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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET  
ATLANTA, GEORGIA 30365

JUL 14 1989

REF: 4WD-SISB/VW

Mr. P. A. Rakowski  
Head, Environmental Programs Branch  
ATTN: Ms. Sheila Ashton, Remedial Project Manager  
Camp LeJeune Military Reservation, North Carolina  
Utilities, Energy and Environmental  
Division  
Naval Facilities Engineering Command  
Norfolk, Virginia 23511-6287

Re: Federal Facilities Agreement  
Camp LeJeune Military Reservation, North Carolina

Dear Mr. Rakowski:

Please find the Draft Federal Facility Agreement (FFA or Agreement) dated July 14, 1989, for Camp LeJeune Military Reservation, North Carolina provided as Enclosure One. Enclosure One includes an explanation to facilitate your review of EPA's proposed FFA revisions incorporated within this Draft Agreement. EPA's proposed FFA revisions were developed to reflect previous negotiations and to clarify certain FFA language. Enclosure Two represents a summary of analogous Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Conservation, and Liability Act (CERCLA) terminology.

We look forward to the upcoming July 25 and 26, 1989, FFA negotiations meeting with the North Carolina Department of Human Resources and the Department of the Navy to be held in Raleigh, North Carolina. If you have any questions concerning any matter concerning this Draft Agreement, please contact me at (404) 347-2641.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Mary Curnane Johnson".

Mary Curnane Johnson  
Assistant Regional Counsel  
Hazardous Waste Law Branch

Enclosures

cc: Mr. William Meyer, North Carolina Department  
of Human Resources  
(w/enclosures)  
Mr. B. W. Elston, Marine Corps Base Camp LeJeune  
(w/enclosures)

Enclosure One

This July 14, 1989, Environmental Protection Agency (EPA) Draft Federal Facility Agreement (FFA or Agreement) for Camp LeJeune Military Reservation, North Carolina is provided for your review. EPA's proposed FFA revisions were developed to reflect previous negotiations by the Parties to the Agreement, and to clarify certain FFA language. Proposed language is [blocked] and underlined for your attention. Along with many minor editorial changes, the following FFA modifications are proposed:

1. The Site has been redefined as the Camp LeJeune Military Reservation, to include Marine Corps Base Camp LeJeune and Marine Corps Air Station New River commands.

2. "Operable Unit Remedial Action", "Removal", and "Significant New Site Conditions" have been defined, and "Project Manager(s)" representing U.S. EPA, the State and the Marine Corps have been distinguished in Part III (Definitions).

3. Part IX (Scope of the Agreement) has been significantly modified to specify the scope of work to be performed by the Marine Corps. The former Part XII (Additional Work) has been added to Part IX as Subpart B, and Subpart C was added to address presently unknown or future releases.

4. Subparts C and D of Part X (Consultation with U.S. EPA and the State) has been modified to reflect required primary and secondary documents. Also, the period for review and comment has been extended to sixty (60) days within Subpart G of Part X, and the "next day mail" requirement has been changed to "certified mail" within this Subpart. The period within which the Marine Corps must respond to U.S. EPA and the State review comments has been extended to forty-five (45) days within Subpart G of Part X, and a dispute resolution provision was added to Subpart J of this Part.

5. In Part XI (Resolution of Disputes), the members for the DRC and SES have been identified.

6. In Part XIII (Imminent and Substantial Endangerments), the responsibilities of the Marine Corps Site Project Manager have been defined.

7. In Part XIV (Reporting) and Part XV (Notification), language was added to address significant new site conditions and removal action reporting and notification by the Marine Corps.

8. In Part XV (Notification), Party addresses have been specified.

9. Former Part XVIII (Technical Review Committee) has been eliminated.

10. Part XIX (Site Access), Part XXI (Other Claims), Part XXII (Confidential Information), and Part XXIII (The State's Reservation of Rights) have been significantly modified for clarity.

11. Part XXVII (Deadlines) has been modified to reflect the changes made to the primary and secondary documents listed in Part X (Consultation with U.S. EPA and the State).

12. Part XXVIII (Extensions), Subpart D has been modified to indicate that U.S. EPA or the State can not give passive concurrence.

13. Part XXXIII (Public Comment), Part XXXIV (Amendment or Modification of Agreement), Part XXXVI (Termination), and Part XXXVII (Effective Date) have been significantly modified for clarity.

July 14, 1989

Draft

FEDERAL FACILITY AGREEMENT

BETWEEN

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY - REGION IV,

THE NORTH CAROLINA DEPARTMENT OF HUMAN RESOURCES,

AND

[THE] UNITED STATES DEPARTMENT OF THE [NAVY],

FOR THE

CAMP LEJEUNE [MILITARY RESERVATION], NORTH CAROLINA

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IV,

NORTH CAROLINA DEPARTMENT OF HUMAN RESOURCES,

AND THE

UNITED STATES DEPARTMENT OF THE [NAVY]

IN THE MATTER OF:

The U.S. Department of [Navy]'s

Camp LeJeune  
[Military Reservation],  
North Carolina

)  
) FEDERAL FACILITY AGREEMENT  
) UNDER CERCLA SECTION 120  
) and RCRA Sections 3004(u),  
) 3004(v), 3008(h) and [6001]  
)  
)  
) Administrative  
) Docket Number:  
)

Based on the information available to [the United States Environmental Protection Agency, Region IV, the State of North Carolina and the United States Department of the Navy] (the Parties) on the effective date of this FEDERAL FACILITY AGREEMENT (Agreement) [concerning Camp LeJeune Military Reservation, North Carolina (the Site)], 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 United States Environmental Protection Agency (U.S. EPA), Region IV, enters into those portions of this Agreement that relate to the Remedial Investigation [and] 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 3008(h) [and] 6001 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6924(u) and (v), 6928(h), [and] 6961, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA/HSWA or RCRA), upon issuance of the RCRA hazardous waste permit, 3004(u) and (v) of RCRA and Executive Order 12580;

B. U.S. EPA, Region IV, enters into those portions of this Agreement that relate to [operable unit] remedial actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, 42 U.S.C. § 9620(e)(2), Sections 3008(h), 6001, and upon issuance of the RCRA hazardous waste permit(s), 3004(u) and (v) of RCRA and Executive Order 12580;

C. The United States Marine Corps, Camp LeJeune [Military Reservation] (Marine Corps), 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)(2), Sections 3008(h), 6001 and, upon issuance of the RCRA hazardous waste permit, 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., and <North Carolina authority to be added>;

D. The Marine Corps enters into those portions of this Agreement that relate to [operable unit] remedial actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, 42 U.S.C. § 9620(e)(2), Sections 3008(h) and 6001, and, upon issuance of the RCRA hazardous waste permit(s), 3004(u) and (v) of RCRA, Executive Order 12580 and the DERP;

E. The State of North Carolina (the State) 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 3006 and 6001 of RCRA, and the <North Carolina Code to be added>.

## II. PARTIES

<NON-MODEL>

The Parties to this Agreement are the U.S. EPA, the State and the Marine Corps. The terms of this Agreement shall apply to and be binding upon the U.S. EPA, the State and the Marine Corps, [their] agents, employees [and primary] response action contractors for the Site and all subsequent owners, operators and lessees of Camp Lejeune [Military Reservation]. The Marine Corps will notify U.S. EPA and the State of the identity, qualifications and assigned tasks of each of its [primary] contractors performing work under this Agreement upon their selection. This [Part] shall not be construed as an agreement to indemnify any person. The Marine Corps shall notify its agents, employees [and primary] response action contractors for

the Site, and all subsequent owners, operators and lessees of Camp Lejeune [Military Reservation] of the existence of this Agreement. 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 legally bind such Party to this Agreement.

### III. DEFINITIONS

<NON-MODEL>

Except as noted below or otherwise explicitly stated, the terms herein shall have their ordinary meaning unless otherwise defined in CERCLA/SARA[, RCRA/HSWA] and[/or] <North Carolina law to be added>.

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 [Agreement].

B. "Camp Lejeune [Military Reservation]" shall mean the Marine Corps Base, Camp Lejeune [and the Marine Corps Air Station, New River], North Carolina [as shown] in Attachment 1 <Map to be added>.

C. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499.

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

E. "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.

F. "Hazardous Constituents" shall have the meaning set forth in Appendix VIII of 40 C.F.R. Part 261.

G. "Hazardous Substances" shall have the meaning set forth by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

H. "Hazardous Waste" shall have the meaning set forth in Section 1004 of RCRA and 40 C.F.R. Part 260.

I. "Marine Corps" shall mean the United States Marine Corps at Camp Lejeune [Military Reservation, North Carolina].

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

K. ["Operable Unit Remedial Action" or "Operable Unit" means a discrete portion of a remedial response, including non-emergency removal actions, which manages migration, or eliminates or mitigates a release, threat of a release, or pathway of exposure and, which will not impede

implementation of subsequent actions, including final remedial actions at the Site. All Operable Unit Remedial Actions or Operable Units shall be performed in accordance with the NCP, as amended, and appropriate Superfund guidance as determined by U.S. EPA, including on-site construction and treatment processes.]

L. "Parties" means all parties who are signatories to this Agreement.

M. "Project Manager(s)" (U.S. EPA and the State) means the individual designated by U.S. EPA and the State who oversee and provide technical assistance concerning the activities to be performed pursuant to this Agreement at the Site.

N. ["Project Manager" (Marine Corps) means the individual designated the Marine Corps who directs the activities to be performed pursuant to this Agreement at the Site.]

O. "[Proposed] Remedial Action Plan" ([P]RAP) means the report describing the [remedial action recommended] for [remediation] of the Site.

P. "Release" shall be used as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

Q. "Remedial Action" (RA) means the implementation of the Remedial Design consistent with the NCP[, as amended,] and [appropriate] Superfund guidance [as determined by U.S. EPA], including on-site construction and treatment processes.

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

S. "Remedial Investigation" (RI) means the investigation conducted to fully determine the nature and extent of any and all release[s] or threat of releases of hazardous substances, pollutants, contaminants, wastes or constituents and to gather necessary data to support the Feasibility Study.

T. ["Removal" shall have the same meaning as "remove" or "removal" as defined by Section 101(23) of CERCLA, 42 U.S.C. § 9601(23).]

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

V. ["Significant New Site Conditions" shall mean those conditions of geology, hydrogeology and/or contamination that were not reasonably foreseeable or known at the time the RI was initiated.]

W. "Site" shall include Camp Lejeune [Military Reservation] and any other geographic areas contaminated by the migration[, disposal, storage, placement or otherwise] of a hazardous substance, pollutant, contaminant, waste or constituent from Camp Lejeune [Military Reservation] as discussed in [Part] IV (Site Description) of this Agreement. [The term shall have the same meaning as "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).]

X. "Solid Waste Management Units" (SWMUs) means those units subject to applicable RCRA requirements, identified by U.S. EPA [and/or the State, either presently or in the future,] as requiring further investigation[, and specifically identified in Attachment 2 <RFA Report to be added>. This Attachment may be revised by agreement of the Parties.]

Y. "Submittal" shall mean every document, report, schedule, deliverable, work plan or other item to be submitted by one Party to another Party pursuant to this Agreement.

Z. "The State" shall mean the State of North Carolina Department of Human Resources <to be further defined>.

AA. "U.S. EPA" shall mean the United States Environmental Protection Agency.

#### IV. SITE DESCRIPTION

<NON-MODEL>

For the purposes of this Agreement, the approximately one-hundred and seventy (170) square miles area comprising Camp Lejeune [Military Reservation, North Carolina] and [any other geographic] area[s] contaminated by the migration[, disposal, storage, placement or otherwise] of hazardous substances, pollutants, contaminants, wastes or constituents from Camp Lejeune [Military Reservation] shall constitute the Site. Present information is inadequate to map the exact geographic extent of the Site. The necessary information will

be developed during [the Site] RI/FS's. The Parties may change the Site description on the basis of additional investigation including the Site Remedial Investigation performed by the Marine Corps, to more accurately reflect the areas contaminated by hazardous substances, pollutants, contaminants, wastes or constituents related in whole or in any part to Camp Lejeune [Military Reservation]. The work to be performed under this Agreement will conform to the definition of the Site established by the Parties. The Camp Lejeune [Military Reservation] lies within the boundaries of the current Site definition. [Any real property acquired by the U.S. Federal government as an addition to Camp LeJeune Military Reservation shall be included within the term "Site".]

#### V. 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 remedial action [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, the National Contingency Plan (NCP), Superfund guidance and policy, RCRA, RCRA guidance and policy, and applicable state law; and

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

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

1. Establish requirements for the performance of an RI to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release[s] and[/or threats of] release of hazardous substances, pollutants, contaminants, wastes or constituents at the Site and to establish requirements for the performance of an FS for the Site to identify, evaluate, and select alternatives for the appropriate RA(s) to prevent, mitigate or abate the release[s] or threatened release[s] of hazardous substances, pollutants, contaminants, wastes or constituents at the Site in accordance with CERCLA/SARA and applicable state law.

2. Identify the nature, objective and schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of [remediation] of hazardous substances, pollutant, contaminants, wastes or constituents mandated by CERCLA/SARA and applicable state law.

3. Identify [operable unit] remedial action[s, including non-emergency removal actions,] which are appropriate at the Site prior to the implementation of final RA(s) for the Site. [Operable unit remedial actions] shall be identified and proposed to the Parties as early as possible prior to formal proposal of [operable unit remedial actions] to U.S. EPA and the State pursuant to CERCLA/SARA, this Agreement, and applicable

state law. This process is designed to promote cooperation among the Parties in identifying [operable unit remedial actions] prior to [final] selection of [operable unit remedial actions].

4. Implement the selected [operable unit remedial actions] and final remedial action(s) in accordance with CERCLA and applicable state law and meet the requirements of Section 120(e)(2) of CERCLA for an Interagency Agreement among the Parties.

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

6. Coordinate response actions at the Site with the mission and support activities at Camp Lejeune [Military Reservation], North Carolina.

7. Expedite the [remediation] process to the extent consistent with protection of human health [or welfare,] and the environment.

8. Provide [for] State involvement in the initiation, development, selection and enforcement of remedial actions to be undertaken at [the Site], including the review of all applicable data as it becomes available and the development of studies, reports, and action plans; and to identify and integrate State ARAR's into the remedial action process.

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

VI. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

A. The Parties intend to integrate the Marine Corps' 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 intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. § 9601 et seq.; satisfy the corrective action requirements of Sections 3004(u) and (v) of RCRA, 42 U.S.C. § 6924(u) and (v), for a RCRA permit, and Section 3008(h), 42 U.S.C. § 6928(h), for interim status facilities; and meet or exceed all applicable or relevant and appropriate federal and state laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. § 9621 and <North Carolina law to be added>.

B. Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement will be protective of human health [or welfare,] and the environment such that [remediation] of releases covered by this Agreement shall obviate the need for further corrective action under RCRA, (i.e., no further corrective action shall be required). The Parties agree that with respect to releases of hazardous waste or hazardous constituents covered by this Agreement, RCRA shall be considered an applicable or relevant

and appropriate requirement pursuant to Section 121 of CERCLA. Releases or other hazardous waste activities not covered by this Agreement remain subject to all applicable state and federal environmental requirements.

C. The Parties recognize that the requirement to obtain permits for response (removal or remedial) actions undertaken at the Site pursuant to this Agreement shall be as provided for in CERCLA and the applicable regulations including the NCP pursuant to SARA. The Parties further recognize that on-going hazardous waste management activities at the Marine Corps Camp Lejeune [Military Reservation] may require the issuance of permits under federal and state laws. This Agreement does not affect the requirements, if any, to obtain such permits, nor shall it be construed to waive permit requirements for activities at the Site unrelated to [remedial] work conducted pursuant to CERCLA. However, if a permit is issued to the Marine Corps for on-going hazardous waste management activities at the Site, U.S. EPA and/or the State shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit.

With respect to those portions of this Agreement incorporated by reference into permits, the Parties intend that judicial review of the incorporated portions shall, to the extent review is authorized by law, only occur under the provisions of CERCLA.

D. Nothing in this Agreement shall alter the Marine Corps' authority with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. [Notification of Site removal actions shall be in accordance with Part XV (Notification) of this Agreement.]

#### VII. FINDINGS

<NON-MODEL>

For 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. <This Part to be added>

#### VIII. U.S. EPA AND THE STATE DETERMINATIONS

<NON-MODEL>

On the basis of U.S. EPA and the State's files and records, U.S. EPA and the State have made the following determinations which shall not be considered admissions by, nor shall they be legally binding on the Marine Corps. The Marine Corps specifically reserves its rights to challenge these determinations if and when it becomes appropriate.

A. [The Marine Corps] Camp Lejeune [Military Reservation, North Carolina] is a "Facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

B. The United States is a "Person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). The United States is the owner and operator of Camp Lejeune [Military Reservation] as defined in Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. §§ 9601(20) and 9607(a)(1). The [Navy] is the Department of the United States charged with fulfilling the obligations of the owner/operator under CERCLA at Camp Lejeune [Military Reservation].

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

D. There [have] been release[s] and there continues to be releases and[/or threats of release] of hazardous substances, constituents, pollutants[, wastes] or contaminants into the environment within the meaning of 42 U.S.C. §§§§ 9601(22), 9604, 9606, and 9607 and Section 1004(5) of RCRA, 42 U.S.C. § 6903(5) and 40 C.F.R. Part 261.

E. With respect to those releases and[/or threat of] releases, the U.S. Marine Corps [at Camp LeJeune Military Reservation, North Carolina] is a responsible party within the meaning of 42 U.S.C. § 9607 and <North Carolina Code to be added>.

F. The actions provided for in this Agreement are [reasonable and] necessary to protect the public health or welfare or the environment.

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

H. This Agreement provides for the expeditious completion of all necessary remedial actions.

#### IX. SCOPE OF THE AGREEMENT

[This Part shall apply to all releases and threats of release of hazardous substances, pollutants or contaminants, and hazardous wastes or constituents at or from Camp LeJeune Military Reservation, North Carolina. The Marine Corps shall conduct the the work within the scope of this Agreement in accordance with the authorities cited in Part I (Jurisdiction) of this Agreement, and all provisions of RCRA, CERCLA, and the NCP, as amended, and as provided for in pertinent U.S. EPA and State guidance or policy, and other applicable Federal or State law.

The U.S. EPA and the State shall provide all pertinent guidance in response to written requests by the Marine Corps for said guidance to assist the Marine Corps in satisfying the requirements pursuant to this Agreement.]

##### A. Scope of Work:

[Under this Agreement, the Marine Corps shall:

1. Develop and implement a Site Community Relations Plan, a Site Health and Safety Plan, and a Site Quality Assurance Project Plan.

2. Develop, conduct and report upon site-specific remedial investigations completely characterizing the degree and extent of Site contamination.

3. Develop, conduct and report upon site-specific feasibility studies detailing the analysis of Site remedial action alternatives, including all Site operable unit remedial action alternatives.

4. Develop, conduct and report upon site-specific Risk Assessments concurrently with Site remedial investigations.

5. Develop site-specific Proposed Remedial Action Plans specifying the preferred Site remedial actions, including all Site operable unit remedial actions, analyzed in detail through Site feasibility studies.

6. Develop site-specific Records of Decision describing the selected Site remedial actions, including Site operable unit remedial actions, specified in Site Proposed Remedial Action Plans.

7. Design, implement and report upon site-specific remedial actions, including all Site operable unit remedial actions described in Site Records of Decision and specified in Site Remedial Action Plans.

8. Operate and maintain the effectiveness of Site remedial actions, including all Site operable unit remedial actions.

9. Conduct all requirements pursuant to this Agreement in accordance with RCRA, CERCLA and the NCP, as amended, and as provided for in any pertinent U.S. EPA and State guidance or policy, or any applicable Federal or State law.]

B. Additional Work or Modification to Work:

1. In the event that the U.S. EPA or the State determine that additional work or modification to work [within the scope of this Agreement] is necessary to accomplish the objectives of this Agreement, notification of such additional work or modification to work shall be provided to the Marine Corps. The Marine Corps agrees, subject to the dispute resolution procedures set forth in Part XI (Resolution of Disputes), to implement any such work.

2. Any additional work or modification to work determined to be necessary by the Marine Corps shall be proposed in writing by the Marine Corps and will be subject to review as a primary document in accordance with Part X (Consultation with U.S. EPA and the State) of this Agreement prior to initiating any [additional] work or modification to work.

3. Any additional work or modification to work approved pursuant to [Paragraphs 1] or [2] shall be completed in accordance with the standards, specifications, and schedule determined or approved by U.S. EPA and the State. If any additional work or modification to work will adversely affect work scheduled or will require significant revisions to an

approved Work Plan, the U.S. EPA and the State Project Managers shall be notified immediately of the situation followed by a written explanation within five (5) business days of the initial notification.

[C. The discovery of previously unknown sites, contamination or releases, and significant new Site conditions may be addressed as additional work under the terms of this Agreement as specified in Subpart B above.]

X. CONSULTATION WITH U.S. EPA AND THE STATE

Review and Comment Process for Draft and Final Documents

A. Applicability:

The provisions of this Part establish the procedures that shall be used by the 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 and 10 U.S.C. § 2705, the Marine Corps will normally be responsible for issuing primary and secondary documents to U.S. EPA and the State. As of the effective date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with Paragraphs B through J below.

The designation of a document as "draft" or "final" is solely for purposes of consultation with U.S. EPA and the State in accordance with this Part. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final", to the public for review and comment as appropriate and as required by law. All documents identified below shall be considered "reports" pursuant to Part XV (Notification) [of this Agreement].

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

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

2. Secondary documents include those reports that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by

the Marine Corps in draft subject to review and comment by U.S. EPA and the State. Although the Marine Corps will respond to comments received, the draft secondary documents may be finalized in the context of the corresponding primary documents. A secondary document may be disputed at the time the corresponding draft final primary document is issued.

C. Primary Reports:

1. The Marine Corps shall complete and transmit draft reports for the following primary documents to U.S. EPA and the State for review and comment in accordance with the provisions of this Part:

- a. [Site-specific] RI/FS Work Plan[s]
- b. [Site-specific Remedial Investigation (RI) Reports, including] Initial Screening of Alternatives
- c. [Site-specific] Risk Assessment[s]
- d. [Site-specific Feasibility Study (FS) Reports, including] Detailed Analysis of Alternatives
- e. [Site-specific] Proposed [Remedial Action] Plan[s]
- f. [Site-specific] Record[s] of Decision
- g. [Site-specific] Remedial Design[s]
- h. [Site-specific] Remedial Action Work Plan[s]

2. Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. The Marine Corps shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Part XXVII (Deadlines) of this Agreement.

D. Secondary Documents:

1. The Marine Corps shall complete and transmit draft reports for the following secondary documents to U.S. EPA and the State for review and comment in accordance with the provisions of this Part:

- a. [Site-generic Community Relations Plan]
- b. [Site-generic Health and Safety Plan]
- c. [Site-generic Quality Assurance Project Plan, including Field Sampling Plan and Quality Assurance and Quality Control Plan]
- d. [Site-specific] Scope[s] of Work
- e. Site[-specific Preliminary] Characterization [Summary] Report[s]
- f. [Site-specific Baseline Risk Assessment Reports]
- g. [Site-specific] Treatability Study Report[s]
- h. [Site-specific Post RI Characterization Work Plans]
- i. [Site-specific Post RI Characterization Reports]
- j. [Site-specific Remedial Action Progress Reports]

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

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

The Project Managers shall meet approximately [quarterly], 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 report specified in Paragraphs C and D above, the Project Managers shall meet to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft report.

F. Identification and Determination of Potential ARARs:

1. For those primary reports or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft report, the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the report being addressed. The State shall identify all potential state ARAR's as early in the remedial process as possible consistent with the requirements of CERCLA Section 121 and the NCP. The Marine Corps shall consider any written interpretations of ARAR's provided by the State. Draft ARAR determinations shall be prepared by the Marine Corps in accordance with Section 121(d)(2) of CERCLA, [42 U.S.C. § 9621(d)(2)], the NCP and pertinent guidance issued by U.S. EPA that is consistent with CERCLA and the NCP.

2. In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances, pollutants [or] contaminants[, and hazardous wastes or constituents] at a site, the particular

actions proposed as a remedy and the characteristics of a site. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be re-examined throughout the RI/FS process until a ROD is issued.

G. Review and Comment on Draft Reports:

1. The Marine Corps shall complete and transmit each draft primary report to U.S. EPA and the State on or before the corresponding deadline established for the issuance of the report. The Marine Corps shall complete and transmit the draft secondary document in accordance with the target dates established for the issuance of such reports established pursuant to Part XXVII (Deadlines) of this Agreement.

2. Unless the Parties mutually agree to another time period, all draft reports shall be subject to a [sixty (60)]-day period for review and comment. Review of any document by the U.S. EPA and the State may concern all aspects of the report (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP and any pertinent guidance or policy issued by the U.S. EPA, and with applicable state law. Comments by the U.S. EPA and the State shall be provided with adequate specificity so that the Marine Corps may respond to the comment and, if appropriate, make changes to the draft report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request

of the Marine Corps, the U.S. EPA and the State shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy report, U.S. EPA or the State may extend the [sixty (60)]-day comment period for an additional twenty (20) days by written notice to the Marine Corps prior to the end of the [sixty (60)]-day period. On or before the close of the comment period, U.S. EPA and the State shall transmit by [certified mail] their written comments to the other Parties.

3. Representatives of the Marine Corps shall make themselves readily available to U.S. EPA and the State during the comment period for purposes of informally responding to questions and comments on draft reports. Oral comments made during such discussions need not be the subject of a written response by the Marine Corps on the close of the comment period.

4. In commenting on a draft report which contains a proposed ARAR determination, U.S. EPA or the State shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that U.S. EPA or the State does object, it shall explain the bases for its objection 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 report, the Marine Corps shall give full consideration to all written comments on the draft report submitted during the comment period. Within [forty-five (45)] days of the close of the comment period on a draft secondary report, the Marine Corps shall transmit to U.S. EPA and the State its written response to comments received within the comment period. Within [forty-five (45)] days of the close of the comment period on a draft primary report, the Marine Corps shall transmit to U.S. EPA and the State a draft final primary report, which shall include the Marine Corps' response to all written comments, received within the comment period. While the resulting draft final report shall be the responsibility of the Marine Corps, it shall be the product of consensus to the maximum extent possible.

6. The Marine Corps may extend the [forty-five (45)]-day period for either responding to comments on a draft report or for issuing the draft final primary report for an additional twenty (20) days by providing notice to U.S. EPA and the State. In appropriate circumstances, this time period may be further extended in accordance with Part XXVIII (Extensions) hereof.

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

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

2. When dispute resolution is invoked on a draft primary report, work may be stopped in accordance with the procedures set forth in Part XI (Resolution of Disputes).

I. Finalization of Reports:

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

J. Subsequent Modifications of Final Reports:

Following finalization of any primary report pursuant to Paragraph I above, any Party to this Agreement may seek to modify the report, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Paragraph 1 below.

1. A Party may seek to modify a report after finalization if it determines, based on new information (i.e., information that became available, or conditions that became

known, after the report was finalized) that the requested modification is necessary. A Party may seek such a modification by submitting a concise written request to the Project Manager of the other Parties. The request shall specify the nature of the requested modification and how the request is based on new information. [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 effectuated.]

2. Nothing in this Subpart shall alter U.S. EPA or the State's ability to request the performance of additional work which was not contemplated by this Agreement. The Marine Corps' obligation to perform such work must be established by either a modification of a report or document or by amendment to this Agreement.

#### XI. RESOLUTION OF DISPUTES

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

All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Part shall be implemented to resolve a dispute.

A. Within thirty (30) days after: (1) issuance of a draft final primary document pursuant to Part X (Consultation with U.S. EPA and the State) 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.

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

C. 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. The U.S. EPA representative on the DRC is the Waste Management Division Director of U.S. EPA Region IV. The Marine Corps' designated member is the [Director of the Utilities, Energy and Environmental Division of the Naval Facilities Engineering Command, North Carolina]. The State's representative on the DRC is the [Chief of the Solid Waste Management Section of the North Carolina Division of Health Services]. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Part XV (Notification).

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

E. The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The U.S. EPA representative on the SEC is the Regional Administrator of U.S. EPA Region IV. The Marine Corps' representative on the SEC is the Assistant Secretary of the Navy. The State's representative on the SEC is the [Director of the North Carolina Division of Health Services]. The SEC

members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision signed by all Parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days, U.S. EPA's Regional Administrator shall issue a written position on the dispute. The Marine Corps or the State may, within fourteen (14) 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 fourteen (14) days escalation period, the Party shall be deemed to have agreed with Regional Administrator's written position with respect to the dispute.

F. Upon escalation of a dispute to the Administrator of U.S. EPA pursuant to Subpart E [above], the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the U.S. EPA Administrator shall meet and confer with the Marine Corps' Secretariat-Representative and the Commissioner of the State agency 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 Part shall not be delegated.

G. The State reserves its right to maintain an action under Section 121(f)(3)(B) of CERCLA, 42 U.S.C. § 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.

H. The pendency of any dispute under this Part shall not affect the Marine Corps' responsibility for timely performance of the work required by this Agreement, except that the time period for completion of work affected by such dispute shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the applicable schedule.

I. 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 Region IV requests, 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 [or welfare, and] the environment, or is likely to have a substantial adverse effect on the remedy selection of implementation process. The State may request the U.S. EPA Region IV [Waste Management] Division Director to order work stopped for the reasons set out above. To the extent possible, the Party seeking a work stoppage shall consult with the other Parties prior to initiating a work stoppage request. After stoppage of work, if a Party believes

that the work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the Party ordering a work stoppage to discuss the work stoppage. Following this meeting, and further consideration of the issue, the U.S. EPA [Region IV 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 [Region IV 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.

J. Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Part, the Marine Corps 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.

K. Resolution of a dispute pursuant to this Part of the Agreement constitutes a final resolution of any dispute arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Part XI (Resolution of Disputes) of this Agreement.

XII. PERMITS

<NON-MODEL>

A. The Parties recognize that under Sections 121(d) and 121(e)(1) of CERCLA/SARA, 42 U.S.C. §§ 9621(d) and 9621(e)(1), and the NCP, 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 all the applicable or relevant and appropriate federal and state standards, requirements, criteria, or limitations which would have been included in any such permit.

When the Marine Corps 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 Marine Corps shall include in the 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 Marine Corps, U.S. EPA and the State will provide their position with respect to 2 and 3 above in a timely manner.

B. Subpart A above is not intended to relieve the Marine Corps from the requirement(s) of obtaining a federal, state or local permit whenever it proposes a response action involving the shipment or movement off-Site of a hazardous substance.

C. The Marine Corps shall notify the State and U.S. EPA in writing of any permits or other authorizations required for off-Site activities as soon as it becomes aware of the requirement. Upon request, the Marine Corps shall provide the State and U.S. EPA copies of all such permit applications and other documents related to the permit or authorization process.

D. If a permit or other authorization which is necessary for implementation fo this Agreement is not issued, or is issued or renewed in a manner which is materially inconsistent with the requirements of this Agreement, the Marine Corps agrees to notify the State and U.S. EPA of its intention to propose modifications to this Agreement to obtain conformance with the permit (or lack thereof). Notification by the Marine Corps of its intention to propose modifications shall be submitted within seven (7) calendar days of receipt by the Marine Corps of notification that: (1) a permit will not be issued; (2) a permit has been issued or reissued; or (3) a final determination with respect to any appeal related to the issuance of a permit has been entered. Within thirty (30) days from the date it

submits its notice of intention to propose modifications, the Marine Corps shall submit to the State and U.S. EPA its proposed modifications to this Agreement with an explanation of its reasons in support thereof.

E. During any appeal of any permit required to implement this Agreement or during review of any of the Marine Corps proposed modifications as provided in Subpart D above, the Marine Corps shall continue to implement those portions of this Agreement which can be reasonably implemented pending final resolution of the permit issue(s).

F. Except as otherwise provided in this Agreement, the Marine Corps shall comply with all state and federal laws and regulations which the Marine Corps is subject to at the Site.

G. To the extent that this information has been provided or would be provided in another document or report required under this Agreement, it is not the intent of the Parties that this paragraph would require resubmission of this information.

### XIII. IMMINENT AND SUBSTANTIAL ENDANGERMENTS

<NON-MODEL>

In the event that the State or U.S. EPA determines that activities conducted pursuant to this Agreement, or any other circumstances or activities, are creating an imminent and substantial endangerment to the health or welfare of the people on the Site or in the surrounding area or to the environment, the State or the U.S. EPA may order the Marine Corps to halt further implementation of this Agreement for such period of time

as needed to take appropriate action, including abating the danger. The Marine Corps shall arrange to have a [Site Project Manager] with Emergency Response Training, Hazardous Materials Handling Training, and Contract Officer's Powers [who could be contacted] at any time that [can direct any necessary corrective action or response] work being carried out pursuant to this Agreement by Marine Corps contractors at the Site.

#### XIV. REPORTING

<NON-MODEL>

The Marine Corps shall submit to the State and U.S. EPA quarterly written progress reports which describe the actions which the Marine Corps has taken during the previous quarter to implement the requirements of this Agreement. Progress reports shall also describe the activities scheduled to be taken during the upcoming quarter. Progress reports shall be submitted by the tenth (10) day of each quarter following the effective date of this Agreement. The progress reports shall include a detailed 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 Marine Corps shall submit notice of a significant new Site condition within seven (7) days of such discovery. Except for an emergency removal action, the Marine Corps shall submit

notice of a removal action seven (7) days prior to such removal action. The Marine Corps shall submit notice of an emergency removal action within seven (7) days of such removal action.]

XV. NOTIFICATION

<NON-MODEL>

A. Unless otherwise specified, the following shall be sent by a certified mail or hand delivery providing a return receipt:

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 and future removal actions submitted under Part XIV (Reporting).]

3. Any notice of dispute and response thereto submitted under Part XI (Resolution of Disputes).

4. Any request, and response thereto, for extensions under Part XXVIII (Extensions).

5. Any notice of Force Majeure.

B. The items listed in "A" above shall be addressed as shown below:

North Carolina Department  
of Human Resources  
[Division of Health Services  
Attn: Chief,  
Solid Waste Management Section  
P.O. Box 2091  
Raleigh, North Carolina 27602-2091]

and

U.S. Environmental Protection Agency Region IV  
Waste Management Division  
Attn: [Remedial Project Manager,  
Camp LeJeune Military Reservation]  
345 Courtland Street N.E.  
Atlanta, Georgia 30365

Documents sent to the Marine Corps shall be addressed as follows:

[Naval Facilities Engineering Command  
Utilities, Energy and Environmental Division  
Attn: Head,  
Environmental Quality Branch  
Norfolk, Virginia 23511-6287]

Unless otherwise requested, all routine correspondences, including monthly progress reports, may be sent via regular mail to the above-named [addressees]. Any time limitations shall commence upon receipt.

XVI. PROJECT MANAGERS

<NON-MODEL>

The U.S. EPA, the State and the Marine Corps shall each designate a [Site] Project Manager and Alternate (hereinafter jointly referred to as Project Manager) 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 of the name and address of their Project Manager. Any Party may change its designated Project Manager 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 terms and conditions of this Agreement shall be directed through the Project Managers as set forth in Part XV (Notification) of this Agreement. Each Project Manager shall be responsible for

assuring that all communications from the other Project Managers are appropriately disseminated and processed by the entities which the Project Managers represent.

The State and U.S. EPA Project Managers shall have the authority to: (1) take samples, request split samples of Marine Corps samples and ensure that work is performed properly and pursuant to U.S. EPA and the State protocols as well as pursuant to the Attachments and plans incorporated into this Agreement; (2) observe all activities performed pursuant to this Agreement, take photographs and make such other reports on the progress of the work as the Project Managers deem appropriate; (3) review records, files and documents relevant to this Agreement; (4) recommend and request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or design utilized in carrying out this Agreement, which are necessary to the completion of the project; and (5) exercise the authorities granted to them in this Part.

The Marine Corps Project Manager may also recommend and 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 proposed under this Part 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 formal procedures of Part X (Consultation), Subpart J to modify the document which established the requirement for work being questioned. Within five (5) business days following a modification made pursuant to this Part, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the other Project Managers.

The Marine Corps Project Manager or his designated representative shall be physically present on Camp Lejeune [Military Reservation] or reasonably available to supervise work performed at Camp Lejeune [Military Reservation] during implementation of the work performed pursuant to this Agreement and shall make himself available to U.S. EPA and the State Project Managers for the pendency of this Agreement. The absence of the U.S. EPA or the State Project Managers from the Site shall not be cause for work stoppage.

XVII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

<NON-MODEL>

The Parties shall make available to each other 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 within forty-five (45) days of their collection or performance. The Marine Corps shall use quality assurance [and] quality control procedures [consistant] with the standard operating procedures and quality assurance [guidance as

determined by U.S. EPA], throughout all sample collection and analysis activities. If quality assurance is not completed within forty-five (45) days, raw data or results shall be submitted within the forty-five (45) day period and quality assured data or results shall be submitted as soon as they become available.

At the request of [any Party], the Marine Corps shall allow split samples to be taken by [any Party] during sample collection conducted during the implementation of this Agreement. The Marine Corps Project Manager shall endeavor to notify the U.S. EPA and the State Project Managers not less than ten (10) business days in advance of any sample collection. If it is not possible to provide ten (10) business days prior notification, the Marine Corps shall notify the State and U.S. EPA Project Managers as soon as possible after becoming aware that samples will be collected.

#### XVIII. RETENTION OF RECORDS

<NON-MODEL>

Each Party to this Agreement shall preserve for a minimum of ten (10) years after termination of this Agreement all records and documents [which comprise the Site Administrative Record] in its possession or in the possession of its divisions, employees, agents, accountants, contractors or attorneys, despite any document retention policy to the contrary. After this ten (10) year period, the Marine Corps shall notify the U.S. EPA and the

State at least forty-five (45) days prior to destruction or disposal of any such documents or records. Upon request by the any Party, the other Parties shall make available such records or documents.

XIX. SITE ACCESS

<NON-MODEL>

A. Without limitation on any authority conferred on U.S. EPA or the State by statute or regulation [and subject to any statutory and regulatory requirements as may be determined in accordance with Section 120(j) of CERCLA to be necessary to protect national security], the U.S. EPA, the State and/or their authorized representatives, shall have authority to enter [and move about] the Site at all reasonable times for [any] purpose [consistant with this Agreement, including, but not limited to]: (1) inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement; (2) reviewing the progress of the Marine Corps, its [primary] response action contractors or lessees in implementing this Agreement; (3) conducting such tests as the State and the U.S. EPA Project Managers deem necessary; (4) verifying the data submitted to the U.S. EPA and the State by the Marine Corps[; and (5) exercising any other right or responsibility assigned to the Party pursuant to this Agreement]. The Marine Corps shall honor all reasonable requests for such access by the U.S. EPA and the State conditioned only upon presentation of proper

credentials. However, such access shall be obtained in conformance with Marine Corps security regulations and in a manner minimizing interference with any operations at Camp Lejeune [Military Reservation].

[B. The Marine Corps shall provide an escort whenever U.S. EPA or the State require access to Camp LeJeune Military Reservation for purposes consistent with the provisions of this Agreement. The U.S. EPA and the State shall provide reasonable notice to the Site Project Manager to request any necessary escorts. The unavailability of a Marine Corps escort shall not prevent access by U.S. EPA or the State. The U.S. EPA or the State shall not use any camera, sound recording, or other electronic recording device at Camp LeJeune Military Reservation without the permission of the Site Project Manager. The Marine Corps shall not unreasonably withhold such permission.]

[C. All Parties with access to Camp LeJeune Military Reservation pursuant to this Part shall comply with all applicable Site health and safety plans.]

D. To the extent that access is required to areas of the Site presently owned by or leased to parties other than the Marine Corps, the Marine Corps agrees to exercise [any authority it may have,] to obtain [written] access [agreements,] pursuant to Section 104(e) of CERCLA/SARA, from the present owners and/or lessees[, which shall provide reasonable access to U.S. EPA and

the State and/or their authorized representatives] within thirty (30) calendar days after the [effective date] of this Agreement or, where appropriate, within thirty (30) days after the relevant Submittals which require access are finalized pursuant to Part X (Consultation with U.S. EPA and the State) of this Agreement.

E. With respect to non-Marine Corps property upon which monitoring wells, pumping wells, treatment facilities or other response actions are to be located, [the Marine Corps shall use its best efforts to obtain] access agreements [that] also provide that no conveyance of title, easement, or other interest in the property shall be consummated without provisions for the continued operation of such wells, treatment facilities, or other response actions on the property. [The Marine Corps shall also use its best efforts to see that] the access agreements provide that the owners of Camp Lejeune [Military Reservation] or of any property where monitoring wells, pumping wells, treatment facilities or other response actions are located shall notify the Marine Corps, the State, and U.S. EPA by certified mail, at least thirty (30) days prior to any conveyance, of the property owner's intent to convey any interest in the property and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other response actions installed pursuant to this Agreement.

F. In the event that Site access is not obtained within the thirty (30) day time period set forth in Subpart[s] D and E above, within fifteen (15) days after the expiration of the thirty (30) day period the Marine Corps shall notify the State and U.S. EPA regarding the lack of, and efforts to obtain, such access agreements. Within fifteen (15) days of any such notice, the Marine Corps shall submit appropriate modification(s) in response to such inability to obtain access.

G. The Marine Corps may request the assistance of U.S. EPA and the State where access problems arise.

XX. FIVE YEAR REVIEW

<NON-MODEL>

Consistent with Section 121(c) CERCLA/SARA and in accordance with this Agreement, the Marine Corps agrees that U.S. EPA and the State will review the remedial action no less often than each five years after the initiation of the final remedial action to assure that human health [or welfare,] and the environment are being protected by the remedial action being implemented. If upon such review the State and U.S. EPA disagree on whether additional or modified action is appropriate under this Part, the dispute shall be resolved under Part XI (Resolution of Disputes) of this Agreement. If it is the judgment of U.S. EPA and the State that additional action or

modification of the remedial action is appropriate in accordance with Section 104 or [Section] 106 of CERCLA/SARA, the Marine Corps shall implement such additional or modified action [pursuant to Part IX (Scope of Agreement) and Part X (Consultation with U.S. EPA and the State), Subpart J of this Agreement].

Any dispute by the Marine Corps of the determination by U.S. EPA and the State under this part shall be resolved under Part XI (Resolution of Disputes) of this Agreement.

XXI. OTHER CLAIMS

<NON-MODEL>

Nothing in this Agreement shall constitute or be construed as a bar or release [by U.S. EPA, the State or the Marine Corps] from any claim, cause of action or demand in law or equity by or against any person, firm, partnership or corporation not a signatory to this Agreement for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Camp Lejeune [Military Reservation].

The U.S. EPA and the State shall not be held as a party to any contract entered into by the Marine Corps to implement the requirements of this Agreement.

[The Marine Corps shall notify the appropriate federal and state natural resource trustees as required by Section 104(b)(2) of CERCLA/SARA, 42 U.S.C. § 9604(e), and Section 2(e)(2) of Executive Order 12580. Except as provided herein, the Marine Corps 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.]

This Agreement shall not restrict U.S. EPA or the State from taken any legal or response action for any matter not specifically part of the work covered by this Agreement.]

#### XXII. CONFIDENTIAL INFORMATION

<NON-MODEL>

The Marine Corps may assert a confidentiality claim as described in 40 C.F.R. Section 2.203(b) covering all or part of the information requested by any Party under this Agreement. Analytical data shall not be claimed as confidential [from U.S. EPA or the State] by the Marine Corps[; however, analytical data may be claimed as confidential from the public pursuant to 40 C.F.R. Part 2]. Information determined to be confidential by U.S. EPA pursuant to 40 C.F.R. Part 2 shall be afforded the protection specified therein and such information shall be treated by the State as <North Carolina equivalent terminology to be added and State statute to be cited>. If no claim of confidentiality accompanies the information when it is submitted

to the U.S. EPA or the State [and none has thereafter been submitted by the Marine Corps prior to public release of the information], the information may be made available to the public without further notice to the Marine Corps.

XXIII. THE STATE'S RESERVATION OF RIGHTS

<NON-MODEL>

Nothing herein shall be construed to affect the State's rights to seek appropriate relief, to the extent authorized by [CERCLA Section 121] and this Agreement, against U.S. EPA, the Marine Corps, or any other party, to obtain compliance with the law at the Site including, but not limited to, North Carolina state law governing hazardous or solid waste storage, treatment, or disposal, state law concerning removal or remedial actions, or liability or compliance with respect to the release of hazardous substances or other pollutants or contaminants. [Unless expressly waived by law, North Carolina does not waive its Sovereign Immunity entering into this Agreement. By entering into this Agreement, the State does not waive any right or authority it may have under North Carolina law, but expressly reserves all of the rights and authority it may have thereunder, except that it expressly agrees to exhaust any applicable remedies provided in Part X (Consultation With U.S. EPA and The State) and Part XI (Resolution of Disputes) of this Agreement.]

XXIV. PRIOR DRAFTS

This Agreement shall constitute the entire integrated agreement of the Parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

XXV. 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, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under Sections 109 and 310(c) of CERCLA;

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

3. All terms and conditions of this Agreement which relate to [operable unit remedial actions] or final remedial actions, including corresponding timetables, deadlines or schedules, and all work associated with [operable unit remedial

actions] or final remedial actions, shall be enforceable by any person pursuant to Section 310(c) of CERCLA, and any violation of such terms or conditions will be subject to civil penalties under Sections 109 and 310(c) of CERCLA; and

4. Any final resolution of a dispute pursuant to Part XI (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, and any violation of such term, condition, timetable, deadline or schedule will be subject to civil penalties under Sections 109 and 310(c) of CERCLA.

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.

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, including but limited to any rights under Sections 113 and 310, 42 U.S.C. §§ 9613 and 9659. The DOD does not waive any rights it may have under CERCLA Section 120, SARA Section 211 and Executive Order 12580.

D. The Parties agree to exhaust their rights under Part XI (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.

XXVI. STIPULATED PENALTIES

A. In the event that the Marine Corps fails to submit a primary document [listed in Part X (Consultation with U.S. EPA and the State), Subpart C of this Agreement,] to U.S. EPA pursuant to the appropriate timetable or deadline in accordance with the requirements of [Part XXVII (Deadlines) of] this Agreement, or fails to comply with a term or condition of this Agreement which relates to [an operable unit remedial action] or final remedial action, U.S. EPA may assess a stipulated penalty against the Marine Corps. 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 Part occurs.

B. Upon determining that the Marine Corps has failed in a manner set forth in Subpart A, U.S. EPA and/or the State shall so notify the Marine Corps in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Marine Corps shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Marine Corps shall not be liable for the stipulated penalty assessed by the U.S. EPA if the failure is determined,

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

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

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

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

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

F. This Part shall not affect the Marine Corps' ability to obtain an extension of a timetable, deadline or schedule pursuant to Part XXVIII (Extensions) of this Agreement.

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

#### XXVII. DEADLINES

A. The following deadlines have been established [for the receipt] by U.S. EPA and the State of [the following] draft documents [from the Marine Corps] pursuant to this Agreement:

1. [A Site-generic Community Relations Plan on or before <Date to be added>]
2. [A Site-generic Health and Safety Plan on or before <Date to be added>]
3. [A Site-generic Quality Assurance Project Plan, including a Field Sampling Plan and a Quality Assurance and Quality Control Plan on or before <Date to be added>]
4. [All Site-specific] Scope[s] of Work [on or before <Date to be added>]

B. Within twenty-one (21) days of the effective date of this Agreement, the Marine Corps shall propose deadlines for completion of the following draft primary [and secondary] documents [which shall become an attachment to this Agreement upon approval by U.S. EPA and the State]:

1. [Site-specific] RI/FS Work Plan[s]
2. [Site-specific Baseline Risk Assessment Reports]
3. Site[-specific Preliminary] Characterization [Summary] Report[s]
4. [Site-specific RI Reports, including Initial Screening of Alternatives]
5. [Site-specific FS Reports, including Detailed Analysis of Alternatives]

Within fifteen (15) days of receipt, U.S. EPA and the State shall review and provide comments to the Marine Corps regarding the proposed deadlines. Within fifteen (15) days following receipt of the comments the Marine Corps shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. If the Parties agree on proposed deadlines, the finalized deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree within thirty (30) days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Part XI (Resolution of Disputes) of this Agreement.

The final deadlines established pursuant to this Part shall be published by U.S. EPA and the State.

C. Within twenty-one (21) days of issuance of the Record of Decision, the Marine Corps shall propose deadlines for completion of the following draft primary documents:

1. Remedial Design
2. Remedial Action Work Plan

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

D. The deadlines set forth in this Part, or to be established as set forth in this Part, may be extended pursuant to Part XXVIII (Extensions) of this Agreement. The Parties recognize that one possible basis for extension of the deadlines for completion of the Remedial Investigation Reports is the identification of significant new Site conditions during the performance of the remedial investigation[s].

#### XXVIII. 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 Marine Corps 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;

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

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

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

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

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

D. [Upon receipt of a written request for an extension of a timetable, deadline or schedule, U.S. EPA and the State shall provide the Marine Corps with a timely response. Every effort will be made to provide a written response within fourteen (14) days.] If U.S. EPA or the State does not concur in the requested extension, [they] shall include in [their] statement of noncurrence an explanation of the basis for [their] position.

E. If there is consensus among the Parties that the requested extension is warranted, the Marine Corps shall extend the affected timetable[.] 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[.] deadline or schedule shall not be extended except in accordance with determination resulting from the dispute resolution process.

F. Within seven (7) days of receipt of a statement of nonconcurrence with the requested extension, any Party may invoke dispute resolution in accordance with Part XI (Resolution of Disputes) of this Agreement. Failure of any Party to invoke dispute resolution within the seven (7)-day period shall be deemed to waive all objections by that Party to the statement of noncurrence.

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[.] 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[,] deadline or schedule as most recently extended.

XXIX. FORCE MAJEURE

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

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

XXX. FUNDING

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

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

Any requirement for the payment or obligation of funds, including stipulated penalties, by the Marine Corps established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

If appropriated funds are not available to fulfill the Marine Corps' 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 action, which would be appropriate absent this Agreement.

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

XXXI. CONVEYANCE OF TITLE

<NON-MODEL>

No conveyance of title, easement, or other interest in the Marine Corps 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 Marine Corps without provision for continued maintenance of any such system or other response action(s). At least thirty (30) days prior to any such conveyance, the Marine Corps shall notify U.S. EPA and the State of the provisions made for the continued operation and maintenance of any response action(s) or systems installed or implemented pursuant to this Agreement.

XXXII. PUBLIC PARTICIPATION

<NON-MODEL>

A. The Parties agree that this Agreement and any subsequent proposed remedial action alternative(s) and subsequent plan(s) for remedial action at the Site arising out of this Agreement shall comply with the administrative record and public participation requirements of CERCLA/SARA, including Section 117 of SARA, the NCP, and U.S. EPA guidances on public participation and administrative records.

B. The Marine Corps shall develop and implement a [Site] Community Relations Plan (CRP) which responds to the need for an interactive relationship with all interested community elements, both on Camp Lejeune [Military Reservation] and off, regarding activities and elements of work undertaken by the Marine Corps. The Marine Corps agrees to develop and implement the [Site] CRP in a manner consistent with Section 117 of SARA, the NCP, U.S. EPA guidelines set forth in U.S. EPA's Community Relations Handbook, and any modifications thereto.

The [Site] CRP is subject to review as a Primary Document as set forth in Part X (Consultation with U.S. EPA and the State) of this Agreement.

C. The public participation requirements of this Agreement shall be implemented so as to meet the public participation requirement applicable to RCRA permits, 40 C.F.R. Part 124 and Section 7004 of RCRA.

D. To the extent practicable, any Party issuing a formal 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.

E. The Marine Corps shall establish and maintain [the Site] Administrative Record at or near Camp Lejeune [Military Reservation] in accordance with Section 113(k) of CERCLA/SARA. The [Site] Administrative Record shall be established and maintained in accordance with current and future U.S. EPA policy and guidelines. A copy of each document placed in the administrative record will be provided to the U.S. EPA and the State. The [Site] Administrative Record developed by the Marine Corps shall be updated and supplied to U.S. EPA and the State on at least a quarterly basis. An index of documents in the [Site] Administrative Record will accompany each update of the [Site] Administrative Record.

F. The Marine Corps shall follow the public participation requirements of Section 113(k) of CERCLA/SARA and comply with any guidance and/or regulations promulgated by U.S. EPA with respect to such Section.

XXXIII. PUBLIC COMMENT

<NON-MODEL>

A. Within fifteen (15) days of the date of the [execution] by all the Parties of this Agreement, U.S. EPA shall announce the availability of this Agreement to the public for review and comment. U.S. EPA shall accept comments from the public for a period of forty-five (45) days after such announcement. U.S. EPA shall review all such comments and shall either:

1. Determine that the Agreement should be made effective in its present form, in which case the Marine Corps [and the State] shall be so notified in writing, and the Agreement shall become effective on the date the Marine Corps receives such notice; or

2. Determine that modification of the Agreement is necessary, in which case if the Parties do not mutually agree on needed changes within thirty (30) days from the close of the public comment period, the Parties shall submit their written notices of position directly to the DRC and the dispute resolution procedure of Part XI (Resolution of Disputes) shall apply.

[B. At the end of the public comment period, and if applicable, upon satisfying the provision of Subpart A(2) above, the Parties shall prepare a written response (hereinafter referred to as "Responsiveness Summary") addressing public comment as outlined in Section 117 of CERCLA. Where modification of the Agreement is necessary, whether by mutual consent of the Parties or through dispute resolution, the Responsiveness Summary shall also describe any such Agreement modification. After the requirements of this Subpart have been satisfied, the Agreement will become effective as provided in Subpart A(1) above. U.S. EPA shall also publish a public notice of the final Agreement, accompanied by the Responsiveness Summary, and it shall be made available to the public.]

XXXIV. AMENDMENT OR MODIFICATION OF AGREEMENT

<NON-MODEL>

This Agreement may be amended or modified by written agreement of U.S. EPA, the State and the Marine Corps.

Any Party may submit a written request for modification to the other Parties. Unless all Parties mutually consent to the modification, such written request for a modification shall be subject to Dispute Resolution under Part XI (Resolution of Disputes) [of this Agreement].

In the event of amendment or modification, the notice procedures of CERCLA Section 117 and SARA Section 211 shall be followed. The effective date of the amendment or modification to the Agreement shall be the date the written[, signed

amendment or modification] agreement is [received] by the [Marine Corps from U.S. EPA following implementation of Part XXXII (Public Comment) of this Agreement].

XXXV. RECOVERY OF EXPENSES

<NON-MODEL>

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

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

B. Reimbursement of North Carolina's Expenses:

1. The Marine Corps agrees to reimburse the State for its costs directly related to implementation of this Agreement up to the amount of <Amount to be added>.

2. After the end of each fiscal year, the State shall submit to the Marine Corps an accounting of all the State costs actually incurred in the course of the fiscal year directly related to the implementation of the Agreement. The State shall submit cost summaries to the Marine Corps in support of such accounting. All costs incurred by the State and set forth in the accounting shall be costs directly related to this Agreement and costs not inconsistent with the NCP.

3. Except as allowed pursuant to Subparts B(4) or (5), below, within ninety (90) days of receipt of the accounting submitted pursuant to Subpart B(2) [above], the Marine Corps shall reimburse the State in the amount set forth in the accounting submitted pursuant to Subpart B(2) above.

4. In the event that the Marine Corps disputes that the costs set forth in the accounting submitted pursuant to Subpart B(2) [above] were directly related to the implementation of this Agreement or were incurred in a manner inconsistent with the NCP, the Marine Corps may challenge the amount to be paid to the State. If unresolved, the State's demand and the Marine Corps' challenge thereto may be resolved in federal district court. In the event of such a dispute, the Marine Corps bears the burden of showing that the State costs were not directly related to the implementation of the Agreement or were incurred in a manner inconsistent with the NCP.

5. The Marine Corps shall not be responsible for reimbursing the State for any costs actually incurred in the course of implementing this Agreement in excess of the cap established in Subpart B(1) above.

#### XXXVI. TERMINATION

The provisions of this Agreement shall only be deemed satisfied and terminated upon receipt by the Marine Corps of written notice from U.S EPA and the State that the Marine Corps has demonstrated, to the satisfaction of the U.S. EPA and the State, that all the terms of this Agreement have been completed.

[The Marine Corps may propose in writing the termination of this Agreement upon documentation that the objectives of this Agreement have been fully satisfied. A Party opposing termination of this Agreement shall notify the other Parties in

writing within ninety (90) days of receipt of the Marine Corps' proposal to terminate this Agreement. No Party shall unreasonably withhold approval of the Marine Corps' proposal to terminate this Agreement.]

XXXVII. EFFECTIVE DATE

This Agreement is effective upon [receipt by the Marine Corps of the notice from U.S. EPA specified in Part XVIII (Public Comment), Subpart A(1)] following [the satisfaction] of Part XXXIII (Public Comment) of this Agreement.

IT IS SO AGREED:

FOR THE U.S. DEPARTMENT OF THE NAVY

By: \_\_\_\_\_ Date \_\_\_\_\_  
<Name and Title to be added>

FOR THE STATE OF NORTH CAROLINA

By: \_\_\_\_\_ Date \_\_\_\_\_  
<Name and Title to be added>

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

By: \_\_\_\_\_ Date \_\_\_\_\_  
<Name and Title to be added>

Enclosure Two

RCRA/CERCLA TERMINOLOGY

RCRA CORRECTIVE ACTION  
[3004(u)] \*

CERCLA REMEDIAL ACTION  
[NCP]

COMBINATION  
[RCRA/CERCLA]

ACRONYMS:

RFI:  
RCRA Facility Investigation

RI:  
Remedial Investigation

RFI/RI

CMS:  
Corrective Measure Study

FS:  
Feasibility Study

CMS/FS

CM:  
Corrective Measures

RA:  
Remedial Action

CM/RA

CMP:  
Corrective Measures Plan

RAP:  
Remedial Action Plan

CMP/RAP

CMD:  
Corrective Measures Design

RD:  
Remedial Design

CMD/RD

General Terminology:

Corrective Action: RCRA term for all activities conducted under requirements of Section 3004(u) & (v) or 3008(h)

Closure: RCRA term for requirements of 40 CFR Parts 264/265 Subpart G for RCRA regulated TSD units only.

Site: CERCLA term as defined in NCP and IAG.

Solid Waste Management Unit (SWMU): RCRA term as defined in RCRA permit.

\* To be proposed as 40 CFR Part 264 Subpart S.