatives are developed and implemented as necessary to protect the public health, welfare and the environment;

2. Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with CERCLA/SARA, RCRA, the National Contingency Plan (NCP), and written U.S. EPA/State-issued guidance and policy relevant to remediation at the Site;

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

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

1. Identify incremental removal/remedial actions, also known as operable units, which are appropriate at specific locations of the Site prior to the implementation of final CERCLA response/RCRA corrective action(s). Any Party may propose incremental CERCLA response/RCRA corrective actions (operable units) to the other Parties and should do so as soon as the need for such incremental CERCLA response/RCRA corrective action is identified. This process is designed to promote cooperation among the Parties in identifying incremental CERCLA response/RCRA corrective actions prior to their final proposal. The Parties do not intend that the identification or proposal of

any incremental CERCLA response/RCRA corrective actions preclude the timely initiation of emergency actions necessary to address immediate threats to human health, welfare or the environment pursuant to Section XI (Imminent and Substantial Endangerment) of this Agreement.

2. Establish requirements for the performance of RIs to determine fully the nature and extent of the threat to the public health, welfare or the environment caused by the release and threatened release of hazardous substances, pollutants, contaminants or constituents at the Site and to establish requirements for the performance of FSs for the Site to identify, evaluate, and select alternatives for the appropriate CERCLA response/RCRA corrective action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants, contaminants or constituents at the Site in accordance with CERCLA/SARA and applicable State law.

3. Identify the nature, objective and schedule of CERCLA response/RCRA corrective actions to be taken at the Site. Such response actions at the Site shall attain that degree of remediation of hazardous substances, pollutants, contaminants or constituents mandated by CERCLA/SARA and applicable or relevant and appropriate requirements (ARARs) under State law.

4. Implement the selected CERCLA response/RCRA corrective action(s) in accordance with CERCLA/RCRA and applicable State law.

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

6. As provided in Section VII (Statutory Compliance/RCRA-CERCLA Integration) of this Agreement, assure compliance, through this Agreement, with RCRA and other federal and State hazardous waste laws and regulations for matters covered herein as consistent with the NCP.

7. Coordinate CERCLA response/RCRA corrective actions at the Site with the mission and support activities of units at the Site.

8. Expedite the remediation process to the extent consistent with protection of human health, welfare and the environment.

9. Provide for FDER involvement in the initiation, development, and selection and enforcement of CERCLA response/RCRA corrective actions to be undertaken at the Site, including the review of all applicable data as it becomes available and the development of studies, reports, and action plans; and to identify and integrate State ARAR's into the CERCLA response/RCRA corrective action processes subject to Sections 121(d)(4) and (f)(3) of CERCLA, 42 U.S.C. Sections 9621(d)(4) and (f)(3).

10. Provide for operation and maintenance of any CERCLA response/RCRA corrective action selected and implemented pursuant to this Agreement.

VII. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

A. The facility is subject to the terms and conditions of Hazardous Waste Permit No. HO16-119108, issued by FDER on October 10, 1988, and the HSWA permit No. FL6 170 024 412 issued by U. S. EPA on June 19, 1987, and Closure Permit No. HF16-144281 issued by FDER on January 8, 1990. U.S. EPA and FDER shall commence the process of modifying the permits to incorporate the provisions of this Agreement in a timely manner. The permit shall be similarly modified after selection of the final remedial action for the site and any public comment period shall run concurrently with the comment period in accordance with Section XXIX (Administrative Record and Public Participation) and Sections 117 and 113(k) of CERCLA.

B. The parties intend to integrate the Navy's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, hazardous constituents, pollutants or contaminants into this comprehensive Agreement. Therefore, the Parties agree that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. Section 9601 et seq.; satisfy the corrective action requirements of Sections 3004(u) and (v) of RCRA for a RCRA permitted facility, and Section 3008(h), the Closure Permit issued pursuant to Chapter 403 F.S. and FAC Rule 17-730.260; and meet or exceed all applicable or relevant and appropriate federal and state laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. Section 9621, and applicable State law.

C. Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement will be protective of human health, welfare and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA, as amended. The Parties agree that with respect to releases of hazardous waste or hazardous constituents covered by this Agreement, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to Section 121 of CERCLA, 42 U.S.C. Section 9621. Releases or other hazardous waste activities not covered by this Agreement remain subject to all applicable State and federal environmental requirements.

D. 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 on-going hazardous waste management activities at the Site 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, since RCRA permits have been issued to the facility for on-going hazardous waste management activities at the Site, U.S. EPA and/or FDER 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

administrative or judicial review of the incorporated portions shall, to the extent review is authorized by law, only occur under the provisions of CERCLA or applicable state law.

E. Nothing in this Agreement shall alter the Parties' authorities with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. Section 9604; and Section 403.726 Florida Statutes.

VIII. CONSULTATION WITH U.S. EPA AND FDER

Review and Comment Process for Draft and Final Documents

A. Applicability:

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 Section 120 of CERCLA, 42 U.S.C. Section 9620, and 10 U.S.C. Section 2705, the Navy will normally be responsible for issuing primary and secondary documents to U.S. EPA and FDER. As of the effective date of this Agreement, all draft and final documents for any deliverable identified herein shall be prepared, distributed and subject to dispute in accordance with Paragraphs B through J below.

2. The designation of a document as "draft" or "final" is solely for purposes of consultation with U.S. EPA and FDER 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. All documents identified below shall be considered "reports" pursuant to Section XIII (Notification) of this Agreement.

B. General Process for RI/FS and RD/RA documents:

1. "Primary documents" include those reports, plans and studies that are major, discrete portions of RI/FS or RD/RA activities. Primary documents are initially issued by the Navy in draft subject to review and comment by U.S. EPA and FDER. Following receipt of comments on a particular draft primary document, the Navy will respond to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary document will become the final primary document thirty (30) calendar days after issuance if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

2. "Secondary documents" include those reports, plans and studies that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by the Navy in draft subject to review and comment by U.S. EPA and FDER. Although the Navy will respond to comments received, the draft secondary documents may be finalized in the context of the corresponding primary documents. A secondary document may be disputed at the time the corresponding draft final primary document is issued.

C. Primary Documents:

1. The Navy shall complete and transmit draft documents of the following primary documents, if such documents are required under the Site Management Plan, to U.S. EPA and FDER for review and comment in accordance with the provisions of this Section. Unless otherwise specified, the documents shall be for a specific operable unit(s).

a. Site Management Plan

b. Site Community Relations Plan (CRP)

c. Remedial Investigation or Feasibility Study (RI/FS) Work Plans

d. Risk Assessments Report

e. Remedial Investigation (RI) Reports

f. Feasibility Study (FS) Reports (including Detailed Analysis of Alternatives)

g. Proposed Remedial Action Plans (PRAP)

h. Records of Decision (RODs)

i. Remedial Design (RD) Reports (including Design Plans and Specifications)

j. Remedial Action (RA) Work Plans

k. Final Remediation Reports (including Notices of Intent to Delete)

l. Five Year Review Reports

m. NPL Close-Out Report

2. Only the draft final primary documents identified above shall be subject to dispute resolution. The Navy shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Section XXIII (Deadlines) of this Agreement.

D. Secondary Documents:

1. The Navy shall complete and transmit draft documents of the following secondary documents, if such documents are required under the Site Management Plan, to U.S. EPA and FDER for review and comment in accordance with the provisions of this Section. Unless otherwise specified, the documents shall be for specific operable unit(s). Secondary documents include:

a. Preliminary Characterization Summary Reports

b. Site Health and Safety Plan

c. Baseline Risk Assessment

d. Site Sampling and Analysis Plan (including Quality Assurance Project Plan (QAPP) and Field Sampling Plan)

e. Site Quarterly Progress Reports

f. Treatability Study Reports

g. Remedial Action (RA) Progress Reports

h. Remedial Design (RD) Implementation Plan

i. Remedial Pre-Design Reports

j. Remedial Action (RA) Post-Construction Reports

2. Although U.S. EPA and FDER may comment on the draft documents for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Paragraph B hereof. Target dates shall be established for the completion and transmission of draft secondary documents pursuant to Section XXIII (Deadlines) of this Agreement.

E. Meetings of the Project Managers on Development of Documents:

The Project Managers shall confer monthly except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site on the primary and secondary documents. Prior to preparing any draft document described in Paragraphs C and D above, the Project Managers shall discuss the data to be reported in an effort to reach a common understanding with respect to the results to be presented in the draft document to the maximum extent practicable.

F. Identification and Determination of Potential ARARs:

1. For those primary or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft document, the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. FDER shall identify all potential State ARAR's as early in the remedial process as possible consistent with the requirements of Section 121 of CERCLA, 42 U.S.C. Section 9621 and the NCP. The Navy shall

consider any written interpretations of ARAR's provided by FDER. Draft ARAR determinations shall be prepared by the Navy in accordance with Section 121(d)(2) of CERCLA, 42 U.S.C. Section 9621(d)(2), the NCP and pertinent written U.S. EPA/State-issued guidance/policy that is consistent with CERCLA and the NCP.

2. In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on an operable unit basis. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be re-examined throughout the RI/FS process until a ROD is issued.

G. Review and Comment on Draft Documents:

1. The Navy shall complete and transmit each draft primary document to U.S. EPA and FDER on or before the corresponding deadline established for the issuance of the document. The Navy shall complete and transmit the draft secondary documents in accordance with the target dates established for the issuance of such documents pursuant to Section XXIII (Deadlines) of this Agreement.

2. Unless the Parties mutually agree to another time period, all draft documents shall be subject to a ninety (90) calendar days period for review and comment. Review of any document by the U.S. EPA and FDER 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 written U.S. EPA/State-issued guidance or policy and with applicable

State law. Comments by the U.S. EPA and FDER shall be provided with adequate specificity so that the Navy may respond to the comment and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Navy, the U.S. EPA and FDER shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy documents, U.S. EPA or FDER may extend the ninety (90) calendar day comment period for an additional twenty (20) calendar days by written notice to the Navy prior to the end of the ninety (90) calendar day period. On or before the close of the comment period, U.S. EPA and FDER shall transmit their written comments to the other Parties by registered/return-receipt mail.

3. Representatives of the Navy shall make themselves reasonably available to U.S. EPA and FDER during the comment period for purposes of informally responding to questions and comments on draft documents. Oral comments made during such discussions need not be the subject of a written response by the Navy.

4. In commenting on a draft document which contains a proposed ARAR determination, the objecting Party shall include a reasoned statement whenever it objects to any portion of the proposed ARAR determination. Whenever the U.S. EPA or FDER objects, it shall explain the basis for its objection(s) in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR

determination.

5. Following the close of the comment period for a draft document, the Navy shall give full consideration to all written comments on the draft document submitted during the comment period. Within sixty (60) calendar days of the close of the comment period on a draft primary document, the Navy shall transmit to U.S. EPA and FDER its written response to comments received within the comment period. Within sixty (60) calendar days of the close of the Navy's response period to EPA and FDER comments on a draft primary document, the Navy shall transmit to U.S. EPA and FDER a draft final primary document, which shall include the Navy's response to all written comments received within the comment period. While the resulting draft final document shall be the responsibility of the Navy, it shall be the product of consensus to the maximum extent possible.

6. The Navy may extend the sixty (60) calendar day periods for either responding to comments in a draft document or for issuing the draft final primary document for an additional twenty (20) calendar days by providing written notice to U.S. EPA and FDER. In appropriate circumstances, these time periods may be further extended in accordance with Section XXIV (Extensions) of this Agreement.

H. Availability of Dispute Resolution for Draft Final Primary Documents:

1. Dispute resolution shall be available to the Parties for draft final primary documents as set forth in Section XXVI (Resolution of Disputes) of this Agreement.

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 XXVI (Resolution of Disputes) of this Agreement.

I. Finalization of Primary Documents:

The draft final primary document shall become the final primary document if no party invokes dispute resolution within thirty (30) calendar days of issuance of the document or, if invoked, at completion of the dispute resolution process should the Navy's position be sustained. If the Navy's determination is not sustained in the dispute resolution process, the Navy shall prepare, within not more than sixty (60) calendar 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 XXIV (Extensions) of this Agreement.

J. Subsequent Modifications of Final Primary Documents:

Following finalization of any primary document pursuant to paragraph I 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 Subparagraphs 1 and 2 below.

1. A Party may seek to modify a primary document after finalization if it determines, based on significant new information 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 provide justification for such modification.

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

3. Nothing in this Section shall alter U.S. EPA's or FDER's ability to request the performance of additional work that was not contemplated by this Agreement. The Navy's obligation to perform such work must be established by either a modification of a report or document or by amendment to this Agreement. (See Section XXXI (Amendment of Agreement)).

IX. SCOPE OF THE AGREEMENT

A. This Agreement shall apply to all releases and threats of release of hazardous substances, pollutants,

contaminants or constituents for which response authorities are provided under CERCLA/SARA and Sections 3008(h) and 3004(u) and (v) of RCRA, 42 U.S.C. Sections 6928(h) and 6924(u) and (v).

B. The Navy shall conduct the work identified within the scope of this Agreement in accordance with the authorities cited in Section I (Jurisdiction) of this Agreement, and all provisions of RCRA, CERCLA, the NCP, as amended and as provided for in pertinent written U.S. EPA or State-issued guidance or policy, and other applicable Federal or State law.

C. The U.S. EPA and FDER shall identify all pertinent written guidance in response to written requests by the Navy for said guidance to assist the Navy in satisfying the requirements pursuant to this Agreement.

D. This Agreement does not extend to the following:

1) to solid or hazardous waste generation, transportation and/or treatment/storage/ disposal requirements under RCRA outside the RCRA corrective action process;

2) to petroleum releases that are excluded under CERCLA §101(14) and 104(a)(2) and that are addressed under FAC Chapter 17-770;

3) to discharges of oil and hazardous substances addressed under the Oil Pollution and Hazardous Substances Control Act.

X. PERMITS

A. The Parties recognize that under Sections 121(d) and 121(e)(1) of CERCLA/SARA, 42 U.S.C. Sections 9621(d) and

9621(e)(1), and the NCP, 40 CFR Part 300 et seq. (1988) as amended, portions of the response actions called for by this Agreement and conducted entirely on-Site are exempted from the procedural requirement to obtain a federal, State, or local permit but must satisfy applicable or relevant and appropriate federal and State standards, requirements, criteria, or limitations which would have been included in any such permit.

B. When the Navy 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/SARA and the NCP would require a federal or State permit, the Navy shall include in the Remedial Action Work Plan:

1. Identification of each permit which would otherwise be required;

2. Identification of the standards, requirements, criteria, or limitations which would have had to have been met to obtain each such permit;

3. Explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified in paragraph (2) immediately above, but only to the extent that this information is not covered by the statutory obligations of the Parties to identify ARAR's. Upon request of the Navy, U.S. EPA and FDER will provide their position with respect to 2. and 3. above in a timely manner.

C. Paragraph A above is not intended to relieve the Navy from complying with federal, State, or local hazardous

waste management requirements whenever it proposes a response action involving the shipment or movement of a hazardous substance/waste off of the facility.

D. The Navy shall provide FDER and U.S. EPA Project Managers written notice of any permits or other approvals required for off-Site activities as soon as it becomes aware of the requirement. Upon request, the Navy shall provide FDER and/or U.S. EPA Project Managers copies of all such permit applications and other documents related to the permit or approval process.

E. If a permit or other authorization necessary for implementation of this Agreement is not issued/granted (or is proposed to be issued or renewed in a manner which is materially inconsistent with the requirements of any Work Plan reached pursuant to this Agreement), the Navy agrees to notify FDER and U.S. EPA of the inconsistency as soon as possible. The Project Managers shall then meet to consider the appropriate course of action.

F. During the pendency of any delay pursuant to Paragraph E above, the Navy shall continue to implement those portions of the applicable Work Plan which are not directly or indirectly dependent upon a permit/approval in question and which can be implemented pending final resolution of the permit/approval issue(s).

XI. IMMINENT AND SUBSTANTIAL ENDANGERMENT

A. An authorized Department of Navy Official, can order a temporary cessation of work (on either his own volition

or at the request of a U.S. EPA or FDER Project Manager) in order to respond to a situation creating an imminent and substantial endangerment to human health, welfare and the environment.

B. In the event the Navy Project Manager does not concur with the U.S. EPA or FDER Project Managers on the need to cease work, the U.S. EPA or FDER Project Manager shall provide the Navy Project Manager with a written directive to cease work. The written directive shall include the reason for ceasing work, the authority U.S. EPA or FDER is acting under to order the cessation and the signature of the authorizing official. After a written directive is issued to the Navy, the Parties agree to discontinue work for such period of time as needed to take appropriate action, to abate the danger. Any dispute regarding the existence of an imminent and substantial endangerment or any action necessary to abate such condition will be resolved pursuant to Section XXVI (Resolution of Disputes) of this Agreement.

C. Notwithstanding any other provision of this Agreement, the Navy retains the right, consistent with Executive Order 12580, to conduct such emergency actions as may be necessary to alleviate immediate threats to human health, welfare or the environment from the release or threat of release of hazardous substances, pollutants, contaminants or constituents at or from the Site. Such actions may be conducted at any time and shall be conducted in accordance with all applicable laws. Consistent with 10 U.S.C. Section 2705, the

Navy shall provide an adequate opportunity for timely review and comment by U.S. EPA, FDER and local officials for any proposal to carry out response actions with respect to any releases or threatened releases of hazardous substances creating an imminent and substantial endangerment and before undertaking such response actions. The preceding sentence does not apply if the action is an emergency removal taken because of imminent and substantial endangerment to human health, welfare or the environment and consultation would be impractical.

D. The Navy shall provide the other Parties with oral notice as soon as possible, but no later than the following business day after the Navy determines that an emergency action was necessary due to an imminent and substantial endangerment to human health, welfare or the environment. In addition, within five (5) days of initiation of such action, the Navy shall provide written notice to the other Parties explaining why such action is or was necessary to abate an imminent and substantial endangerment. Promptly thereafter, the Navy shall provide the other Parties with the written bases (factual, technical, scientific) for such action and any available documents supporting such action. Upon completion of such an emergency action, the Navy shall notify the Parties in writing that the emergency action has been implemented. Such notice shall state whether, and to what extent, the emergency action varied from the description of the action provided in the written notice provided pursuant to the second sentence of this paragraph.

E. This Section shall not be construed to relieve the

Navy from compliance with State and federal notice requirements applicable to releases.

XII. REPORTING

The Navy shall submit to FDER and U.S. EPA quarterly written progress reports which identify and briefly describe the actions which the Navy has taken during the previous quarter to implement the requirements of this Agreement. Progress reports shall also identify and briefly describe the activities scheduled to be taken during the upcoming quarter. Progress reports shall be submitted within thirty (30) calendar days following the end of the previous quarter following the effective date of this Agreement. The progress reports shall include a statement of the manner and extent to which the requirements and time schedules set out in this Agreement and approved Work Plans are being met. In addition, the progress reports shall identify any anticipated delays in meeting time schedules, the reason(s) for the delay and actions taken to prevent or mitigate the delay.

The Navy shall submit notice of a significant new site condition within five (5) days of such determination by the Navy.

XIII. NOTIFICATION

A. Unless otherwise specified in this Agreement, the following shall be sent by certified registered/return-receipt mail, facsimile machine or hand delivery to Project Managers or their designated agent(s):

1. Any report provided pursuant to a schedule or

deadline identified in or developed under this Agreement.

2. Any notice of significant new site conditions.

3. Any decisions on remedial action selected by the Parties.

4. Any notice of dispute and response thereto submitted under Section XXVI (Resolution of Disputes) of this Agreement.

5. Any request, and response thereto, for extensions under Section XXIV (Extensions) of this Agreement.

6. Any notice of Force Majeure under Section XXV (Force Majeure) of this Agreement.

7. Any notice of cessation of work due to an imminent and substantial endangerment situation under Section XI (Imminent and Substantial Endangerment) of this Agreement.

B. The items listed in Paragraph A above shall be transmitted as shown below:

Mail:

U.S. EPA: U.S. Environmental Protection Agency Region IV
Waste Management Division
Attn: NAS Jacksonville Remedial Project Manager
345 Courtland Street N.E.
Atlanta, GA 30365

FDER: Florida Department of Environmental Regulation
Bureau of Waste Clean-up
2600 Blair Stone Street
Twin Towers Office Building
Tallahassee, FL 32399-2400

Navy: Southern Division
Naval Facilities Engineering Command
Code 11512
2155 Eagle Drive
P.O. Box 10068
Charleston, SC 29411-0068

Information copies of the items listed in Paragraph A above shall be delivered to the address below:

NAS Jacksonville
Facility IR Manager
Public Works Dept., Environmental Div.
Box 5, Code 184, Building 902
Jacksonville, FL 32212-5000

C. Unless otherwise requested, all routine correspondence, including quarterly progress reports, may be sent via regular mail to the above-named persons. Any time limitations shall commence upon receipt.

D. Telephones:

1. U.S. EPA: (404) 347-3016 (Project Manager)
2. FDER: (904) 488-0190 (Project Manager)
3. Navy: (803) 743-0577 (Project Manager)
   (904) 772-2717 (Facility IR Manager)

XIV. PROJECT MANAGERS

A. The U.S. EPA, FDER and the Navy shall each designate a Project Manager and Alternate for the purpose of overseeing the implementation of this Agreement. Within ten (10) days of the effective date of this Agreement, each Party shall notify the other Parties in writing of the name and address of their Project Manager/Alternate. Any Party may change its designated Project Manager/Alternate by notifying the other Parties, in writing, within five (5) days of the change. To the maximum extent possible, communications between the parties concerning the implementation of this Agreement shall be directed through the Project Managers as set forth in Section XIII (Notification) of this Agreement. As a matter of course,

all written communications shall be sent to the primary point of contact as described in Section XIII (Notification) above. Each Project Manager shall be responsible for assuring that all communications from the other Project Managers are appropriately disseminated to and processed by the entities which the Project Manager represents.

B. The Project Managers or their designees shall have the authority to:

1. Take samples, request split samples and ensure that work is performed properly and pursuant to Section XV (Sampling and Data Document Availability) of this Agreement as well as pursuant to the Appendices and plans incorporated into this Agreement;

2. Observe all activities performed pursuant to this Agreement;

3. Take photographs subject to national security-related restrictions that may be imposed by military authorities at specific locations pursuant to Section 120(j) of CERCLA, 42 U.S.C. Section 9620(j);

4. Make such other reports on the progress of the work as are appropriate; and

5. Review records, files and documents relevant to this Agreement.

C. Any Project Manager may request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or designs utilized in carrying out this Agreement, which are necessary to the

completion of the project. Any minor field modifications requested by any Party must be approved orally by all three (3) Project Managers to be effective. If unanimous agreement cannot be reached on the proposed minor field modification, the Parties shall use the procedures of Section XXVI (Resolution of Disputes) of this Agreement. Within five (5) days following a modification made pursuant to this paragraph, the Project Manager who requested the modification shall provide written notification to the other Project Managers which delineates the modification and reasons therefore.

D. The Facility Installation Restoration (IR) Manager or his designated representative shall be physically present on Site or reasonably available to supervise work performed at NAS Jacksonville during implementation of the work performed pursuant to this Agreement.

E. Each Project Manager shall make himself reasonably available to the other Project Managers for the pendency of this Agreement.

XV. SAMPLING AND DATA DOCUMENT AVAILABILITY

A. The Parties shall provide as soon as possible, but no later than 120 days after collection, quality assured results of sampling, tests or other data generated by such Party, or on their behalf, with respect to the implementation of this Agreement. The Parties shall use the following U.S. EPA/State-approved quality assurance, quality control and chain of custody procedures throughout all sample collection and analysis activities:

- Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual. April 1, 1986.
- Characterization of Hazardous Waste Sites A Methods Manual, Volume 11. EPA-600/4-84-076.
- Test Methods for Evaluating Solid Waste, Current Edition. GPO #955-001-00000-1. EPA #SW-846.

Any deviation from the above referenced procedures shall be submitted and approved as part of the site sampling analysis plan.

B. At the request of any Party the sampling Party shall allow split samples to be taken by any other Party during sample collection conducted during the implementation of this Agreement. The Project Manager obtaining the sample shall notify the other Project Managers not less than twenty-one (21) calendar days in advance of any sample collection to the maximum extent practicable. If it is not possible to provide twenty-one (21) calendar day notification, the Project Manager shall notify the other Project Managers as soon as possible after becoming aware that samples will be collected. Sampling taken without 21 days notice shall be postponed by the request of any Party.

XVI. RETENTION OF RECORDS

Each Party to this Agreement shall preserve all records and documents forming the Administrative Record for a minimum of ten (10) years after termination of this Agreement despite any other document retention statute, regulation, or policy to the contrary. After the ten (10) year period, any Party desiring to

destroy/dispose of document(s)/ record(s) shall notify the other Parties at least forty-five (45) days prior to destruction/disposal of any such documents or records. Upon request by any Party, all records/documents pending destruction/disposal shall be made available for the requesting Party's review and retention.

XVII. SITE ACCESS

A. U.S. EPA and FDER authorized representatives shall have authority to enter and move about the Facility at all reasonable times for any purpose consistent with this Agreement including, among other things:

1. Inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement;

2. Reviewing the progress of the Navy, its response action contractors or lessees in implementing this Agreement;

3. Gathering samples and conducting such analyses of those samples as is necessary to implement this Agreement; and

4. Verifying the data submitted to the U.S. EPA and FDER by the Navy.

The Navy shall honor all reasonable requests for such access by the U.S. EPA and FDER conditioned only upon presentation of proper credentials. However, such access shall be obtained in conformance with Navy security regulations and in a manner minimizing interference with any military operations at

NAS Jacksonville. The Parties recognize that the Facility is a National Security installation thereby requiring that the U.S. EPA and FDER shall refrain from using cameras or recording devices at the Site without the prior permission of the Navy. Such permission shall not be unreasonably withheld. The Navy shall provide an escort, for purposes consistent with the provisions of this Agreement. The U.S. EPA and FDER shall provide reasonable notice to the Facility Installation Restoration Manager to request any necessary escorts.

B. To the extent that access is required to areas of the Site presently owned by or leased to parties other than the Navy, the Navy agrees to initiate negotiations and exercise any authority it may have to obtain access pursuant to Section 104(e) of CERCLA/SARA, 42 U.S.C. Section 9604(e), from the present owners and/or lessees within thirty (30) calendar days after the relevant submittals which require access are finalized. The Navy shall use its best efforts to obtain access agreements which shall provide reasonable access to the authorized representatives of all Parties.

C. During negotiations with property owners on whose property where Navy monitoring wells, pumping wells, treatment facilities or other response actions are to be located, the Navy will request owners to notify the Parties by registered/return receipt mail, at least forty-five (45) calendar days prior to any conveyance or any other transfer of any interest in the property. The Navy will use its best efforts to insure the continued operation of the monitoring wells, treatment

facilities, or other response actions installed pursuant to this Agreement.

D. Should the Navy be denied access to non-federal property, it will advise the Parties of that denial and will describe those actions taken to gain access within thirty (30) calendar days of the denial. Within fifteen (15) calendar days of such notice, the Navy shall submit appropriate modification(s) to affected Work Plans.

E. The Navy Project Manager may request the assistance of the other Parties' Project Managers in obtaining access to non-federal property as appropriate.

XVIII. CONFIDENTIAL INFORMATION

A. The Navy may possess information which is subject to a confidentiality claim as established by the Navy pursuant to regulations found at 32 C.F.R. Part 701. In the event that the Navy submits information to other parties pursuant to this Agreement which is subject to a confidentiality claim, such information shall be clearly designated by the Navy as confidential. If no confidentiality claim accompanies the information when it is submitted, the information may be made available to the public without further notice to the Navy.

B. Upon receipt of material claimed as confidential, U.S. EPA shall review the confidentiality claim pursuant to 40 C.F.R. Part 2, and shall make an independent confidentiality determination. The Navy's prior confidentiality determination made pursuant to 32 C.F.R. Part 701 shall be relevant to, but shall not control, U.S. EPA's confidentiality determination.

C. In the event that U.S. EPA determines that information submitted by the Navy pursuant this Agreement contains confidential business information ("CBI"), U.S. EPA shall manage such information according to U.S. EPA procedures for the management of CBI.

D. In the event that U.S. EPA determines that information submitted by the Navy pursuant to this Agreement does not contain CBI as established pursuant to 40 C.F.R. Part 2, the Parties to this Agreement recognize that the conflicting confidentiality determinations made by U.S. EPA and the Navy give rise to a unique inter-agency dispute. Therefore, in the event of such conflicting determinations, U.S. EPA and the Navy agree to jointly elevate the resulting dispute to their respective offices of General Counsel for assistance in resolving the dispute. The parties agree to abide by the final inter-agency resolution of the dispute resulting from such elevation, including appropriate management of the information in question in accordance with the resolution of the dispute.

E. Nothing in this Part shall serve as a limitation on the Navy's right to classify information for national security purposes pursuant to the national security provisions referenced in Section 120(j)(2) of CERCLA, 42 U.S.C. 9620(j)(2), or to seek site-specific Presidential orders under Section 120(j)(1) of CERCLA, 42 U.S.C. 9620(j)(1). Except as otherwise provided by Section 120(j) of CERCLA, analytical data shall not be claimed as confidential by the Navy.

F. Notwithstanding the foregoing, the parties recognize that documents submitted to FDER, whether draft or final in form, are subject to provisions of Chapter 119 F.S.

XIX. FIVE YEAR REVIEW

A. Consistent with Section 121(c) of CERCLA/SARA, 42 U.S.C. Section 9621(c) and OSWER Directive 9320.2-3A, Procedures for Completion and Deletion of NPL Sites, the Parties agree that they will conduct an initial review of the status of each remedial action that results in any hazardous substances, contaminants or pollutants remaining at the Site five years after the initiation of such final remedial action(s) to assure that human health, welfare, and the environment are being protected. The review will be conducted on such remedial actions each five years thereafter until all remediation is determined by each of the Parties to have been effective. If during any such review it is agreed by the parties that additional action or modification of the remedial action is appropriate, the Navy shall take such steps as necessary to address the identified shortcoming.

B. Any dispute under this Section shall be resolved under Section XXVI (Resolution of Disputes) of this Agreement.

XX. OTHER CLAIMS

A. Nothing in this Agreement shall constitute or be construed as a bar or release by any of the Parties 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, pollutants, contaminants or constituents found at, taken to, or taken from NAS Jacksonville.

B. Neither the U.S. EPA nor the State shall be held as a party to any contract entered into by the Navy to implement the requirements of this Agreement.

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

XXI. THE STATE'S RESERVATION OF RIGHTS

By entering into this Agreement, the State does not waive any right or authority it may have under Florida law, but expressly reserves all of the rights and authority it may have thereunder, including the right to order abatement of an imminent hazard to the public health or the environment, and reserves all rights it may have under Section 121 of CERCLA, 42 U.S.C. Section 9621. The State expressly agrees to exhaust any applicable remedies provided in Section VIII (Consultation with U.S. EPA and FDER) and Section XXVI (Resolution of Disputes) of this Agreement before pursuing

any remedies it may have under the statutes which provide the jurisdictional basis for this Agreement. Unless expressly waived by law, Florida does not waive its Sovereign Immunity by entering into this Agreement.

XXII. STIPULATED PENALTIES

A. In the event that the Navy fails to submit a primary document to U.S. EPA or FDER pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a material term or condition (including any deadlines or schedules for work under this Agreement) which relates to a CERCLA response action at the Site, U.S. EPA may assess a stipulated penalty against the Navy. A stipulated penalty may be assessed in an amount not to exceed $5,000 for the first week (or part thereof), and $10,000 for each additional week (or part thereof) for which a failure set forth in this Section occurs.

B. Upon determining that the Navy has failed in a manner set forth in Paragraph A above, U.S. EPA or FDER shall so notify the Navy in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Navy shall have thirty (30) calendar days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Navy shall not be liable for the stipulated penalty assessed by U.S. EPA if the failure is determined, through the dispute resolution process,

not to have occurred. If dispute resolution is not invoked, a stipulated penalty shall be final upon assessent. If dispute resolution is invoked, stipulated penalties shall be final upon conclusion of dispute resolution procedures.

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

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

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

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

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

D. 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.

E. Stipulated penalties assessed pursuant to paragraph A shall be payable as follows: one-half to the Hazardous Substances Response Trust Fund and one-half to the FDER Pollution Recovery Fund.

F. In no event shall this Section give rise to a

stipulated penalty in excess of the amount set forth in Section 109 of CERCLA, 42 U.S.C. Section 9609.

G. This Section shall not affect the Navy's ability to obtain an extension of a timetable, deadline or schedule pursuant to Section XXIV (Extensions) of this Agreement.

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

XXIII. DEADLINES

A. The Navy shall submit the Site Management Plan within thirty (30) calendar days of the Effective Date of this Agreement. The Site Management Plan shall include:

1. actions necessary to mitigate any immediate threat to human health or the environment;
2. a list of Operable Units subject to the Agreement;
3. a prioritization and rationale for the Operable Units at the Site;
4. activities and schedules for work planned for the current calendar year, including the schedule of submittal of primary documents; and
5. work projections for subsequent calendar years.

B. Within the Site Management Plan, the Navy shall propose schedule deadlines and work priorities for completion of

each of the draft primary documents which shall be completed during the calendar year including, but not limited to:

1. Site Community Relations Plan
2. RI/FS Work Plans for Operable Units
3. Baseline Risk Assessments for Operable Units

C. No later than September 1 of each year thereafter, the Navy shall submit an amendment to the Site Management Plan which shall propose schedule deadlines and work priorities for completion of each of the draft primary documents to be submitted in the following calendar year.

D. Within thirty (30) calendar days of receipt, U.S. EPA and FDER shall review and provide comments to the Navy regarding the proposed schedule deadlines and work priorities for the Site. Within thirty (30) calendar days following receipt of the comments the Navy shall, as appropriate, make revisions and re-issue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed schedule deadlines and work priorities for the Site. If the Parties agree on proposed schedule deadlines and work priorities for the Site, the finalized deadlines shall be incorporated into the appropriate Work Plans. It is not the intent of this Agreement for U.S. EPA or FDER to interfere with the Navy's appropriation process. If the Parties fail to agree by December 1st on the proposed schedule deadlines and work priorities for the Site, the matter shall immediately be submitted for dispute resolution described in Section XXVI (Resolution of Disputes).

E. The final deadlines established pursuant to this

Section shall be published by U.S. EPA and FDER.

F. Within twenty-one (21) calendar days of issuance of the Record of Decision, the Navy shall propose deadlines for completion of each Remedial Design Report and Remedial Action Work Plan. Each deadline shall be proposed, finalized and published utilizing the same procedures set forth in Paragraphs D and E above.

G. Within twenty-one (21) calendar days of receipt of any Final Remedial Investigation or Feasibility Study Work Plans by U.S. EPA and FDER, the Navy shall furnish target completion dates for secondary documents listed in the Remedial Investigation and Feasibility Study Work Plans.

H. The deadlines set forth in this Section, or to be established as set forth in this Section, may be extended pursuant to Section XXIV (Extensions) of this Agreement. The Parties recognize that one possible basis for extension of the deadlines for completion of Remedial Investigation and Feasibility Study Reports is the identification of Significant New Site Conditions during the performance of the remedial investigation.

XXIV. EXTENSIONS

A. Either a timetable and deadline or a schedule shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by the Navy shall be submitted in writing and shall specify:

1. The timetable and deadline or the schedule

that is sought to be extended;

2. The length of the extension sought;

3. The good cause(s) for the extension; and

4. Any related timetable and deadline or schedule that would be affected if the extension were granted.

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

1. An event of force majeure as described in Section XXV (Force Majeure) of this Agreement;

2. A delay caused by another party's failure to meet any requirement of this Agreement;

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

4. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; and

5. Any other event or series of events mutually agreed to by the Parties as constituting good cause, including but not limited to the following:

a) fire;

b) unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance;

c) unusual delay in transportation;

d) delays caused by compliance with applicable statutes or regulations

governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence.

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

D. Within ten (10) days of receipt of a request for an extension of a timetable and deadline or a schedule, U.S. EPA and FDER shall advise the Navy in writing of their respective positions on the request. If U.S. EPA or FDER does not concur in the requested extension, it shall include in its statement of nonconcurrance an explanation of the basis for its position. Any failure by U.S. EPA or FDER to respond in writing within 10 days shall be deemed a nonconcurrence with the request for an extension.

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

F. Within ten (10) days of nonconcurrence with the requested extension, any Party may invoke dispute resolution in accordance with Section XXVI (Resolution of Disputes) of this

Agreement.

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

H. It shall not be grounds for an extension of time if the Navy has not provided a copy of this Agreement to its agents, employees and response action contractors for the Site and a delay is caused by failure to provide a copy of this Agreement.

XXV. FORCE MAJEURE

A Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or prevents the performance of any obligation under this Agreement, including, but not limited to, acts of God; war; insurrection; civil disturbance; explosion; unusually severe weather conditions that could not be reasonably anticipated; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable

diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the Navy; and insufficient availability of appropriated funds, if the Navy shall have made timely request for such funds as part of the budgetary process as set forth in Section XXXIV (Funding) of this Agreement. A Force Majeure shall also include any strike or other labor dispute against a Navy contractor. Force Majeure shall not include increased costs or expenses of Response Actions whether anticipated at the time such Response Actions were initiated unless sufficient additional appropriated funds are not available.

XXVI. RESOLUTION OF DISPUTES

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

B. Informal Resolution: All parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or their immediate supervisor level. During this informal dispute resolution process the Parties shall meet as many times as the Parties deem necessary to discuss and attempt resolution of the dispute. If resolution cannot be achieved informally, the formal procedures of Paragraph C of this Section shall be implemented to resolve a dispute.

C. Formal Resolution:

1. Within thirty (30) calendar days after: (1) issuance of a draft final primary document pursuant to Section VIII (Consultation with U.S. EPA and FDER) of this Agreement, or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the other Parties a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position.

2. 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. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section XIII Notification) of this Agreement. The membership of the DRC includes:

(a) U.S. EPA:

Principal: Director
Waste Management Division
U.S. EPA, Region IV

Alternate: Deputy Director
Waste Management Division
U.S. EPA, Region IV

(b) State:

Principal: Director
Division of Waste Management
Florida Department of Environmental Regulation

Alternate: Deputy Director
Division of Waste Management
Florida Department of Environmental Regulation

(c) Navy:

Principal: Director
Utilities and Environmental Division
Southern Division
Naval Facilities Engineering Command

Alternate: Head, Remedial Activities Branch
Southern Division
Naval Facilities Engineering Command

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

4. The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. 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) calendar days, U.S.

EPA's Regional Administrator shall issue a written position on the dispute. The Navy or FDER may, within twenty-one (21) calendar days of the Regional Administrator's issuance of U.S. EPA's position, issue a written notice elevating the dispute to the Administrator of U.S. EPA for resolution in accordance with all applicable laws and procedures. In the event that a Party elects not to elevate the dispute to the Administrator within the designated twenty-one (21) calendar days escalation period, the Party shall be deemed to have agreed with Regional Administrator's written position with respect to the dispute. The membership of the SEC includes:

(a) U.S. EPA: Regional Administrator
U.S. EPA, Region IV

(b) State: Assistant Secretary
Florida Department of
Environmental Regulation

(c) Navy: Commanding Officer
Southern Division
Naval Facilities Engineering
Command

5. Upon escalation of a dispute to the Administrator of U.S. EPA pursuant to Subparagraph 4 above, the Administrator will review and resolve the dispute within twenty-one (21) calendar days. Upon request, and prior to resolving the dispute, the U.S. EPA Administrator shall meet and confer with the Assistant Secretary of the Navy (Installations and Environment) and the Secretary of the Department of Environmental Regulation 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.

D. The State reserves its right to maintain an action under Section 121(f)(3)(B) of CERCLA, 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.

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

F. When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Waste Management Division Director for U.S. EPA's Region IV directs, in writing, that work related to the dispute be stopped because, in U.S. EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health, welfare or the environment, or

is likely to have a substantial adverse effect on the remedy selection or implementation process. FDER may request the U.S. EPA's Region IV Waste Management Division Director to direct 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 directive. After stoppage of work, if a Party believes that the work stoppage is inappropriate or may have potentially significant adverse impacts, the Party may meet with the Party directing the work stoppage to discuss that stoppage. Following this meeting, and further consideration of the issues, the U.S. EPA Waste Management Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the U.S. EPA Waste Management 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.

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

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

pursuant to this Section of the Agreement.

XXVII. ENFORCEABILITY

A. The Parties agree that:

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

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

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

4. Any final resolution of a dispute pursuant to Section XXVI (Resolution of Disputes) of this Agreement which

establishes a term, condition, timetable, deadline or schedule shall be enforceable by any person pursuant to Section 310(c) of CERCLA, 42 U.S.C. Section 9659(c) and any violation of such term, condition, timetable, deadline or schedule will be subject to civil penalties under Sections 310(c) and 109 CERCLA, 42 U.S.C. Sections 9659(c) and 9609.

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

C. Nothing in this Agreement shall be construed as a restriction or waiver of any rights the U.S. EPA or the State may have under CERCLA or state law, including but not limited to any rights under Sections 113 and 310, 42 U.S.C. Sections 9613 and 9659. The Department of Defense (DOD) does not waive any rights it may have under CERCLA Section 120, 42 U.S.C. Section 9620, SARA Section 211, 42 U.S.C. Section 2701 et seq. and Executive Order 12580.

D. The Parties agree to exhaust their rights under Section XXVI (Resolution of Disputes) prior to exercising any rights to judicial review that they may have.

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

F. Notwithstanding any provision in this Section to the contrary, nothing in this Agreement shall be construed as

preventing a person not subject to this Agreement from initiating judicial or administrative review of any final action made or taken by FDER as provided under state law.

XXVIII. CONVEYANCE OF TITLE

No conveyance of title, easement, or other interest in the Site property in which any containment system, treatment system, monitoring system or other response action(s) is installed or implemented pursuant to this Agreement shall be consummated by the Navy without provision for continued maintenance of any such system or other response action(s) in accordance with Section 120(h) of CERCLA, 42 U.S.C. 9620 (h) and all applicable Federal Property Management Regulations. At least thirty (30) calendar days prior to any such conveyance, the Navy shall notify U.S. EPA and FDER of the provisions made for the continued operation and maintenance of any response/corrective action(s) or systems installed or implemented pursuant to this Agreement. The Navy shall not transfer any real property from the NPL Site except in compliance with Section 120(h) of CERCLA, 42 U.S.C. 9620(h).

XXIX. ADMINISTRATIVE RECORD AND PUBLIC PARTICIPATION

A. The Parties recognize that this Agreement and all response actions arising thereunder shall comply with the administrative record and public participation requirements of CERCLA/SARA, including Sections 113(k) and 117 of SARA respectively, 42 U.S.C. Sections 9613(k) and 9617, the NCP, the public hearing requirements of Section 3008(h) of RCRA, 42 U.S.C. Section 6928(h).

B. The Navy shall develop and implement a Community

Relations Plan (CRP) consistent with Section 117 of SARA, 42 U.S.C. Section 9617, the NCP, U.S. EPA issued guidance set forth in U.S. EPA's Community Relations Handbook, and any modifications thereto.

C. The public participation requirement of this Agreement shall be implemented so as to meet the public participation requirements applicable for modification of the RCRA permits.

D. To the extent practicable, any Party issuing any press release to the media or publishing a notice regarding any of the work required by this Agreement shall advise the other Parties of such press release or notice and the contents thereof at least forty-eight (48) hours before the issuance of such press release or notice and of any subsequent changes prior to release. This provision for notice, however, does not extend to contract solicitations for work or modifications thereto that are routinely publicized for competition purposes.

E. The Navy agrees to establish and maintain a copy of the Administrative Record at or near the facility in accordance with Section 113(k) of CERCLA, 42 U.S.C. Section 9613(k). A copy of each Navy document placed in the Administrative Record shall be supplied to U.S. EPA and FDER. An index of documents in the Administrative Record will be updated on at least a quarterly basis and provided to the U.S. EPA and FDER.

XXX. PUBLIC COMMENT

A. When the Parties agree that this Agreement or any amendments thereto, is ready for public review and comment they

will sign a Letter of Intent to Execute. U.S. EPA shall then announce the availability of this Agreement or any amendment(s) thereto, and the Letter of Intent to Execute for public review and comment. U.S. EPA shall accept comments from the public for a period of forty-five (45) calendar days after such announcement. At the end of the comment period, the Parties shall review all such comments and shall either:

1. Determine that the Agreement should be executed in its present form and then be submitted for execution by those Parties; or

2. Determine that further negotiation of the Agreement is necessary, in which case the Parties shall return to negotiation. After further negotiation, if agreement among the Parties is reached, the Agreement and Responsiveness Summary may be submitted again for public comment under Paragraph A pursuant to Sections 117 and 211 of CERCLA/SARA, 42 U.S.C. Section 6917 and 10 U.S.C. Section 2705, and may be renoticed as proposed state agency action under FAC Rule 17-103.

B. Within 14 days of the execution of the Letter of Intent to Execute, the Navy shall publish a notice of proposed state agency action in a newspaper of general circulation in Duval County, Florida.

XXXI. AMENDMENT OF AGREEMENT

A. Any Party may submit a written request for amendment to the other Parties.

B. This Agreement may be amended by the unanimous written agreement of the Parties. If the Parties do not reach unanimous

agreement to the proposed amendment they may enter into negotiations with a view toward resolving all points of disagreement. If, following negotiation, unanimity cannot be achieved, the amendment will not occur. Amendment proposals under this Agreement are not subject to Section XXVI (Resolution of Disputes) of this Agreement.

C. The notice procedures of CERCLA Section 117, 42 U.S.C. Section 2705 shall be followed for all proposed amendments. Public notice is not required for minor ministerial changes to this Agreement (e.g. changes in telephone numbers or addresses). The amendment cannot be executed until such time as the public participation requirements of Section XXX (Public Comment) have been satisfied.

XXXII. RECOVERY OF EXPENSES

A. Reimbursement of U.S. EPA's Expenses:

The Parties agree to amend this Section at a later date in accordance with subsequent resolution of the national issue of DOD-U.S. EPA cost reimbursement.

B. Reimbursement of Florida's Expenses:

[Note: This section of the Agreement is to be negotiated between the DOD and the State of Florida.]

XXXIII. TERMINATION

The provisions of this Agreement shall only be deemed satisfied and terminated upon receipt by the Navy of written notice from U.S. EPA and FDER that the Navy has demonstrated, to the satisfaction of the U.S. EPA and FDER, that all the terms of this Agreement have been completed [i.e. upon completion of all

response/corrective actions at the Site]. Termination procedures shall be in accordance with Section XXX (Public Comment) and Section XXVI (Resolution of Disputes) of this Agreement.

XXXIV. FUNDING

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

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

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

D. If appropriated funds are not available to fulfill the Navy's obligations under this Agreement, U.S. EPA and the State reserve the right to initiate an action against any other person, or to take any response/corrective action, which would be appropriate absent this Agreement.

E. Funds authorized and appropriated annually by Congress under the "Environmental Restoration, Defense" appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense (Environment) [DASD(E)] to the Navy will be the source of funds for activities required by this Agreement consistent with Section 211 of SARA, 10 U.S.C. Section 2703. However, should the Environmental Restoration, Defense appropriation be inadequate in any year to meet the total Navy CERCLA implementation requirements, the DOD shall employ and the Navy shall follow a standardized DOD prioritization process which allocates that year's appropriations in a manner which maximizes the protection of human health, welfare and the environment. A standardized DOD prioritization model shall/may be developed and utilized with the assistance of U.S. EPA and the State.

F. If sufficient funds are not available to fulfill the Navy's obligations under this Agreement, the Parties shall meet to discuss the funding shortfall, the ways of resolving it, and whether it is appropriate to grant an extension. If the Navy is unable to perform a scheduled activity due to insufficient funds for two consecutive fiscal years, FDER reserves the right to seek injunctive relief outside this agreement to require said activity be performed by the Navy, notwithstanding that lack of funding is a force majeure in Section XXV of this Agreement. Nothing herein shall prevent the Navy from raising lack of sufficient funds as a defense to any action initiated by FDER under this paragraph. All other terms and conditions of this Agreement shall remain in full force and effect during the pendancy of any action brought under this paragraph.

XXXV. EFFECTIVE DATE

A. This Agreement will not be executed until such time as public participation requirements of Section XXX (Public Comment) of this Agreement have been satisfied.

B. This Agreement is final agency action of the State pursuant to Section 120.69, F.S. and FAC Rule 17-103.110(3), and it is final and effective on the date filed with the Clerk of the Department of Environmental Regulation unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition this Agreement will not be effective as to the State until further order of the Department of Environmental Regulation.

C. The Parties agree that if any portion of this Agreement is determined to be unenforceable the balance of the Agreement shall remain in full force and effect.

D. This Agreement is effective upon its execution by all the Parties. However, the schedules and deadlines under this Agreement will not commence until the Navy receives written notification of execution from U.S. EPA.

XXXVI. TOTAL INTEGRATION

There are no promises, verbal understandings or other agreements of any kind pertaining to this Agreement or its appendices herein other than specified herein. This Agreement shall constitute the entire integrated agreement of the Parties.

IT IS SO AGREED:

FOR U.S. DEPARTMENT OF THE NAVY

By: _____ DATE: 23 October 1990

Jacqueline E. Schafer

Assistant Secretary of the Navy

(Installations and Environment)

FOR THE STATE OF FLORIDA

By: _____ DATE: 23 Oct 90

Dale Twachtmann

Secretary

Florida Department of Environmental Regulation

FOR THE U.S. ENVIRONMENTAL AGENCY

By: _____ DATE: 23 Oct 90

Greer Tidwell, Regional Administrator

Region IV

APPENDIX A

PART I: POTENTIAL SOURCES OF CONTAMINATION REQUIRING A RI/FS

NO.	DESCRIPTION	STATUTE
3.	West WWTP Ex-Sludge Disposal Area	HSWA / CERCLA
4.	Pine Tree Planting Area	HSWA / CERCLA
11.	Hanger Building 101	HSWA / CERCLA
12.	Old Test Cell Building	HSWA / CERCLA
13.	Radium Paint Disposal Pit	HSWA / CERCLA
14.	Battery Shop	HSWA / CERCLA
15.	Solvent and Paint Disposal Area (NADEP)	HSWA / CERCLA
26.	Old Main Registered Disposal Area	HSWA / CERCLA
27.	PCB Transformer Storage Site	HSWA / CERCLA
41.	Domestic Sludge Drying Beds	HSWA
42.	WWTP Polishing Pond	HSWA

PART II: POTENTIAL SOURCES OF CONTAMINATION UNDERGOING SCREENING

1.	Patrol Road Turn-around Site	HSWA / CERCLA
2.	Present Fire Fighting Training Area	HSWA / CERCLA
5.	Shoreline Fill West of Fuel Barge Dock Site	HSWA / CERCLA
6.	Fuel Farm	HSWA / CERCLA
7.	Gas Hill	HSWA / CERCLA / UST
8.	Vacant Lot, Fuel Farm Area	HSWA / CERCLA
9.	Old Disposal Area (East of Fuel Farm)	HSWA / CERCLA
10.	Building 119, A-T	HSWA / CERCLA
16.	Storm Sewer Discharge, Black Point	HSWA / CERCLA
17.	Glass Bead Disposal Area	HSWA / CERCLA
18.	Radioactive Waste Disposal Area	HSWA / CERCLA
19.	Old Gas Station	HSWA / CERCLA
20.	Solid Waste Incinerator	HSWA / CERCLA
21.	Gulf Course	HSWA / CERCLA
22.	"Fort Dix"	HSWA / CERCLA
23.	Old Skeet Range	HSWA / CERCLA
24.	Scrap Metal Disposal	HSWA / CERCLA
25.	Bldg. No. 2038, (NRMC Ex-Rad. Waste Storage Area)	HSWA / CERCLA
28.	Ex - Fire Fighting Training Area	HSWA / CERCLA
29.	Organic Disposal Area	HSWA / CERCLA
30.	Old Drum Lot	HSWA / CERCLA
31.	Asphalt Mix Area	HSWA / CERCLA
32.	Ex - Base Landfill	HSWA / CERCLA
33.	Base Service Station	HSWA / CERCLA
34.	Old Transformer Storage Building	HSWA / CERCLA
35.	Temporary PCB Storage Area	HSWA / CERCLA
36.	Dewey Park	HSWA / CERCLA
37.	Ex - Power Barge Dock Area	HSWA / CERCLA
38.	Torpedo Rework Facility	HSWA / CERCLA
39.	Possible Transformer Burial Area	CERCLA
40.	Ex - East IWWTP Discharge Area	CERCLA