10/1/03-00540

Final

Federal Facilities Agreement

Naval Amphibious Base Little Creek
Virginia Beach, Virginia

Prepared by

Department of the Navy

Atlantic Division
Naval Facilities Engineering Command
Norfolk, Virginia

October 2003

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

COMMONWEALTH OF VIRGINIA

AND THE

UNITED STATES DEPARTMENT OF THE NAVY

IN THE MATTER OF:

U.S. Department of the Navy
Naval Amphibious Base
Little Creek
Virginia Beach, Virginia

FEDERAL FACILITY AGREEMENT
Under CERCLA Section 120
Administrative
Docket Number: III-FFA-CERCLA-03-2003-0180FF

TABLE OF CONTENTS

Section		Page
I.	JURISDICTION	1
II.	DEFINITIONS	2
III.	PARTIES BOUND	7
IV.	PURPOSE	7
V.	SCOPE OF AGREEMENT	9
VI.	FINDINGS OF FACT	10
VII.	EPA DETERMINATIONS	13
VIII.	STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION	14
IX.	WORK TO BE PERFORMED	15
X.	CONSULTATION	25
XI.	DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN	31
XII.	BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN	33
XIII.	EXTENSIONS	38
XIV.	PROJECT MANAGERS	39
XV.	EXEMPTIONS	42
XVI.	ACCESS	42
XVII.	PERMITS	44
XVIII.	REMOVAL AND EMERGENCY ACTIONS	45
XIX.	PERIODIC REVIEW	47
XX.	DISPUTE RESOLUTION	48
XXI.	STIPULATED PENALTIES	50
XXII.	FORCE MAJEURE	51
XXIII.	ENFORCEABILITY	53
XXIV.	OTHER CLAIMS	54
XXV.	RESERVATION OF RIGHTS	54
XXVI.	PROPERTY TRANSFER	55
XXVII.	FUNDING	55
XXVIII.	REIMBURSEMENT OF COMMONWEALTH SERVICES	56
XXIX.	RECOVERY OF EPA EXPENSES	56

XXX. QUALITY ASSURANCE 56
XXXI. RECORD PRESERVATION 57
XXXII. SAMPLING AND DATA/DOCUMENT AVAILABILITY 57
XXXIII. PROTECTED INFORMATION 58
XXXIV. COMMUNITY RELATIONS 58
XXXV. PUBLIC COMMENT ON THIS AGREEMENT 59
XXXVI. RESTORATION ADVISORY BOARD 61
XXXVII. EFFECTIVE DATE 62
XXXVIII. AMENDMENT OF AGREEMENT 62
XXXIX. COMMONWEALTH OF VIRGINIA RESERVATION OF RIGHTS 63
XL. SEVERABILITY 64
XLI. TERMINATION AND SATISFACTION 64

Appendixes

A SITE SCREENING AREAS UNDER SITE SCREENING PROCESS
B PRELIMINARY SCREENING AREAS
C NO FURTHER ACTION SITES

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

COMMONWEALTH OF VIRGINIA

AND THE

UNITED STATES DEPARTMENT OF THE NAVY

IN THE MATTER OF:

U.S. Department of the Navy Naval Amphibious Base Little Creek Virginia Beach, Virginia	FEDERAL FACILITY AGREEMENT Under CERCLA Section 120 Administrative Docket Number: III-FCA-CERCLA-03-2003-0180FF

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

I. JURISDICTION

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

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

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

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

D. The Navy enters into those portions of this Agreement that relate to IRAs and FRAs pursuant to CERCLA Section 120(e)(2), 42 U.S.C. Section 9620(e)(2), RCRA Sections 6001, 3008(h), 3004(u) and (v), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), Executive Order 12580, and the DERP.

E. The Virginia Department of Environmental Quality (VDEQ) enters into this Agreement pursuant to CERCLA Sections 120(f) and 121(f), 42 U.S.C. Sections 9620(f) and 9621(f), Section 3006 of RCRA, 42 U.S.C. Sections 6926, and the Virginia Waste Management Act, Virginia Code Sections 10.1-1400 et. seq.

II. DEFINITIONS

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

A. "Accelerated Operable Unit" or "AOU" shall mean a remedial action (RA) that prevents, controls, or responds to a release or threatened release of hazardous substances, pollutants, and contaminants where prompt action is necessary but a response under removal authorities is not appropriate or desirable. The purpose of an AOU is to allow the Parties to proceed with an RA for that Operable Unit (OU) prior to completion of the final Record of Decision (ROD) for the total RA. AOUs are particularly appropriate where the size and complexity of the total RA would seriously delay implementation of independent parts of the action. AOUs will only proceed after complying with applicable procedures in the NCP, and the Parties shall make every effort to expedite these procedures. It is not intended that AOUs diminish the requirements for or delay the conduct of a total RA.

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

C. "Applicable Commonwealth law" shall mean all Commonwealth of Virginia laws administered by the VDEQ determined to be applicable under this agreement. The term shall also include all Commonwealth laws determined to be Applicable or Relevant and Appropriate Requirements (ARARs).

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

E. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., as amended by SARA, Public Law No. 99-499, and any amendments thereto.

F. "Commonwealth" or "state" shall mean the Commonwealth of Virginia, including all departments, offices, and agencies thereof.

G. "Community Relations" shall mean the program to inform and involve the public in the installation restoration (IR), Superfund, and RCRA process and to respond to community concerns.

H. "Corrective Action Permit" shall mean the corrective action portion of any RCRA permit issued to Naval Amphibious Base (NAB) Little Creek pursuant to HSWA.

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

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

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

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

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

N. "Facility" shall mean that property owned by the United States Navy and operated by the U. S. Department of the Navy currently known as the NAB Little Creek located in the City of Virginia Beach in the Commonwealth of Virginia and including all areas identified in Appendix A and Appendix B. This definition is for the purpose of describing a geographical area and not a governmental entity.

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

P. "Focused Feasibility Study" or "FFS" shall mean a comparison of alternatives that concentrates on a particular contaminated medium or a discrete portion of the Site that does not need added investigation in order to progress forward in the remedial process.

Q. "Guidance" shall mean any requirements or policy directives issued by the EPA or that may be issued by the VDEQ, which are of general application to environmental matters and are otherwise applicable to the Navy's work under this Agreement.

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

S. "Land use control" or "LUC" shall mean any restriction or administrative action, including engineering and institutional controls, arising from the need to reduce risk to human health and the environment.

T. "Milestones" shall mean the dates established by the Parties in the SMP for the initiation or completion of Primary Actions and the submission of Primary Documents and Project End Dates. Milestones shall include Near Term Milestones, Out Year Milestones, Primary Actions, and Project End Dates.

U. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and any amendment thereto.

V. "Navy" shall mean the U. S. Department of the Navy, including the Naval Facility Engineering Command (NAVFACENGCOM) Atlantic Division (LANTDIV), NAB Little Creek, their employees, members, successors and authorized representatives, and assigns. The Navy shall also include the United States Department of Defense (DoD) to the extent necessary to effectuate the terms of the Agreement, including, but not limited to, appropriations and Congressional reporting requirements.

W. "Near Term Milestones" shall mean the Milestones within the current FY, the next FY or "budget year" (FY+1), and the year for which the budget is being developed or "planning year" (FY+2).

X. "Onsite" shall have the meaning as defined in the NCP.

Y. "Operable Unit" or "OU" shall mean a discrete action that comprises an incremental step toward comprehensively remediating the Site. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of release, or

pathway of exposure related to the Site. OUs may address geographical portions of the Site, specific Site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of the Site. The cleanup of the Site can be divided into a number of OUs, depending on the complexity of the problems associated with the Site. The term "Operable Unit" is not intended to refer to the term "operating unit" as used in RCRA. All OUs shall be addressed in accordance with the NCP, EPA Guidance, and the requirements of CERCLA.

Z. "Out Year Milestones" shall mean the Milestones within those years occurring after the planning year until the completion of the cleanup or phase of the cleanup (FY+3 through Project End Date).

AA. "Parties" shall mean the Navy, the EPA, and the VDEQ.

BB. "Primary Actions" as used in this Agreement shall mean those specified major, discrete actions that the Parties identify as such in the SMP. The Parties should identify all major, discrete actions for which there is sufficient information to be confident that the date for taking such action is implementable.

CC. "Project End Dates" shall mean the dates established by the Parties in the SMP for the completion of major portions of the cleanup or completion of the cleanup of the Facility. The Parties recognize that, in many cases, a higher degree of flexibility is appropriate with Project End Dates due to uncertainties associated with establishing such dates.

DD. "Project Manager" shall mean each person designated by the Parties to represent that Parties' interests and manage all response actions undertaken at the Site.

EE. "Public Stakeholder" shall mean members of the public including residents, environmentalists, community leaders, public officials, citizens' action groups, and any other interested party.

FF. "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended by HSWA, Public Law No. 98-616, and any amendments thereto.

GG. "Record(s) of Decision" or "ROD(s)" shall be the public document(s) that select(s) and explain(s) which cleanup alternative(s) will be implemented at the Site, and includes the basis for the selection of such remedy(ies). The bases include, but are not limited to, information and technical analyses generated during the RI/FS and consideration of public comments and community concerns.

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

II. "Site" shall include the Facility and any other areas where a hazardous substance, hazardous waste, hazardous constituent, pollutant, or contaminant from the Facility has been deposited, stored, disposed of, or placed, or has migrated or otherwise come to be located. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9). This definition is not intended to include hazardous substances or wastes intentionally transported from the Facility by motor vehicle.

JJ. "Site Management Plan" or "SMP" shall mean a planning document, prepared specifically under Section XII—DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN, that contains a timetable, plan, or Schedule that indicates the time and sequence of events. The SMP will be used as a management tool in planning, reviewing, and setting priorities for all response activities at the Facility. Deadlines developed under the terms of this Agreement are listed in the SMP. Final Deadlines listed in the SMP are subject to stipulated penalties.

KK. "Site-Screening Areas" or "SSAs" shall mean those geographical areas listed in Appendix A and any additional areas agreed to by the Parties in the future. SSAs may be either RCRA Solid Waste Management Units (SWMUs) or RCRA or CERCLA Areas of Concern (AOCs). When the Parties agree, SSAs may expand or contract in size as information becomes available indicating the extent of contamination and the geographical area needed to be studied.

LL. "Site-Screening Process" or "SSP" refers to the mechanism described in Subsection 9.3 for evaluating whether identified SSAs should proceed with an RI and FS. The SSP encompasses both the Facility's RCRA AOCs and SWMU areas and newly discovered CERCLA AOCs within the Facility. Appendix A lists those geographical areas and any additional areas agreed to by the Parties in the future that are being evaluated under the SSP.

MM. "Solid Waste Management Unit" or "SWMU," as defined pursuant to RCRA, shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid and/or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

NN. "Target Dates" shall mean dates established for the completion and transmission of Secondary Documents. Target Dates are not subject to dispute resolution and they are not Milestones.

PP. "Transmit" shall mean the following: any document or notice to be transmitted by a certain date will be considered as transmitted on time if: (1) it is provided to the carrier on a next-day mail basis no later than the day before it is due to be delivered according to the requirements of this Agreement; (2) it is hand-delivered by the due date; or (3) it is sent by certified mail return receipt requested no later than 2 days before it is due to be delivered according to the requirements of this Agreement. Any other means of transmission must arrive on the due date to be considered as timely delivered.

QQ. "VDEQ" shall mean the Commonwealth of Virginia Department of Environmental Quality and its authorized employees and authorized representatives.

RR. "Work" shall mean all activities the Navy is required to perform under this Agreement, except those required by Section XXXI—RECORD PRESERVATION.

III. PARTIES BOUND

3.1 This Agreement shall apply to and be binding upon the EPA and the Navy. Under this Agreement, the Commonwealth of Virginia is acting pursuant to its power and duties under Sections 120(f) and 121(f) of CERCLA, 42 U.S.C. Sections 9620(f) and 9621(f). The Commonwealth intends to voluntarily comply with all the terms of this Agreement and is committed to full participation in the remediation efforts to be conducted pursuant to this Agreement. The Commonwealth does not consider this Agreement to be a contract and as to the Commonwealth, this Agreement does not create third party beneficiary. The Navy agrees to include the notices required by Section 120(h) of CERCLA in any contract for the sale or transfer of real property affected by this Agreement. Transfer (sale or lease) of property affected by this Subsection 3.1 shall not relieve the Navy of its applicable obligations under this Agreement.

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

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

IV. PURPOSE

4.1 The general purposes of this Agreement are to:

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

B. Establish a procedural framework and Schedule for developing, implementing, and monitoring appropriate response actions at the Site in accordance with CERCLA, as amended by SARA, the NCP, Superfund Guidance and policy, RCRA, and RCRA Guidance and policy; and

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

4.2 Specifically, the purposes of this Agreement are to:

A. Identify IRA and FRA alternatives that are appropriate at the Site. The IRA alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of IRA(s) to the EPA and the VDEQ pursuant to CERCLA and applicable Commonwealth of Virginia law. This process is designed to promote cooperation among the Parties in identifying remedial alternatives for OUs prior to selection of FRAs.

B. Establish requirements for the performance of RIs to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants, or contaminants at the Site and to establish requirements for the performance of FSs for the Site to identify, evaluate, and select alternatives for the appropriate RA(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants, or contaminants at the Site in accordance with CERCLA, the NCP, and applicable Commonwealth of Virginia law.

C. Identify the nature, objective, and Schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of cleanup of hazardous substances, pollutants, or contaminants mandated by CERCLA, the NCP, and applicable Commonwealth of Virginia law.

D. Implement the selected IRA and FRA(s) at the Site in accordance with CERCLA, the NCP, and applicable Commonwealth of Virginia law and meet the requirements of CERCLA Section 120(e)(2) for an interagency agreement among the Parties.

E. Ensure compliance, through this Agreement, with RCRA and other federal and Commonwealth of Virginia hazardous waste laws and regulations for matters covered herein.

F. Coordinate response actions at the Site with the mission and support activities at NAB Little Creek.

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

H. Provide, in accordance with CERCLA and the NCP, for Commonwealth of Virginia involvement in the initiation, development, selection, and enforcement of RAs 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 ARARs into the RA process.

I. Provide for operation and maintenance of any RA selected and implemented pursuant to this Agreement.

V. SCOPE OF AGREEMENT

5.1 This Agreement is entered into by the Parties to enable the Navy to meet the provisions of CERCLA, 42 U.S.C. Section 9601 et seq., and Sections 3004(u) and (v) and 3008(h) of the RCRA as amended, 42 U.S.C. Sections 6924(u) and (v) and 6928(h).

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

5.3 This Agreement is intended to address and satisfy NAB Little Creek's RCRA corrective action obligations that relate to the release(s) of hazardous substances, hazardous wastes, hazardous constituents, pollutants, or contaminants at or from all areas addressed under future Corrective Action Permits. This Agreement is not intended to limit any requirements under RCRA or any other law or regulation to obtain permits, and is not intended to affect any permitted or regulated activities at the Facility not occurring in conjunction with CERCLA removal actions or RAs pursuant to this Agreement. This Agreement is not intended to encompass response to spills of hazardous substances from ongoing operations unless those spills occur in conjunction with CERCLA removal actions or RAs pursuant to this Agreement.

5.4 The scope of this Agreement extends to the entire Site. The Site cannot be removed from the National Priorities List (NPL) unless it is determined, in accordance with CERCLA/SARA, the NCP, and this Agreement, that the Navy has implemented all appropriate response actions and the Site no longer poses a threat to human health or the environment. All response actions at the Site shall occur in discrete locations termed SSAs, or OUs identified at the Site pursuant to this Agreement.

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

5.6 The Parties agree to expedite the initiation of response actions at the Site, including AOUs and Interim Response Actions, and to carry out all activities under this Agreement so as to protect the public health, welfare, and the environment. Upon request, the Parties agree to provide applicable Guidance or reasonable assistance in obtaining such Guidance relevant to the implementation of this Agreement.

VI. FINDINGS OF FACT

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

A. NAB Little Creek is homeport to amphibious ships of the U.S. Atlantic Fleet and host to a variety of tenant commands. The base is located principally in the northwest corner of Virginia Beach; a small portion (on its west side) is located in Norfolk. The base, which adjoins the Chesapeake Bay and surrounds Little Creek Harbor, is low lying and relatively flat with several fresh water lakes located on the base and nearby (Lakes Chubb and Bradford, and Lakes Smith and Whitehurst, respectively). Activity aboard NAB Little Creek includes industrial, commercial, administrative, residential, and recreational functions typically of a naval shore installation of medium size.

In 1981, the Department of the Navy initiated the Navy Assessment and Control of Installation Pollutants Program (NACIP). NACIP uses a three-phase approach to study and clean contaminated sites. NAB Little Creek initiated a NACIP Initial Assessment Study (IAS) in December 1984, conducted by Rogers, Golden, and Halpern, of Philadelphia, Pennsylvania. The IAS examined 17 sites at NAB Little Creek, sites now known as IR Sites 1 through17. Six sites were recommended for confirmation study (IR Sites 7, 9, 10, 11, 12, and 13). Of the remaining 11 sites, mitigation measures were recommended for four (IR Sites 4, 5, 15, and 16) and no further action (NFA) was recommended for six (IR Sites 1, 2, 6, 8, 14, and 17). IR Site 3 was addressed separately by means of an action to recover oil in the water table. IR Site 17 was later added to the list of sites to undergo Preliminary Site Inspection (PSI).

B. In October 1986, a Round 1 Verification Step (RVS), the first step in the confirmation study process, was completed. The purpose of RVS is to verify the presence (or absence) of contamination at the six sites recommended for confirmation study (IR Sites 7, 9, 10, 11, 12, and 13). Recommendations resulting from the RVS were to continue sampling during the Interim RI, for the purpose of confirming RVS results.

C. A.T. Kearny, under contract to EPA, conducted a RCRA Facility Assessment (RFA) in 1989. RFA is the first step in the RCRA corrective action process, a process through which facilities with RCRA Part B permits must go in order to renew their permits. The RFA, which involves a records search and a Visual Site Inspection (VSI), but no sampling or analysis, identified 147 SWMUs and several AOCs. Twenty-two SWMUs and two AOCs are associated with IR sites (e.g., SWMUs 123-126 are located within the bounds of IR Site 7).

D. An Interim Remedial Investigation (IRI) was conducted in 1991 to determine whether further characterization or RA was warranted at IR Sites 7, 9, 10, 11, 12, or 13. The objectives of the IRI (identified by LANTDIV) were to conduct a second round of sampling at IR Sites 7, 9, 10, 11, 12, and 13 and to integrate into one document historical and newly acquired data, and site-specific recommendations for further action.

E. A Preliminary Site Inspection (PSI) was also conducted in 1991 to assess the threat to human health and the environment from IR Sites 4, 5, 15, 16, and 17. Chemical constituents of concern were detected in the groundwater at IR Site 5 and further sampling was recommended. At IR Site 16, elevated levels of polychlorinated biphenyls (PCBs) were detected in soil and additional sampling was recommended. NFA was proposed for IR Sites 4, 15, and 17.

F. A Background Groundwater Quality Study report was finalized in December 1992. The purpose of this study was to collect, organize, and present background data on groundwater quality and conditions. Information on the hydraulic characteristics of the water table aquifer was obtained by conducting pump tests at three locations. Analyses performed on groundwater samples did not include all target analyte list (TAL) metals in either the total or filtered analyses. Subsurface soil samples were collected from below the water table, adjacent to the screened interval of the wells. None of the data was validated. As a result, the data is of limited use in risk analysis.

G. From 1993 to 1994, Foster Wheeler Environmental Services (FWES) conducted a RI/FS at IR Sites 7, 9, 10, 11, 12, and 13. This included a Phase I Baseline Risk Assessment (BRA). The FS recommended long-term groundwater monitoring at IR Sites 9 and 10, removal action and post-removal monitoring at IR Site 11, and additional evaluation of IR Sites 7, 12, and 13. At the same time, FWES conducted a Site Investigation (SI) at IR Sites 5 and 16. The SI included soil, groundwater, sediment, surface water, and soil-gas samples, and additional groundwater monitoring wells were installed. Recommendations resulting from the SI included semiannual groundwater monitoring at IR Site 5 and soil removal at IR Site 16.

H. In September 1993, EPA prepared a draft RCRA permit. The Navy, however, withdrew its application before a permit was finalized, and before conducting a RCRA Facility Investigation (RFI) the Navy withdrew from the corrective action program. It decided to investigate seventeen SWMUs by including them in its Relative Risk Ranking System (RRRS) program. The seventeen were chosen because EPA identified them as sites of highest concern.

I. In September 1994, a corrective measures plan was prepared for PCB contamination at IR Site 16. PCB-contaminated soil was removed from the site in 1995, and it was closed-out in 1996.

J. In October 1994, best management practices (BMPs) were implemented at IR Site 7. Bare areas of this former landfill were covered with a 6-inch layer of topsoil, and access to the Site was restricted through signs placed around the perimeter. The Navy issued a decision document for this Site in June 1998 which selected removal (of visible debris) and cover as the remedy, along with semi-annual monitoring of groundwater, surface water, and sediment. A gravel access road and two entrances were constructed.

K. In November 1994, the Navy issued a decision document for removal of a neutralization tank (with associated piping) and soil at IR Site 11. The tank, piping, and soil were excavated in November 1995.

L. In May 1996, an Interim RA Final Closeout Report was issued for IR Site 11.

M. Baker Environmental, Inc. (Baker) completed a RRRS and a revised RRRS analysis in 1996. The purpose of these studies was to gather contaminant, pathway, and receptor information for the seventeen SWMUs of highest concern. Data had been collected from field investigation of surface soil, subsurface soil, and groundwater at these sites in October 1995. The results of these studies were used to identify the relative risk posed by each SWMU according to contaminants, migration pathways, and receptors (human and ecological). Three SWMUs were determined to pose high risk and six were determined to pose medium risk. They are:

High-risk SWMUs:

SWMU 84 - Demolition Debris Landfill (IR Site 8)
SWMU 105 - Steam Plant Flyash Silo (redesignated SWMU 2)
SWMU 111 - Pier 10 Sandblast Yard (redesignated SWMU 3)

Medium-risk SWMUs:

SWMU 17 - Small Transformer Storage Area (redesignated SWMU 1; IR Site 14)
SWMU 117 - SBS 2 Battery Storage Area (redesignated SWMU 4; IR Site 4)
SWMU 130 - Building 3896 Boat Painting Area (redesignated SWMU 5)
SWMU 131-133 - Seabee Area (consolidated and redesignated SWMU 6)

N. In January 1997, Baker prepared a proposed plan and a decision document for IR Sites 9 and 10. The documents called for continued site access restrictions and long-term groundwater monitoring.

O. In September 1998, the Navy issued *Engineering Evaluation/Cost Analysis (EE/CA) for Soil at Site 13: Public Works PCP Dip Tank and Wash Rack.* This was done to address pentachlorophenol (PCP) contamination in soil surrounding the former dip tank. It recommended excavation of about 150 cubic yards of soil, which was accomplished in May 1999. The site was closed-out, with respect to soils, in July 1999.

P. On May 10, 1999 NAB Little Creek was added to the NPL. 4 Fed. Reg. 24949 (1999).

Q. In July 1999, a 3-year summary report of groundwater monitoring at IR Sites 9 and 10 was submitted to VDEQ and EPA.

R. In August 1999, the Navy issued a revised report on the 147 SWMUs, 8 AOCs, and 17 IR sites identified during the RFA process. The report summarized findings from the Revised RFA, the VSI, a 1993 Navy site review (site visits and photographs), and the 1995 RRRs. The revised report documented the SSP conducted by the NAB Little Creek Partnering Team (Navy, EPA, and VDEQ) through desktop reviews and site visits. The Partnering Team identified 107 sites for NFA, 15 sites for further investigation, and 25 sites for limited sampling, desktop re-assessment, or both. Many sites identified for NFA are already the subjects of other environmental programs, e.g., underground storage tank management, National Pollutant Discharge Elimination System (NPDES) permitting, and pollution prevention.

S. In January 2000, the Navy conducted a comprehensive background study of surface and subsurface soil samples collected from 29 locations. Sample spots were chosen to

avoid contaminant sources, and thereby provide representative background soil-quality data. Additionally, background groundwater wells were re-sampled and one new well was installed and sampled. Further analysis of groundwater will be conducted, to assess seasonal differences.

T. In August 2000, the Navy submitted a Master Project Plan (MPP) for RI/FS activities. A MPP is designed to expedite the planning process and promote consistency from site-to-site. The Navy will update the MPP as necessary; EPA and VDEQ will review it at least once every 3 years. Revisions will be incorporated in addenda.

U. In January 2002, the Partnering Team conducted a review of the 1999 SSP. The Team identified 105 sites for NFA, 4 sites for further investigation as SSAs, 10 sites with work in progress, and 13 sites for limited sampling, desktop re-assessment, or both. Many sites identified for NFA are already the subjects of other environmental programs, e.g., underground storage tank management, National Pollutant Discharge Elimination System (NPDES) permitting, and pollution prevention. Appendix C lists these sites; other sites may be added in the future. NFA sites (RCRA SWMUs or RCRA or CERCLA AOCs) will not be investigated further, unless new information leads the Parties to believe that the sites have released hazardous substances, hazardous waste, or hazardous constituents into the environment and therefore pose a threat to human health or the environment.

V. The Navy identified ten sites for RI/FS activities. Closure of these sites will require a ROD. They are:

IR Site 7:	Amphibious Base Landfill
IR Site 8:	The Demolition Debris Landfill
IR Site 9:	Driving Range Landfill
IR Site 10:	Sewage Treatment Plant Landfill
IR Site 11:	The School of Music Plating Shop
IR Site 12:	Exchange Laundry Waste Disposal Area
IR Site 13:	Public Works PCP Dip Tank and Wash Rack
SWMU 3:	Pier 10 Sandblast Yard (Former SWMU 111)
SWMU 7:	Small Boats Sandblast Yard
SWMU 8:	West Annex Sandblast Area

W. By virtue of the Facility's listing on the NPL, the Agency for Toxic Substances and Disease Registry performed a public health assessment. A final report was issued in September 2003.

VII. EPA DETERMINATIONS

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

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

B. The NAB Little Creek is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9), and 10 U.S.C. Section 2701 et seq., and is subject to the DERP.

C. The United States is the owner and operator of NAB Little Creek as defined in Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. Sections 9601(20) and 9607(a)(1). The Navy is the DoD component charged with fulfilling the obligations of the owner/operator under CERCLA at NAB Little Creek.

D. There has been a release or a substantial threat of a release of hazardous substances, pollutants, contaminants, hazardous wastes, or constituents at or from the Facility.

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

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

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

VIII. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

8.1 The Parties intend to integrate the Navy's CERCLA response obligations and RCRA corrective action obligations, which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. Section 9601 et seq.; satisfy the corrective action requirements of RCRA Sections 3004(u) and (v), 42 U.S.C. Sections 6924(u) and (v), for a RCRA Permit, and RCRA Section 3008(h), 42 U.S.C. Section 6928(h), for interim status facilities; and meet or exceed ARARs, to the extent required by CERCLA Section 121, 42 U.S.C. Section 9621.

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

8.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at NAB Little Creek may require the issuance of permits under Federal and Commonwealth laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to the Navy for on-going hazardous waste management activities at the Site, EPA and/or the VDEQ shall reference and incorporate any appropriate provisions, including appropriate Schedules (and the provisions for extension of such Schedules), of this Agreement into such permit. With respect to those portions of this Agreement incorporated by reference into permits, the Parties intend that judicial review of the incorporated portions shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

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

IX. WORK TO BE PERFORMED

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

B. Any Party may propose that a portion of the Site be designated as a distinct Operable Unit. If all Parties agree, it is not necessary to complete the SSP prior to designating an Operable Unit. This proposal must be in writing to the other Parties, and must stipulate the reasons for such a proposal. The proposal shall be discussed by all Project Managers within forty-five (45) days of receipt of the written notice. Dispute Resolution may be invoked if the Parties are not in agreement on the proposal of a specific Operable Unit. If Dispute Resolution is not invoked by the Parties within thirty (30) days after the Project Manager's discussion concerning the proposal or if the need for an Operable Unit is established through Dispute Resolution, the portion of the Site proposed shall be an Operable Unit as that term is defined in Section II - DEFINITIONS, of this Agreement.

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

D. The Navy shall develop, implement, and report upon the Site-Screening Areas (SSAs) as defined herein, and listed in Appendix A to this Agreement, in order to satisfy its obligations under RCRA/CERCLA integration. The Site-Screening Process (SSP), outlined in Subsection 9.3 of this Agreement, is intended to provide a simplified investigative method whereby identified RCRA units and CERCLA areas of concern can be evaluated to determine whether Remedial Investigations are required for these areas. Additional SSP investigations may be initiated at areas later identified by the Parties. The SSP investigation(s) shall be conducted in accordance with an SSP Work Plan as agreed to by the Parties.

E. SSP Reports(s) shall be subject to the review and comment procedures described in Section X - CONSULTATION. The SSP investigation(s) shall be conducted in accordance with the requirements set forth in Subsection 9.3, and the Deadlines established therein and set forth in Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN.

Remedial Investigations and Feasibility Studies for Previously Identified Sites

9.2 A. The Navy is conducting remedial investigations and feasibility studies (RI and FS) for the sites listed in Section 6.1.V.

B. In the Site Management Plan, the Navy shall include a Deadline for submittal of the RI Work Plan for those sites referenced in 9.2 A. above. The RI Work Plan shall contain a proposed Deadline for the submittal of the RI Report and the FS Report(s). The Schedule and Deadlines included in the Final RI Report shall be incorporated into the Site Management Plan in accordance with Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement. The development of the FS(s) will proceed in accordance with Subsection 9.5 of this Agreement.

D. For those sites determined by the Parties not to be included in a Phase 2 RI, the Navy shall include a Deadline in the Site Management Plan for submittal of the FS Report for each of these Operable Units. These Deadlines will be finalized in accordance with Sections XI and XII of this Agreement.

E. For those sites, which the Parties determine, represent a negligible or minimal impact and are strong candidates for no action, or remediation limited to periodic monitoring, the Navy shall include a Schedule in the Site Management Plan for submittal of a risk screening report and any limited sampling that may be recommended to support the risk screening. If the Parties determine that no further action is required, a no-action Proposed Plan will then be prepared. This Schedule will be finalized in accordance with Section XII of this Agreement.

Site-Screening Areas

9.3 A. Determination of Site-Screening Areas When a Party to this Agreement determines that an area on the Site that has not previously been identified as an area that may pose a threat, or potential threat, to public health, welfare, or the environment, does pose such a threat, or potential threat, such Party shall notify in writing the other Parties of such

determination. Notification of the other Parties under this Subsection shall at a minimum include the location of such area on the Site and the reason(s) the Party believes such an area poses a threat, or potential threat, to public health, welfare, or the environment. The Parties shall have 45 days from the date of receipt of notification to discuss the proposal and to agree whether such area shall be addressed under this Agreement as an SSA. If an agreement on whether to address such an area under the Agreement cannot be reached within 45 days from the date of receipt of notification, any Party can initiate the dispute resolution process pursuant to Subsection 20.4 of this Agreement. If dispute resolution is not invoked within 45 days from the date of receipt of notification or if an SSA is established through the dispute resolution process, the proposed SSA will be addressed as an SSA in accordance with this Section.

B. Any area at the Site that is established as an SSA pursuant to the procedures described in this Section after the Effective Date of this Agreement shall be added to the list of SSAs found in Appendix A as an additional SSA to be investigated and possibly remediated pursuant to the requirements of this Agreement. For any SSAs established pursuant to this Section after the Effective Date of this Agreement, the Navy shall, in the next draft Amended SMP, propose Deadlines for the submittal of an SSP Work Plan(s). This Deadline(s) shall be approved in accordance with Section XI and adopted in the SMP.

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

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

2. Unless otherwise agreed to by the Parties within 60 days of receipt by the Parties of the final SSP Report(s), the Parties shall determine which (if any) of the SSAs listed in Appendix A or established pursuant to Subsection 9.3 will require an RI/FS.

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

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

D. Preliminary Screening Areas: Certain areas at the Site have been listed as Preliminary Screening Areas (PSAs) in Appendix B to this Agreement. These areas will undergo a "desk-top" evaluation, which involves a thorough review of all existing or easily obtainable documentation/information on the identified sites. If the parties agree, the evaluation could also include obtaining limited samples from the area. The desk-top evaluation will also involve assessing information concerning the handling of hazardous wastes at each area, or actions taken at each area, or actions that will be occurring under other regulatory programs. Based on this evaluation, a decision will be made by the Project Managers on which the areas will proceed to the Site Screening Process (SSP) as SSAs, and which areas will require no further action and can be closed-out. For those areas which the parties agree will not proceed to the Site Screening Process, the Navy shall prepare, with EPA and Commonwealth assistance, a brief PSA Close-out document.

EPA and the Commonwealth shall review all information submitted by the Navy in the support of the PSA desk-top evaluation and shall provide a response to the Navy as to whether the information provided is sufficient to close-out the area(s). The response shall be forwarded from EPA and the Commonwealth to the Navy within 30 days of the receipt of the supporting documentation. Within 120 days of the effective date of this Agreement, the final determination on which PSAs will become SSAs and which PSAs shall be closed-out shall be completed. Those PSAs, which are not agreed upon by the Parties to be closed-out, will proceed to SSP. If the Parties agree, in writing, the desktop evaluation for specific areas may be extended beyond the 120-day finalization deadline. If the Navy submits supporting documentation to EPA and the Commonwealth in such a manner that the 30-day review and response time for EPA and the Commonwealth extends beyond the finalization date, the finalization date will automatically be extended to allow for a full 30 days of review and discussion.

For those areas which all Parties agree should proceed to the SSP, the Navy shall include those areas in the draft amended Site Management Plan for future Fiscal Years as SSAs and propose deadlines for submittal of SSP Work Plans as prescribed in Subsection 9.3C.

Remedial Investigation and Feasibility Study

9.4 The Navy agrees it shall develop, implement, and report upon an RI for areas identified in Subsections 9.2 and 9.3. RIs shall be conducted in accordance with the requirements and Schedules set forth in the approved RI/FS Work Plan and SMP. RIs shall meet the purposes set forth in Section IV - PURPOSE, of this Agreement. A BRA shall be a component of the RIs. Final Site clean-up level criteria will only be determined following completion of the BRA.

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

Procedures for Interim Remedial Actions

9.6 A. The Navy shall implement those IRAs necessary to prevent, minimize, or eliminate risks to human health and the environment caused by the release of hazardous substances, pollutants, or contaminants. An IRA is identified, proposed, and implemented prior to a FRA. An IRA shall attain ARARs to the extent required by CERCLA or the NCP and be consistent with and contribute to the efficient performance of a FRA(s) taken at an area or OU. An IRA must be protective of human health and the environment, and comply with CERCLA, the NCP, and Commonwealth laws to the extent that they are legally ARARs in accordance with Section 121 of CERCLA, and this Agreement.

B. When a Party to this Agreement determines that an IRA is necessary for an area(s) within the Facility, such Party shall notify, in writing, the other Parties, of the proposal. The Proposal Notification to the other Parties under this Subsection shall at a minimum include the location of such area(s) on the Facility and the reason(s) the Party believes an IRA is required. Any Party may propose an IRA for those OUs or SSAs most suitable for an IRA.

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

C. After the determination that an IRA is required under this Agreement, the Navy shall, in the next draft Amended SMP, submit to the EPA and the VDEQ proposed Deadlines for the submission of Work Plan(s) for the performance of an FFS for the identified area(s). The Deadlines will be finalized in accordance with Section XI. Each FFS Work Plan shall contain a proposed Deadline for the submittal of the FFS. The Schedule and Deadlines included in the approved, Final FFS Work Plan will immediately be incorporated in the SMP. The FFS shall include a limited number of proposed IRA alternatives. To the extent possible, the FFS shall provide an assessment of the degree to which these alternatives were analyzed during their

development and screening. The Navy shall develop, implement, and report upon each FFS in accordance with the requirements set forth in the Final FFS Work Plan. The Navy shall follow the steps outlined in Subsections 9.7B through 9.14 below.

Records of Decision and Plans for Remedial Action

9.7 A. This Section shall apply to selection of RAs.

B. Within 30 days after finalization of an RI and FS or FFS, the Navy shall submit a Draft Proposed Plan to the EPA and the VDEQ for review and comment as described in Section X - CONSULTATION, of this Agreement. Within 7 days after receiving the EPA's acceptance and the VDEQ's comments on the Proposed Plan, the Navy shall publish its Proposed Plan for 45 days of public review and comment. During the public comment period, the Navy shall make the Administrative Record available to the public and distribute the Proposed Plan.

The Navy shall hold a public information meeting during the public comment period to discuss the preferred alternative for each RA. Copies of all written and oral public comments received will be provided to the Parties. Public review and comment shall be conducted in accordance with Section 117(a) of CERCLA, 42 U.S.C. Section 9617(a), and applicable EPA and VDEQ Guidance.

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

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

E. The ROD shall be subject to the review and comment procedures described in Section X – CONSULTATION and is subject to the dispute resolution process in Section XX – DISPUTE RESOLUTION.

F. The selection of a remedy that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation is one basis on which the VDEQ may determine not to concur with a FRA plan.

In accordance with CERCLA Section 121(f)(3)(A), 42 U.S.C. Section 9621(f)(3)(A), at least 30 days prior to the publication of the Navy's FRA plan, if the Navy proposes to select a remedy that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation, the Navy shall provide an opportunity for the VDEQ to concur or not concur in the selection of such plan. If the VDEQ concurs or does not act within 30 days of receipt of notification by the Navy of pending publication of the FRA plan, the RA may proceed. If the VDEQ does not concur, it may act pursuant to Section 121(f)(3)(B) of CERCLA, 42 U.S.C. Section 9621(f)(3)(B).

G. Notice of the final ROD shall be published by the Navy and shall be made available to the public prior to commencement of the RA, in accordance with Section 117(b) of CERCLA, 42 U.S.C. Section 9617(b). The final ROD shall include a statement that the VDEQ has concurred or not concurred with the selection of the remedy.

Remedial Design and Remedial Action

9.8 A. The SMP shall include a Target Date for submission of a Preliminary/Conceptual Remedial Design (RD) document (30 percent design report); a Target Date for submission of a 90 percent or Prefinal RD; and a Deadline for the Final RD, which documents shall be prepared in accordance with this Agreement and applicable Guidance issued by the EPA, including the EPA-Navy *Principles and Procedures for Specifying, Monitoring and Enforcement of Land Use Controls and Other Post-ROD Actions* (October 2003).

B. The RD shall provide the appropriate plans and specifications describing the intended remedial construction and shall include provisions necessary to ensure that the RA will achieve ARARs and performance standards identified in the ROD. The RD shall describe short and long-term implementation actions, and responsibilities for the actions, to ensure long-term viability of the remedy, which may include both Land Use Controls and an engineered portion (e.g., landfill caps, treatment systems) of the remedy. The term "implementation actions" includes all actions to implement, operate, maintain, and enforce the remedy.

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

D. After the final design document is approved, pursuant to Section X - CONSULTATION, the Navy shall begin performance of the RA in accordance with the final RD and the RA Work Plan. The RA shall be completed in accordance with the approved final RD and RA Work Plan and all applicable EPA and VDEQ Guidance.

Finalization of Remedial Actions

9.9 A. The Navy agrees that it shall submit to the EPA and the VDEQ a primary document memorializing remedial action completion in accordance with the Schedule in the SMP following the completion of the RA for each OU. The primary document memorializing remedial action completion shall document the cleanup activities that took place at the OU, and that performance standards specified in the ROD have been met. For each Long-Term Response Action (LTRA), a primary document memorializing remedial action completion shall be prepared when the physical construction of the system is complete and the unit is operating as designed. Such primary document memorializing remedial action completion shall be amended and finalized when the LTRA performance standards specified in the ROD are achieved. The primary document memorializing remedial action completion shall outline in detail, and provide an explanation for, any activities that were not conducted in accordance with the final RD and/or RA Work Plan(s).

Accelerated Operable Unit

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

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

A. Within 15 days after the determination that an AOU is required under this Agreement, the Navy shall submit to the EPA and the VDEQ proposed Deadlines for the submission of Work Plan(s) for the performance of an AOU FFS for the identified AOU(s). Each AOU FFS Work Plan shall contain a proposed Deadline for submittal of the AOU FFS and Proposed Plan. The Schedule and Deadlines included in the final AOU FFS Work Plan will be incorporated in the next Draft Amended SMP. The Navy shall develop, implement, and report upon each AOU FFS in accordance with the requirements set forth in the final AOU FFS Work Plan. The Navy shall follow the steps outlined in Subsections 9.7B through 9.9.

Supplemental Response Action

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

release or threat of release does not present an immediate threat to public health or welfare or the environment, it shall be addressed pursuant to Subsections 9.12 through 9.17.

9.12 A supplemental response action shall be undertaken only when:

A. A determination is made that:

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

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

B. Either of the following conditions is met for any determination made pursuant to Subsection 9.12.A., above:

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

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

9.13 If, subsequent to ROD signature, any Party concludes that a supplemental response action is necessary, based on the criteria set forth in Subsection 9.12, such Party shall promptly notify the others of its conclusion in writing. The notification shall specify the nature of the modification needed and the new information on which it is based. The Project Managers shall confer and attempt to reach consensus on the need for such an action within 30 days of receiving such notification. If the Project Managers have failed to reach consensus, any Party may notify the other Parties in writing within 10 days thereafter that it intends to invoke dispute resolution. If the Project Managers are still unable to reach consensus within 14 days of the issuance of notice invoking dispute resolution, the question of the need for the supplemental response action shall be resolved through dispute resolution.

9.14 If the Project Managers agree, or if it is determined through dispute resolution, that a supplemental response action is needed based on the criteria set forth in Subsection 9.12, the Navy shall propose a Deadline for submittal of the Supplemental Work Plan(s) and a Schedule

for performance of the Work there under to the EPA and VDEQ in the next Draft Amended SMP.

9.15 After finalization of a Supplemental Work Plan, the Navy shall conduct a Supplemental Response Action RI/FS. Following finalization of the Supplemental Response Action RI/FS, the procedures described in Sections 9.7 through 9.9 shall be followed.

Construction Completion/Remedial Action/EPA Certification

9.16. EPA, the Navy, and the Commonwealth have committed to streamlining procedures and documentation for post-ROD activities. Revised procedures may be amended to this agreement upon consensus by the parties. Until any new procedures and documentation are agreed upon, the following provisions will be applicable.

9.17. Construction Completion. The Navy agrees that it shall submit to EPA and VDEQ information required to document completion of physical construction of the remedial action for all OUs within 30 days of completing physical construction at the Site as part of the final, amended primary document memorializing remedial action completion. This information must satisfy the NCP and provide a schedule for any remaining activities necessary to reach Site completion. The information will also address any five-year review requirements.

9.18. Remedial Action/ Site Completion.

A. When the Navy determines that remedial actions at all OUs have been completed, it shall document this event by amending the final primary document memorializing remedial action completion and submitting it to EPA and VDEQ for review. The information provided therein shall document compliance with statutory requirements and provide a consolidated record of all remedial activities for all OUs at the Site. In order for a Site to be eligible for completion, the following criteria must be met:

1. Performance standards specified in all RODs have been met, and all cleanup actions and other measures identified in the RODs have been successfully implemented.

2. The constructed remedies are operational and performing according to engineering specifications.

3. All sites are protective of human health and the environment.

4. The only remaining activities, if any, at the site are operation and maintenance activities (which may include long-term monitoring).

B. Information provided shall summarize work at the entire site (i.e., all OUs). As outlined in Section 9.9 of this Agreement, the primary document memorializing remedial action completion for each OU, including the final OU, is required to document that Work was performed according to design specifications. Information amended to the final primary

document memorializing remedial action completion to indicate remedial action completion shall include a discussion regarding any operation and maintenance requirements and/or land use restrictions at the Site.

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

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

2. Deny the Navy's request for certification of Site completion, stating the basis of its denial and detailing the additional Work needed for completion and certification.

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

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

X. CONSULTATION

Review and Comment Process for Draft and Final Documents

10.1 Applicability:

The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either Primary or Secondary

Documents. The Navy will normally be responsible for issuing Primary and Secondary Documents to the EPA and the VDEQ. As of the Effective Date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed, and subject to dispute in accordance with Sections 10.2 through 10.10 below.

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

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

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

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

10.3 Primary Documents:

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

Site 7 Remedial Investigation
Site 8 Remedial Investigation
Site 9 and 10 Record of Decision
Site 11 Remedial Investigation
Site 12 Feasibility Study
Site 13 Feasibility Study

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

1. RI/FS (including Baseline Risk Assessment for human health and the environment) and FFS Work Plans

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

3. FS and FFS Reports

4. Proposed Plans

5. Records of Decision

6. Final Remedial Designs

7. Remedial Action Work Plans

8. Document Memorializing Remedial Action Completion

9. Site Management Plan

C. Only the Draft Final Primary Documents identified above (and their amendments) shall be subject to dispute resolution in accordance with Section XX - DISPUTE RESOLUTION of this Agreement. The Navy shall complete and transmit Draft Primary Documents in accordance with the Schedule and Deadlines established in Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN, of this Agreement.

10.4 Secondary Documents:

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

1. Health and Safety Plans

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

3. Pilot/Treatability Study Work Plans

4. Pilot/Treatability Study Reports

5. Engineering Evaluation/Cost Analysis Report

6. Well Closure Methods and Procedures

7. Preliminary/Conceptual Designs, or Equivalents

8. Prefinal Remedial Designs

9. Removal Action Memoranda

B. Although the EPA and the VDEQ may comment on the Draft Secondary Documents listed above, such documents shall not be subject to dispute resolution except as provided by Subsection 10.2 hereof. Target Dates shall be established for the completion and transmission of Draft Secondary Documents pursuant to Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN, of this Agreement.

10.5 Meetings of the Project Managers on Development of Documents:

The Project Managers shall meet approximately every 90 days, and confer by telephone every 30 days, except as otherwise agreed by the Parties, to review and discuss the development of Primary and Secondary Documents. Prior to preparing any draft document specified in Subsections 10.3 and 10.4 above, the Project Managers shall meet to discuss the document in an effort to reach a common understanding, to the maximum extent practicable, with respect to the content of draft documents.

10.6 Identification and Determination of Potential ARARs:

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

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

10.7 Review and Comment on Draft Documents:

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

B. Unless the Parties mutually agree to another time period, all draft documents, except the SMP, the Prefinal RD, and the Final RD, shall be subject to a 60-day period for review and comment. The SMP shall be reviewed and commented on in accordance with Section XII or as agreed to by the Parties. The Parties recognize that time periods for review and comment on the Draft RD and RA Work Plans may need to be expedited in order for the Navy to satisfy the requirement of Section 120(e)(2) of CERCLA, 42 U.S.C. Section 9620(e)(2). The Prefinal RD shall be subject to a 45-day period for review and comment. The Final RD will be subject to a 2-week period for review and comment by the Parties.

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

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

D. If documents not scheduled in the current SMP are determined by mutual agreement of the Program Managers to be necessary, review periods, Deadlines, and Target Dates shall be established and shall be incorporated into the Amended SMP.

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

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

G. Following the close of any comment period for a draft document, the Navy shall give full consideration to all written comments on the draft document submitted during the comment period. Within 60 days of the close of the comment period on a Draft Secondary Document, the Navy shall transmit to the EPA and the VDEQ its written response to comments received within the comment period. Within 60 days of the close of the comment period on a Draft Primary Document, the Navy shall transmit to the EPA and the VDEQ a Draft Final Primary Document, which shall include the Navy's response to all written comments received within the comment period. While the resulting Draft Final Document shall be the responsibility of the Navy, it shall be the product of consensus to the maximum extent possible.

H. The Navy may extend the 60-day period for either responding to comments on a Draft Document or for issuing the Draft Final Primary Document for an additional 20 days by providing timely notice to the EPA and the VDEQ. In appropriate circumstances, this time period may be further extended in accordance with Section XIII - EXTENSIONS, hereof.

10.8 Availability of Dispute Resolution on Draft Final Primary Documents:

A. Dispute resolution shall be available to the Parties for Draft Final Primary Documents as set forth in Section XX - DISPUTE RESOLUTION.

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

10.9 Finalization of Documents:

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

If the Navy's determination is not sustained in the dispute resolution process, the Navy shall prepare, within not more than 35 days, a revision of the Draft Final Document that conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section XIII - EXTENSIONS, hereof.

10.10 Subsequent Modification of Final Document:

Following finalization of any Primary Document pursuant to Subsection 10.9 above, any Party to this Agreement may seek to modify the document, including seeking additional field work, pilot studies, computer modeling, or other supporting technical work, only as provided in Subsections A. and B. below.

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

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

1. The requested modification is based on significant new information; and

2. The requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment.

C. Nothing in this Subsection shall alter the EPA's or the VDEQ's ability to request the performance of additional Work that was not contemplated by this Agreement. The Navy's obligation to perform such Work must be established by either a modification of a report or document or by amendment to this Agreement.

XI. DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN

11.1 This Agreement establishes a process for creating the SMP. The SMP is attached to this Agreement as Appendix E. The SMP and each annual Amendment to the SMP shall be Primary Documents. Milestones established in an SMP or established in a Final Amendment to an SMP remain unchanged unless otherwise agreed to by the Parties or unless directed to be changed pursuant to the agreed dispute resolution process set out in Subsections 12.5 or 12.6. In addition, if an activity is fully funded in the current fiscal year, Milestones associated with the performance of Work and submittal of Primary Documents associated with such activity (even if they extend beyond the current fiscal year) shall be enforceable.

11.2 The SMP includes proposed actions for both CERCLA responses and actions that would otherwise be handled pursuant to RCRA corrective actions per Section VIII - STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION, and outlines all response activities and associated documentation to be undertaken at the Facility. The SMP incorporates all existing

Milestones contained in approved Work Plans, and all Milestones approved in future Work Plans immediately become incorporated into the SMP.

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

11.4 The SMP and its annual Amendments include:

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

11.4.2 A listing of all currently identified SSAs, OUs (including AOUs), IRAs, Supplemental Response Actions, and Critical and Non-Time Critical Removal Actions covered or identified pursuant to this Agreement;

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

1. Identification of any Primary Actions;

2. All Deadlines;

3. All Near Term Milestones;

4. All Out Year Milestones;

5. All Target dates;

6. Schedule for initiation of RDs, IRAs, Non-Time Critical Removal Actions, AOUs, and any initiation of other planned response action(s) covered by this Agreement; and,

7. All Project End Dates.

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

11.6 The Milestones established in accordance with this Section and Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN remain the same unless otherwise agreed by the Parties, or unless changed in accordance with the dispute resolution procedures set out in Subsections 12.5 and 12.6. The Parties recognize that possible basis for requests for changes or extensions of the Milestones include but are not limited to—(i) the identification of significant new Site conditions at this installation; (ii) reprioritization of activities under this Agreement caused by changing priorities or new site conditions elsewhere in the Navy; (iii) reprioritization of activities under this Agreement caused by budget adjustments (e.g., rescissions, inflation adjustments, and reduced Congressional appropriations); (iv) an event of Force Majeure; (v) a delay caused by another Party's failure to meet any requirement of this Agreement; (vi) a delay caused by the good faith invocation of dispute resolution or the initiation of judicial action; (vii) a delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and Deadline or Schedule; and (viii) any other event or series of events mutually agreed to by the Parties as constituting good cause.

11.7 The Deadlines established in the SMP and its Amendments shall be published by the EPA and the VDEQ.

XII. BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN

12.1 The Navy, as a federal agency, is subject to fiscal controls, hereinafter referred to as the Future Years Defense Plan (FYDP). The planning, programming, and budgeting process, hereinafter referred to as the POM process, is used to review total requirements for DoD programs and make appropriate adjustments within the FYDP for each program while adhering to the overall FYDP control. The Parties recognize that the POM process is a multi-year process. The Parties also agree that all Parties should be involved in the full cycle of POM activities as specified in this Agreement. Further, the Parties agree that each Party should consider the factors listed in Subsection 11.3, including federal fiscal constraints as well as each of the other factors, in their priority-setting decisions. Initial efforts to close any gap between cleanup needs and funding availability shall be focused on the identification and implementation of cost savings.

Facility-Specific Budget Building

12.2 In order to promote effective involvement by the Parties in the POM process, the Parties will meet at the Project Manager level for the purpose of (1) reviewing the FYDP controls; (2) developing a list of requirements/Work to be performed at the Site for inclusion in the Navy POM process; and, (3) participating in development of the Navy submission to the President's proposed budget, based on POM decisions for the year currently under consideration. Unless the Parties agree to a different time frame, the Navy agrees to notify the other Parties within 10 days of receipt, at the Project Manager level, that budget controls have been received. Unless the

Parties agree to a different time frame or agree that a meeting is not necessary, the Parties will meet, at the Project Manager level, within 5 days of receiving such notification to discuss the budget controls. However, this consultation must occur at least 10 days prior to the Navy's initial budget submission to Naval Facilities Engineering Command (NAVFAC). In the event that the Project Managers cannot agree on funding levels required to perform all Work outlined in the SMP, the Parties agree to make reasonable efforts to informally resolve these disagreements, either at the immediate or secondary supervisor level; this would also include discussions, as necessary, with NAVFAC. If agreement cannot be reached informally within a reasonable period of time, the Navy shall resolve the disagreement, if possible with the concurrence of all Parties, and notify each Party. If all Parties do not concur in the resolution, the Navy will forward through NAVFAC to the Navy Headquarters its budget request with the views of the Parties not in agreement and also inform Navy Headquarters of the possibility of future enforcement action should the money requested not be sufficient to perform the Work subject to disagreement. In addition, if the Navy's budget submission to NAVFAC relating to the terms and conditions of this Agreement does not include sufficient funds to complete all Work in the existing SMP, such budget submission shall include supplemental reports that fully disclose the Work required by the existing SMP, but not included in the budget request due to fiscal controls (e.g., a projected budget shortfall). These supplemental reports shall accompany the cleanup budget that the Navy submits through its higher Headquarters levels until the budget shortfall has been satisfied. If the budget shortfall is not satisfied, the supplemental reports shall be included in the Navy's budget submission to the DoD Comptroller. The Deputy Under Secretary of Defense (Installations and Environment) shall receive information copies of any supplemental reports submitted to the DoD Comptroller.

Navy Budget for Clean Up Activities

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

Amended SMP

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

The Draft Amendment to the SMP should reflect any agreements made by the Parties during the POM process outlined in this Section. Resolution of any disagreement over adjustment of Milestones pursuant to this subsection shall be resolved pursuant to Subsection 12.5.

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

12.5.1 If the Navy proposes in the Draft Final Amendment to the SMP modifications of Milestones to which either the EPA or the VDEQ have not agreed, those proposed modifications shall be treated as a request by the Navy for an extension. Milestones may be extended during the SMP review process by following Subsections 12.4 through 12.7. All other extensions will be governed by Section XIII - EXTENSIONS. The time period for the EPA to respond to the request for extension will begin on the date the EPA receives the Draft Final Amendment to the SMP, and the EPA and VDEQ shall advise the Navy in writing of their respective positions on the request within 30 days. If the EPA and the VDEQ approve of the Navy's Draft Final Amendment, the document shall then await finalization in accordance with Subsections 12.5.3 and 12.6. If the EPA denies the request for extension, then the Navy may amend the SMP in conformance with the EPA's and the VDEQ's comments or seek and obtain a determination through the dispute resolution process established in Section XX - DISPUTE RESOLUTION within 21 days of receipt of notice of denial. Within 21 days of the conclusion of the dispute resolution process, the Navy shall revise and reissue, as necessary, the Draft Final Amendment to the SMP. If the EPA or the VDEQ initiates a formal request for a modification to the SMP to which the Navy does not agree, the EPA or the VDEQ may initiate dispute resolution as provided in Section XX - DISPUTE RESOLUTION with respect to such proposed modification. In resolving a dispute, the persons or person resolving the dispute shall give full consideration to the bases for changes or extensions of the Milestones referred to in Subsection 11.6 asserted to be present, and the facts and arguments of each of the Parties.

12.5.2 Notwithstanding Subsection 12.5.1, if the Navy proposes, in the Draft Final Amendment to the SMP, modifications of Project End Dates that are intended to reflect the time needed for implementing the remedy selected in the ROD but to which either the EPA or the VDEQ have not agreed, those proposed modifications shall not be treated as a request by the Navy

for an extension, but consistent with Section XX - DISPUTE RESOLUTION, the EPA or the VDEQ may initiate dispute resolution with respect to such Project End Date.

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

12.5.4 The Navy shall finalize the Draft Final Amendment as a Final Amendment to the SMP consistent with the mutual consent of the Parties, or in the absence of mutual consent, in accordance with the final decision of the dispute resolution process. The Draft Final Amendment to the SMP shall not become final until 21 days after the Navy receives official notification of Congress' authorization and appropriation of funds if funding is sufficient to complete Work in the Draft Final SMP or, in the event of a funding shortfall, following the procedures in Subsection 12.6. However, upon approval of the Draft Final Amendment or conclusion of the dispute resolution process, the Parties shall implement the SMP while awaiting official notification of Congress' authorization and appropriation.

Resolving Appropriations Shortfalls

12.6 After authorization and appropriation of funds by Congress and within 21 days after the Navy has received official notification of Navy's allocation based on the current year's Environmental Restoration, Navy (ER,N) Account, the Navy shall determine if planned Work (as outlined in the Draft Final Amendment to the SMP) can be accomplished with the allocated funds. (1) If the allocated funds are sufficient to complete all planned Work for that fiscal year and there are no changes required to the Draft Final Amendment to the SMP, the Navy shall immediately forward a letter to the other Parties indicating that the Draft Final Amendment to the SMP has become the Final Amendment to the SMP. (2) If the Navy determines within the 21-day period specified above that the allocated funds are not sufficient to accomplish the planned Work for the Site (an appropriations shortfall), the Navy shall immediately notify the Parties. The Project Managers shall meet within 30 days to determine if planned Work (as outlined in the Draft Final Amendment to the SMP) can be accomplished through: 1) rescoping or rescheduling activities in a manner that does not cause previously agreed upon Near Term Milestones and Out Year Milestones to be missed; or 2) developing and implementing new cost-saving measures. If, during this 30-day discussion period, the Parties determine that rescoping or implementing cost-saving measures are not sufficient to offset the appropriations shortfall such that Near Term Milestones, Out Year Milestones, and Project End Dates should be modified, the Parties shall discuss these changes and develop modified Milestones. Such modifications shall be based on the "Risk Plus Other Factors" prioritization process discussed in Subsection 11.3, and shall be specifically identified by the Navy. The Navy shall submit a new Draft Final Amendment to the SMP to the other Parties within 30 days of the end of the 30-day discussion period. In preparing the revised Draft Final Amendment to the SMP, the Navy shall give full consideration to EPA and VDEQ input during the 30-day discussion period. If the EPA and the VDEQ concur with the modifications made to the Draft Final Amendment to the SMP, the EPA and the VDEQ shall notify the Navy and the revised Draft Final Amendment shall

become the Final Amendment. In the case of modifications of Milestones due to appropriations shortfalls, those proposed modifications shall, for purposes of dispute resolution, be treated as a request by the Navy for an extension, which request is treated as having been made on the date that the EPA receives the new Draft Final SMP or Draft Final Amendment to the SMP. The EPA and the VDEQ shall advise the Navy in writing of their respective positions on the request within 21 days. The Navy may seek and obtain a determination through the dispute resolution process established in Section XX - DISPUTE RESOLUTION. The Navy may invoke dispute resolution within 14 days of receipt of a statement of nonconcurrence with the requested extension. In any dispute concerning modifications under this Section, the Parties will submit the dispute directly to the SEC level, unless the Parties agree to use the standard dispute resolution process, in which case the time periods for the dispute resolution process contained in Subsections 20.2, 20.5, and 20.6 of Section XX - DISPUTE RESOLUTION shall be reduced by half in regard to such dispute. Within 21 days after the conclusion of the dispute resolution process, the Navy shall revise and reissue, as necessary, the Final Amendment to the SMP.

12.7 It is understood by all Parties that the Navy will work with representatives of the other Parties to reach consensus on the reprioritization of work made necessary by any annual appropriations shortfalls or other circumstances as described in Section 12.6. This may also include discussions with other EPA Regions and states with installations affected by the reprioritization; the Parties may participate in any such discussions with other states.

Public Participation

12.8 In addition to any other provision for public participation contained in this Agreement, the development of the SMP, including its annual Amendments, shall include participation by members of the public interested in this action. The Navy must ensure that the opportunity for such public participation is timely; but this Subsection 12.8 shall not be subject to Section XXI - STIPULATED PENALTIES.

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

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

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

12.8.4 The Navy shall ensure that public participation provided for in this Subsection 12.8 complies with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

XIII. EXTENSIONS

13.1 A timetable, Deadline, or Schedule shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension as described in Subsection 13.2, below. Any request for extension by the Navy shall be submitted in writing and shall specify:

A. The timetable and Deadline or Schedule that is sought to be extended;

B. The length of the extension sought;

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

D. Any related timetable and Deadline or Schedule, that would be affected if the extension were granted.

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

A. An event of Force Majeure, as defined in Section XXII;

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

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

D. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and Deadline or a Schedule; and

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

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

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

13.5 If there is consensus among the Parties that the requested extension is warranted, the requesting Party shall extend the affected timetable and Deadline or Schedule accordingly. If there is no consensus among the Parties as to whether all or part of the requested extension is

warranted, the timetable and Deadline or Schedule shall not be extended except in accordance with a determination resulting from the dispute resolution process.

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

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

XIV. PROJECT MANAGERS

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

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

14.3 The Parties' Project Managers shall meet or confer informally as necessary as provided in Section X - CONSULTATION, of this Agreement. Although the Navy has ultimate responsibility for meeting its respective Deadlines, the EPA and the VDEQ Project Managers shall endeavor to assist in this effort by scheduling meetings to review documents and reports; overseeing the performance of environmental monitoring at the Site; reviewing SSP, RI/FS or RD/RA progress; and attempting to resolve disputes informally. At least 1 week prior to each scheduled Project Manager meeting, the Navy will provide to the EPA and the VDEQ Project Managers a draft agenda and summary of the status of the Work subject to this Agreement.

These status reports shall include, when applicable:

A. Identification of all data received and not previously provided by the Navy during the reporting period consistent with the limitations of Subsection 32.1;

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

C. A description of any delays, the reasons for such delays, anticipated delays, concerns over possible timetable implementation, or problems that arise in the execution of a Work Plan during the quarter and any steps that were or will be taken to alleviate the delays or problems.

The minutes of each Project Manager meeting, with the meeting agenda, will be sent to all Project Managers within 14 days after the meeting. Any documents requested during the meeting will be provided in a timely manner, except for those documents for which express notification is required.

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

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

14.6 Modifications of Work not provided for in Subsections 14.4 and 14.5 of this Section also must be approved by all the Parties' Project Managers to be effective. If agreement cannot be reached on the proposed modification to Work, dispute resolution as set forth in Section XX - DISPUTE RESOLUTION, shall be used. Within 5 business days following a modification made pursuant to this Section, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the Project Managers of the other Parties for signature and return.

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

14.8 The Parties shall transmit Primary and Secondary Documents and all notices required herein by next-day mail, hand delivery, or certified letter to the persons specified in Subsection 14.9 below by the Deadline established under Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN. Time limitations shall commence upon receipt. The Navy shall provide to the EPA and the VDEQ seven and two copies respectively, of each Primary and Secondary Document.

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

A. For the Navy:

Commanding Officer, Atlantic Division
Naval Facilities Engineering Command
Attn: NAB Little Creek Installation Project Manager
6506 Hampton Boulevard
Norfolk, VA 23508-1278

Naval Weapons Station Yorktown
Regional IR Program Coordinator
Code 0950, Building 31B
Yorktown, VA 23691-0160

B. For the EPA:

EPA Region III (3HS13)
Attn: NAB Little Creek Project Manager
Federal Facilities Branch
1650 Arch Street
Philadelphia, PA 19103-2029

C. For the VDEQ:

Virginia Department of Environmental Quality
Attn: NAB Little Creek Project Manager
Federal Facilities Program
629 East Main Street
Richmond, VA 23219

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

14.11 The Project Manager for the Navy shall represent the Navy with regard to the day-to-day field activities at the Site. The Navy's Project Manager or other designated employee of the Navy shall be physically present at the Site or available to supervise Work during implementation of all the Work performed at the Site pursuant to this Agreement. The absence of the EPA or VDEQ Project Managers from the Site shall not be cause for Work stoppage or delay, unless the Project Managers agree otherwise in writing.

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

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

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

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

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

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

XV. EXEMPTIONS

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

15.2 The VDEQ reserves any statutory right it may have to challenge any order or exemption specified in Subsection 15.1 relieving the Navy of its obligations to comply with this Agreement.

XVI. ACCESS

16.1 The EPA and the VDEQ and/or their representatives shall have the authority to enter the Site at all reasonable times for the purposes consistent with provisions of this Agreement. Such authority shall include, but not be limited to: inspecting records, logs, contracts, and other documents relevant to implementation of this Agreement; reviewing and monitoring the progress of the Navy, its contractors, and lessees in carrying out the activities under this Agreement; conducting, with prior notice to the Navy, tests that the EPA or the VDEQ deem necessary;

assessing the need for planning additional remedial response actions at the Site; and verifying data or information submitted to the EPA and the VDEQ.

The Navy shall honor all reasonable requests for access to the Site made by the EPA or the VDEQ, upon presentation of credentials showing the bearer's identification and that he/she is an employee or agent of the EPA or the VDEQ. The Navy's Project Manager or his/her designee will provide briefing information, coordinate access and escort to restricted or controlled-access areas, arrange for base passes, and coordinate any other access requests that arise. The Navy shall use its best efforts to ensure that conformance with the requirements of this Subsection do not delay access.

16.2 The rights granted in Subsections 16.1 and 16.4 to the EPA and the VDEQ regarding access shall be subject to regulations and statutes, including NAB Little Creek security regulations, as may be necessary to protect national security information ("classified information") as defined in Executive Order 12356, and comply with NAB Little Creek's health and safety requirements. Such requirements shall not be applied so as to unreasonably hinder the EPA or the VDEQ from carrying out their responsibilities and authority pursuant to this Agreement.

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

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

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

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

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

XVII. PERMITS

17.1 The Navy shall be responsible for obtaining all federal, Commonwealth, and local permits necessary for the performance of all Work under this Agreement.

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

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

A. Identification of each permit that would otherwise be required;

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

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

17.4 Subsection 17.2 above is not intended to relieve the Navy from the requirement(s) of obtaining a permit whenever it proposes a response action involving the shipment or movement of a hazardous substance, pollutant, or contaminant or hazardous waste off the Site or in any other circumstances where the exemption provided for at Section 121(e)(1) of CERCLA, 42 U.S.C. Section 9621(e), does not apply.

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

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

Notification by the Navy of its intention to propose modifications shall be submitted within 60 days of receipt by the Navy of notification that: (1) a permit will not be issued; (2) a

permit has been issued or reissued; or (3) a final determination with respect to any appeal related to the issuance of a permit has been entered. Within 60 days from the date it submits its notice of intention to propose modifications to this Agreement, the Navy shall submit to the EPA and the VDEQ its proposed modifications to this Agreement with an explanation of its reasons in support thereof.

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

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

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

XVIII. REMOVAL AND EMERGENCY ACTIONS

18.1 The Navy shall provide the EPA and the VDEQ with timely notice of any proposed removal action.

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

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

A. Documentation of the actual or threatened release at or from the Site;

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

C. Documentation that the action is consistent with the NCP, applicable Commonwealth regulations, and, to the extent practicable, contributes to the efficient performance of any LTRA with respect to the release or threatened release concerned;

D. Prepare an EE/CA, or its equivalent. The EE/CA shall contain an analysis of removal alternatives for a site. The screening of alternatives shall be based on criteria as provided in CERCLA and the NCP, such as cost, feasibility, and effectiveness; and

E. A Non-Time Critical Removal Action Plan and Target Date for the proposed action.

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

18.4 The opportunity for review and comment for proposed removal actions, as stated in Subsection 18.3 above, may not apply if the action is in the nature of an emergency removal taken because a release or threatened release may present an imminent and substantial endangerment to human health or the environment. The Navy may determine that review and comment, as stated in Subsection 18.3 above, is impractical. However, in the case of an emergency removal action, the Navy shall provide the EPA and the VDEQ with oral notice as soon as possible and written notice within 48 hours after the Navy determines that an emergency removal is necessary. Within 7 days after initiating an emergency removal action, the Navy shall provide the EPA and the VDEQ with the written basis (factual, technical, and scientific) for such action and any available documents supporting such action. Upon completion of an emergency removal action, the Navy shall state whether, and to what extent, the emergency removal action varied from the description of the action in the written notice provided pursuant to this Section. Within 30 days of completion of an emergency response action, the Navy will furnish the EPA and the VDEQ with an Action Memorandum addressing the information provided in the oral notification, whether and to what extent the action varied from the description previously provided, and any other information required by CERCLA or the NCP, and in accordance with EPA Guidance for such actions. Such actions may be conducted at anytime, either before or after the issuance of a ROD.

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

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

XIX. PERIODIC REVIEW

19.1 Consistent with Section 121(c) of CERCLA, 42 U.S.C. Section 9621(c), and in accordance with this Agreement, if the selected RA results in any hazardous substance, pollutants, or contaminants remaining at the Site, the Parties shall review the RA program for each OU at least every 5 years after the initiation of the RA to assure that human health and the environment are being protected by the RA being implemented. As part of this review, the Navy shall report the findings of the review to the EPA and the VDEQ upon its completion. This report, the Periodic Review Assessment Report, shall be submitted to EPA and VDEQ for review and comment. Target Dates shall be established for the completion and transmission of the Periodic Review Assessment Report pursuant to Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN, of this Agreement.

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

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

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

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

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

19.7 The assessment and selection of any additional response actions determined necessary as a result of a Periodic Review shall be in accordance with Subsections 9.11 to 9.15. Except for emergency response actions, which shall be governed by Section XVIII - REMOVAL AND EMERGENCY ACTIONS, such response actions shall be implemented as a supplemental response action in accordance with Subsections 9.14 and 9.15.

XX. DISPUTE RESOLUTION

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

20.2 Within 30 days after: (1) issuance of a Draft Final Primary Document pursuant to Section X - CONSULTATION of this Agreement, or (2) any action that 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 information the disputing Party is relying upon to support its position.

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

20.4 The 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 EPA's representative on the DRC is the Hazardous Site Cleanup Division Director of EPA Region III. The VDEQ's representative on the DRC is its Assistant Division Director, Office of Remediation Programs. The Navy's designated member is the Commander, LANTDIV, NAVFAC. Written notice of any delegation of authority from the Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section XIV - PROJECT MANAGERS.

20.5 Following elevation of a dispute to the DRC, the DRC shall have 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 21-day period, the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution.

20.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA's representative on the SEC is the Regional Administrator of EPA Region III, or his or her delegatee. The Navy's representative on the SEC is the Assistant Secretary of the Navy (Installations and Environment) or his or her delegatee. The VDEQ's representative on the SEC is the Waste Division Director, or his or her delegatee. In the event of a delegation, the positions presented by the delegatees shall represent the positions of the Regional Administrator of EPA Region III, the Waste Division Director of VDEQ, and the Assistant Secretary of the Navy (Installations and Environment).. Any documents issued by the SEC or its members pertaining to a dispute shall be issued by the Regional Administrator of EPA Region III, the Assistant Secretary of

the Navy (Installations and Environment), and/or the Waste Division Director of VDEQ. Notice of any delegation of authority from a Party's designated representative on the SEC shall be provided to the other Parties in writing before the delegation takes effect. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a unanimous written decision signed by all Parties. If unanimous resolution of the dispute is not reached within 21 days, the EPA Regional Administrator shall issue a written position on the dispute. The Secretary of the Navy or the Director of VDEQ may, within 21 days of the Regional Administrator's issuance of the EPA's position, issue a written notice elevating the dispute to the Administrator of the EPA for resolution in accordance with all applicable laws and procedures. In the event that the Navy and/or the VDEQ elect not to elevate the dispute to the Administrator within the designated 21-day escalation period, the decision will become final and the Work will proceed in accordance with the Regional Administrator's written position with respect to the dispute.

20.7 Upon escalation of a dispute to the Administrator of the EPA pursuant to Subsection 20.6 above, the Administrator will review and resolve the dispute within 21 days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Secretary of the Navy and Director of the VDEQ to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other Parties with a written final decision setting forth resolution of the dispute. The duties of the Administrator pursuant to this Subsection may be delegated only to the EPA Assistant Administrator for Enforcement and Compliance Assurance. The duties of the Secretary of the Navy pursuant to Subsection 20.7 may be delegated only to the Assistant Secretary of the Navy (Installations and Environment). The duties of the Director of the VDEQ pursuant to Subsection 20.7 may be delegated only to VDEQ's Deputy Director.

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

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

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

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

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

20.12 If the Commonwealth continues to dispute the position of the Administrator of the EPA, Commonwealth reserves its rights, to the extent provided by law including Sections 113(h), 121 and 310 of CERCLA, Section 7002 of RCRA, and Section XXIII - ENFORCEABILITY of this Agreement, to bring an action in federal court to seek relief regarding such dispute and to seek injunctive relief. This Subsection, however, does not create any rights that the Commonwealth does not already have under applicable laws.

20.13 The Commonwealth reserves the right to maintain an action under CERCLA Section 121(f)(3)(B), 42 U.S.C. Section 9621(f)(3)(B), to challenge the selection of a RA that does not attain a Commonwealth ARAR.

XXI. STIPULATED PENALTIES

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

21.2 Upon determining that the Navy has failed in a manner set forth in Subsection 21.1, the EPA or the VDEQ shall so notify the Navy in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Navy shall have 15 days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Navy shall not be liable for the stipulated penalty assessed by the EPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

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

A. The facility responsible for the failure;

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

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

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

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

21.4 In the event that stipulated penalties become payable by the Navy under this Agreement, the Navy will seek Congressional approval and authorization to pay such penalties in equal amounts to the federal Hazardous Substances Superfund and to the Virginia Environmental Emergency Response Fund. Any requirement for the payment of stipulated penalties under this Agreement shall be subject to the availability of funds, and no provision herein shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341.

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

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

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

XXII. FORCE MAJEURE

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

A. Acts of God;

B. Fire;

C. War;

D. Insurrection;

E. Civil disturbance;

F. Explosion;

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

H. Adverse weather conditions that could not be reasonably anticipated;

I. Unusual delay in transportation due to circumstances beyond the control of the Navy;

J. Restraint by court order or order of public authority;

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

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

M. Insufficient availability of appropriated funds, if the Navy made a timely request for such funds as a part of the budgetary process as set forth in Section XXVII - FUNDING, of this Agreement.

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

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

22.3 The Party seeking an extension based on Force Majeure shall describe the Force Majeure event being alleged.

XXIII. ENFORCEABILITY

23.1 The Parties agree that:

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

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

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

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

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

23.3 Nothing in this Agreement shall be construed as a restriction or waiver of any rights the EPA may have under CERCLA, including but not limited to any rights under Sections 113, 120, 121 and 310, 42 U.S.C. Sections 9613, 9620, 9621 and 9659, or any rights, or defenses, including sovereign immunity, the VDEQ may have under federal or Commonwealth law.

The Navy does not waive any rights it may have under CERCLA Section 120, SARA Section 211, 10 U.S.C. 2701 et seq., and Executive Order 12580.

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

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

XXIV. OTHER CLAIMS

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

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

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

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

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

24.6 This Agreement does not bar any claim for:

A. Natural resources damage assessments, or for damage to natural resources; or

B. Liability for disposal of any hazardous substances or waste material taken from NAB Little Creek.

XXV. RESERVATION OF RIGHTS

25.1 Notwithstanding anything in this Agreement, the EPA and the Commonwealth may initiate any administrative, legal, or equitable remedies available to them, including requiring additional response actions by the Navy in the event that: (a) conditions previously unknown or undetected by the EPA or the Commonwealth arise or are discovered at the Site; or (b) the EPA or the Commonwealth receive additional information not previously available concerning the premises that it employed in reaching this Agreement; or (c) the implementation of the

requirements of this Agreement are no longer protective of public health and the environment; or (d) the EPA or the Commonwealth discover the presence of conditions on the Site that may constitute an imminent and substantial danger to the public health, welfare, or the environment; or (e) the Navy fails to meet any of its obligations under this Agreement; or (f) the Navy fails or refuses to comply with any applicable requirement of CERCLA or RCRA or Commonwealth laws or related regulations; or (g) the Navy, its officers, employees, contractors, or agents falsify information, reports, or data, or make a false representation or statement in a record, report, or document relating to the release of hazardous materials at the Site, and this information affects the determination of whether an RA is protective of human health and the environment. For purposes of this Subsection, conditions at the Site and information known to the EPA and the Commonwealth shall include only those conditions and information known as of the date of the relevant response action decision document.

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

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

XXVI. PROPERTY TRANSFER

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

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

XXVII. FUNDING

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

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

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

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

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

XXVIII. REIMBURSEMENT OF COMMONWEALTH SERVICES

28.1 The Navy and the VDEQ agree to use the Defense State Memorandum of Agreement, DSMOA, signed on August 31, 1990, in accordance with the Cooperative Agreements, for the reimbursement of services provided in direct support of Navy environmental restoration activities at the Site pursuant to this Agreement.

XXIX. RECOVERY OF EPA EXPENSES

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

XXX. QUALITY ASSURANCE

30.1 The Navy shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. The Navy

has developed, in accordance with EPA Guidance, and the EPA and the VDEQ have approved, a Basewide Quality Assurance Project Plan (BWQAPP) that shall be used as a component of each SSP, RI, FS, RD, and RA Work Plan(s). If additional detail is required, the Navy shall develop a site-specific QAPP. These Work Plans will be reviewed as Primary Documents pursuant to Section X - CONSULTATION, of this Agreement. QA/QC Plans shall be prepared in accordance with applicable EPA Guidance.

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

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

XXXI. RECORD PRESERVATION

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

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

XXXII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

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

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

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

XXXIII. PROTECTED INFORMATION

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

33.2 National Security Information:

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

B. Upon receipt from the EPA and/or the VDEQ of a request to meet with the classifying officer regarding access to classified information, the Navy shall, within 10 days of such request, notify the requesting Party of the identity of the classifying officer and the level of classification of the information sought. If the document was classified by the Navy, the classifying officer and the representative of the requesting Party shall meet within 21 days following receipt of the request. The purpose of the meeting shall be to seek a means to accommodate the requesting Party's request for access to information without compromising national security or violating security regulations. If no resolution is reached at the meeting, the Navy shall notify the requesting Party of the classifying officer's decision within 14 days following the meeting. Failure to render a timely decision shall be construed as a denial. Failure to respond is subject to dispute resolution under this Agreement.

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

XXXIV. COMMUNITY RELATIONS

34.1 The Navy has developed and is implementing a Community Relations Plan. This plan responds to the need for an interactive relationship with all interested community elements, both on and off the NAB Little Creek, regarding environmental activities conducted pursuant to this

Agreement by the Navy. Any revision or amendment to the Community Relations Plan shall be submitted to the EPA and the VDEQ for review and comment.

34.2 Except in case of an emergency requiring the release of necessary information, and except in the case of an enforcement action, any Party issuing a press release with reference to any of the Work required by this Agreement shall use its best efforts to advise the other Parties of such press release and the contents thereof upon issuance of such release.

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

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

34.5 The Information Repository is located at Bayside Area Library. The Navy has established and is maintaining an Administrative Record at or near NAB Little Creek (Virginia Beach Central Library) available to the public, and another copy at a central location, in accordance with CERCLA Section 113(k), 42 U.S.C. Section 9613(k), Subpart I of the NCP, and applicable Guidance issued by the EPA. The Administrative Record developed by the Navy shall be periodically updated and a copy of the Index will be provided to the EPA and the VDEQ. The Navy will provide to the EPA and the VDEQ on request any document in the Administrative Record.

34.6 Pursuant to 10 U.S.C. Section 2705(d) and Section XXXVI - RESTORATION ADVISORY BOARD of this Agreement, the Navy has established a Restoration Advisory Board (RAB) for NAB Little Creek in 1984. The purpose of the RAB is to afford a forum for cooperation between the Parties, local community representatives, and natural resource trustees on action and proposed actions at the Site.

XXXV. PUBLIC COMMENT ON THIS AGREEMENT

35.1 Within15 days after the execution of this Agreement (the date by which all Parties have signed the Agreement) or as soon thereafter to conform with RCRA integration requirements, the EPA shall announce the availability of this Agreement to the public for their review and comment, including publication in at least two major local newspapers of general circulation. Such public notices shall include information advising the public as to the availability and location of the Administrative Record discussed in Subsection 35.7. The EPA shall accept comments from the public for 45 days after such announcement. Within 21 days of completion of the public comment period, the EPA shall transmit copies of all comments received within the

comment period to the other Parties. Within 30 days after the transmittal, the Parties shall review the comments and shall decide that either:

A. The Agreement shall be made effective without any modifications; or

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

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

35.3 If the Parties agree that modifications are needed and agree upon the modifications and amend the Agreement by mutual consent within 60 days after the expiration of the public comment period, the EPA and the VDEQ, in consultation with the Navy, will determine whether the modified Agreement requires additional public notice and comment pursuant to any provision of CERCLA. If the EPA and the VDEQ determine that no additional notice and comment are required, and the Parties agree on the Responsiveness Summary, the EPA shall transmit a copy of the modified Agreement to the Navy and the VDEQ and shall notify them in writing that the modified Agreement is effective as of the date of the notification. If the Parties amend the Agreement within the 60 days and the EPA and the VDEQ determine that additional notice and comment are required, such additional notice and comment shall be provided consistent with the provisions stated in Subsection 35.1 above. If the Parties agree, after such additional notice and comment has been provided, that the modified Agreement does not require any further modification and if the Parties agree on the Responsiveness Summary, the EPA shall send a copy of the mutually agreed upon modified Agreement to the Navy and the VDEQ and shall notify them that the modified Agreement is effective. In either case, the Effective Date of the modified Agreement shall be receipt by the Navy from the EPA of notification that the modified Agreement is effective.

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

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

A. Whether modifications to the Agreement are needed; or

B. What modifications to the Agreement should be made; or

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

D. Whether additional public notice and comments are required; or

E. The contents of the responsiveness summary,

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

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

35.7 Existing records maintained by NAB Little Creek that will be included in the Administrative Record such as reports, plans, and Schedules, shall be made available by the Navy for public review during the public comment period.

XXXVI. RESTORATION ADVISORY BOARD

36.1 The Navy has established a RAB, which meets the requirements of 10 U.S.C. Section 2705(d) at DoD installations. The Parties shall participate in the RAB as follows:

A. A NAB Little Creek representative who shall co-chair the RAB;

B. An EPA representative,

C. A VDEQ representative, and

D. The Navy Project Manager.

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

E. Sierra Club Virginia,

F. Virginia Beach Clean Community Commission,

G. Clean the Bay Day Inc., and

H. City of Virginia Beach.

36.2 The co-chairs shall Schedule quarterly meetings of the RAB unless the Parties agree to meet less frequently. If possible, meetings shall be held in conjunction with the meetings of the Project Managers. Meetings of the RAB shall be for the purpose of reviewing progress under the Agreement and for the following purposes:

A. To facilitate early and continued flow of information between the community, NAB Little Creek, and the environmental regulatory agencies in relation to restoration actions taken by NAB Little Creek under the IR Program,

B. To provide an opportunity for RAB members and the public to review and comment on actions and proposed actions taken by NAB Little Creek under the IR Program, and,

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

Special meetings of the RAB may be held at the request of the members.

XXXVII. EFFECTIVE DATE

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

XXXVIII. AMENDMENT OF AGREEMENT

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

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

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

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

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

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

XXXIX. COMMONWEALTH OF VIRGINIA RESERVATION OF RIGHTS

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

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

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

39.4 In the event that the Navy's obligations under this Agreement are not fulfilled for 6 consecutive months, the Commonwealth shall have the option of terminating all provisions of the Agreement affecting the Commonwealth's rights and responsibilities, and the Commonwealth may thereafter seek any appropriate relief. The Commonwealth, however, expressly agrees to exhaust any applicable remedies provided in Section X – CONSULTATION, and Section XX - DISPUTE RESOLUTION, of this Agreement, prior to exercising any such rights. Thereafter, the Commonwealth will provide the other Parties with 10 days notice of its intent to terminate. This Section does not create any right that Commonwealth does not already have under applicable law.

XL. SEVERABILITY

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

XLI. TERMINATION AND SATISFACTION

41.1 The provisions of this Agreement shall be deemed satisfied upon a consensus of the Parties that the Navy has completed its obligations under the terms of this Agreement. Following EPA Certification of all the response actions at the Site pursuant to Subsection 9.9.C of Section IX - WORK TO BE PERFORMED, any Party may propose in writing the termination of this Agreement upon a showing that the requirements of this Agreement have been satisfied. The obligations and objectives of this Agreement shall be deemed satisfied and terminated upon receipt by the Navy of written notice from the EPA, with concurrence of the VDEQ, that the Navy has demonstrated that all the requirements of this Agreement have been satisfied. A Party opposing termination of this Agreement shall provide a written statement of the basis for its denial and describe the actions necessary to grant a termination notice to the proposing Party within 90 days of receipt of the proposal.

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

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

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

AUTHORIZED SIGNATURES

Each of the undersigned representatives of the Parties certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Agreement. This agreement shall apply to and be binding upon the EPA and the Navy. The Commonwealth intends to voluntarily comply with the terms of this Agreement and is committed to full participation in the remediation efforts to be conducted pursuant to this Agreement.

IT IS SO AGREED:

By _____ Date 10/22/2003

Donald R. Schregardus
Deputy Assistant Secretary of the Navy
(Environment)

By _____ Date Oct 30, 2003

Karen Jackson Sismour
Waste Division Director
Virginia Department of Environmental Quality

Ms. Sismour signs this agreement only as a statement of the intentions of the Commonwealth. The Commonwealth does not consider this agreement to be a contract and, as to the Commonwealth, the agreement creates no third party beneficiaries.

By _____ Date 11/04/2003

Donald S. Welsh
Regional Administrator
Environmental Protection Agency, Region III

Appendix A
Site Screening Areas Under Site Screening Process

APPENDIX A - Site Screening Areas Under Site Screening Process

Site ID	Other ID	Name/Description	Location
IR Site 6	SWMU 117/ 4	Special Boat Unit 2 Battery Storage Area/ Battery Acid Disposal Area	On the SE corner of Bldg 103, in the SW Area of the Base
SWMU 13		Former Pesticide Shop	Building 3170 near Building 3166 and intersection of 6th and F Streets (Off Gator Blvd)
New SWMU 5	SWMU 130	Port Ops Boat Painting Area	Port Ops Building 3896, west of piers 56-59
New SWMU 6	SWMUs 131-133	Seabee Area - CB124	East of Pier 47: South of Desert Cove

Appendix B
Preliminary Screening Areas

APPENDIX B – Preliminary Screening Areas

Site ID	Other ID	Name/Description	Location
IR Site 11A	Site 11	Adjacent to Site 11	School of Music Area, East Central Portion of Base
SWMU 30		Leaking Above Ground Diesel Tank	Bldg 3400, in the SE portion of the Base
IR Site 14	SWMU 16 and SWMU 17/1	Transformer Storage Area - Old Pole Yard (SWMU 16); Small Transformer Storage Area (SWMU 17/1)	Bldg 3664 across 7th St from the Public Works Compound, East-Central Portion of Base
SWMU 18		PWC Trans. Garage Spent Battery Shop, Collection Area	North of Public Works Facility Area in Building 3661
SWMU 96		CB301 Seabee Vehicle Maintenance Facility Scrap Storage Area	Bldg CB301, South of Desert Cove
SWMU 97		CB301 Seabee Vehicle Maintenance Facility Storm Drain	Bldg CB301, South of Desert Cove
SWMU 98		CB210 Elevated Causeways Mechanic Shop Material Dispensing Area	Bldg CB210, South of Desert Cove
SWMU 116		MWR Recreation Boat Maintenance Facility	Bldg 3021 in the northeast corner of the base
SWMU 119		Former Special Warfare Group 2 Electronics Shop	South of Little Creek Channel, Bldg W112
AOC D		PCB Transformer Leak	Bldg 3530 Between 5th and 3rd Streets in the SE Corner of the Base
AOC H		Pesticide Mixing Area	Buildings 3109 and 3630, near golf course
AOC I		Golf Course Pond	Golf Course hole 9
AOC J		Burn Area	Across street from golf course driving range

Appendix C
No Further Action Sites

APPENDIX C – No Further Action Sites

Site ID	Other ID	Name/Description	Location
IR Site 4		Reserve Center Motor Oil Disposal Area	Naval Marine Reserve Center West of Little Creek Channel
IR Site 5	SWMU 118	Motor Oil Disposal Area Special Boat Unit Yard	Between Bldgs. T-9 and T-11 in the SW Area of the Base
New SWMU 2	SWMU 105	Steam Plant Flyash Silo	In Building 757 between Murray Road and Amphibious Drive
SWMU 23		Rifle Range	NE Corner of Base
IR Site 15	AOC A	PBC Capacitor Spill - Fire Station Number 1	Electric Utility Pole on E Street
IR Site 16	AOC B	PCB Capacitor Spill - Pole Number 425	PCB Capacitor Pole located 300 ft east of the intersection of Amphibious Dr. and Helicopter Rd.
IR Site 17	SWMU 113	Motor Disposal Area	Bldg 1256, between piers 11 and 12
SWMU 81		MWR Auto Hobby Shop Stain in Parking Lot Area	Southeast portion of base between 5th and 3rd Streets
SWMU 114		ACU-2 Drum Rack and Tank Area	Building 1522, west of Little Creek Channel
SWMU 115		ACU-2 Fuel Dispensing Area	Building 1522, west of Little Creek Channel
SWMU 122		Gymnasium Emergency Generator	Bldg 3147, Southeast of the Public Works Facility
SWMU 128		Port Ops Lube Oil Dispensing Area Storm Water Drain	Building 3896, near port ops, west of piers 56-59
SWMU 129		Port Ops Satellite Accumulation Area	Port Ops Building 3896, west of piers 56-59
SWMU 138		SEAL Team 4 Satellite Accumulation Area	Building 3806 South of Desert Cove
SWMU 141		SEAL Delivery Vehicle 4 Satellite Accumulation Area	Building 3806 South of Desert Cove
SWMU 146		SEAL Team 2 Material Storage Area	Bldg 3813: North of Pier 59
IR Site 1		Building 1231 Oil Disposal Area	West of Little Creek Channel
IR Site 3	SWMU 102	West Annex Fuel Leak - Piers 11-19	Piers 11-19 along the west side of Little Creek Channel
Old SWMU 1		Paint Shop Waterwall- Building 3165	Along Gator Blvd in Bldg 3165 D, two blocks from the baseball diamond

APPENDIX C – No Further Action Sites

Site ID	Other ID	Name/Description	Location
Old SWMUs 2-5;		Wood dust/chip collection bins	Bldgs.3165, 3227, 3334, and 3530
Old SWMU 6		NEX Maintenance Shop Spent Battery AA	Building 3334, NW of the 5th and B St intersection
Old SWMU 7		NEX Maintenance Shop Satellite Accumulation Area	Building 3334, NW of the 5th and B St intersection
Old SWMU 8		Base Exchange (East Annex) Gas Station Dumpster	Building 3615 in the eastern portion of the base
SWMU 9		PWC Training Center Scrap Metal Dumpster	Adjacent to Building 3614
SWMU 10		PWC Sheet Metal Shop Scrap Metal Dumpster	Adjacent to Building 3165
SWMU 11		Harbormaster Shop Scrap Metal Dumpster	Building 3894 near Port Ops, west of piers 56-59
SWMU 12		The Former Wharf Building Shop	Near Building 3165 in the proximity of the Public Works Facility
SWMU 19		PWC Transportation Garage - Paint Booth Filters	Near Bldg 3661 in East/Central Portion of Base
SWMU 20		PWC Transportation Garage - Salvage Parts Storage Area	Building 3661 North of the Public Works Facility
SWMU 21		PWC Transportation Garage - Lubricating Oil Storage Area	Building 3661 North of the Public Works Facility
SWMU 22		PWC Transportation Garage - Wash Rack	Bldg 3661 in East/Central Portion of Base
SWMU 29		Harbormaster's Office Area - Paint/Thinner Residue Tank	Bldg 3894; East/Central Portion of base
SWMU 31		Pier 10 Leaking Above Ground Fuel Tanks	On Pier 10 near Bldg 1263
SWMU 32		NEX (East Annex) Gas Station - Battery Storage Area	East end of Base
SWMU 33		NEX (East Annex) Gas Station - Satellite Accum. Area	East end of Base
SWMU 34		NEX Vending Office Used Oil UST	Bldg 3319, Southeast Corner of the Base

APPENDIX C – No Further Action Sites

Site ID	Other ID	Name/Description	Location
SWMU 35		PWC Transportation Garage Used Oil UST	Bldg 3661 in East/Central Portion of Site, north of Public Works Facility
SWMU 36		Auto Hobby Shop Used Oil UST	Bldg 3530 Between 5th and 3rd Streets in the SE Corner of the Base
SWMU 37		CB301-3 Seabee Maintenance Used Oil Tank	CB301-3 South of Desert Cove
SWMU 38		ACU-4 Used Oil Tanks	Bldg 3817, slightly west of Desert Cove Area in the north/central portion of the base
SWMU 39		East Annex Gas Station Used Oil Tank	Bldg 3615 in the far eastern portion of the base
SWMU 40		BMU-2 Used Oil Tank	Bldg 3142, south of the baseball fields in the North/Central portion of the Base
SWMU 41		MWR Equipment Rental Used Oil Tank	Bldg 3108, NW of the Public Work Facility
SWMU 42		ACU-2 Used Oil Tank 3	Bldg 1231 west of the Little Creek Channel
SWMU 43		ACU-2 Used Oil Tank 4	Bldg 1231 west of the Little Creek Channel
SWMU 44		NSWG-2 Used Oil Tank	Between Bldgs.T-9 and T-11 in the SW Area of the Base
SWMU 45	Cross-reference with SWMU 139	Naval Special Warfare Group 2 Solvent Tank	Bldg 3806 in the central region of the base, just north of Pier 59
SWMU 46		NAMS Used Oil Tank 4	Bldg 3872, in the proximity of Desert Cove
SWMU 47		SURTASS-3 Used Oil Tank	Bldg 1558 west of Little Creek Channel
SWMU 48		Oil/Water Separator	Bldg 3896, Port Ops, west of piers 56-59
SWMU 49		Used Oil Tank 1	Bldg 3860, west of Desert Cove in the North/Central portion of the base
SWMU 50		Used Oil Tank 2	Bldg 3860, west of Desert Cove in the North/Central portion of the base
SWMU 51		Used Oil Tank 6	Bldg 3530, south of Desert Cove

APPENDIX C – No Further Action Sites

Site ID	Other ID	Name/Description	Location
SWMU 52		CB208 Used Oil Tank	South of Building CB-210, slightly south of Desert Cove
SWMU 53		CB214 Used Oil Tank	Bldg CB214, directly south of Desert Cove
SWMU 54		CB301-4 Seabee Maintenance Used Oil Tank	Bldg CB301-4
SWMU 55		CB315 Used Oil Tank	South of Desert Cove Area
SWMUs 56-58		SIMA Used Oil Tanks 2-4	Building 1265 west of Little Creek Channel
SWMU 59		Naval/Marine Reserve Center Used Oil Tank 1	SW portion of the base, west of Little Creek Channel
SWMU 60		Used Oil Tank	Bldg 3033, north of the Music School
SWMU 61		Harbormaster's Office Above Ground Used Oil Tanks	Building 3894, East/Central Portion of Base
SWMU 62		CB210 ELCS Mechanic Shop Above Ground Used Oil Tank	CB210 ELCS
SWMU 63		Fuel Farm Platform Above Ground Waste Oil Tanks	Bldg 3867, West of Desert Cove
SWMU 64		BMU-2 Maintenance Above Ground Waste Oil Tank	Bldg 3142
SWMUs 65-75		Facility Oil/Water Separators	Facility Wide
SWMU 76		Hazardous Waste Storage Pad	North of Gates 4 and 5 in the Southeast corner of the Base
SWMU 78		Navy Exchange Vending Office Drum Area	Exact location could not be determined after visit to building 3319
SWMU 79		Navy Exchange Vending Office Scrap Yard	SE Portion of Base, Bldg 3319
SWMU 80		MWR Auto Hobby Shop Paint Booth Filters	Bldg 3530 Between 5th and 3rd Streets
SWMU 82		Boone Clinic Medical X-Ray Silver Recovery Unit	Bldg 3505, Medical Clinic Building
SWMU 83		Boone Clinic Dental Clinic	Bldg 3505, Medical Clinic Building
SWMU 85		SIMA Machine Shop	Bldg 1265

APPENDIX C – No Further Action Sites

Site ID	Other ID	Name/Description	Location
SWMU 86		SIMA Grind Shop	Bldg 1265
SWMU 87		SIMA Rewind Shop	Bldg 1265
SWMU 88		SIMA Mechanical Calibration Laboratory	Bldg 1265
SWMU 89		SIMA Carpentry Shop	Bldg 1265
SWMU 90		SIMA Boat Shop Storage Yard Satellite Accum. Area	Exact location could not be determined after visit to building 1265
SWMU 91		SIMA Cable Rigger Shop Storage Satellite Accum. Area	Bldg 1265
SWMUs 92-95		CB301 Seabee Vehicle Maintenance Facility	Bldg CB301, South of Desert Cove
SWMU 99		Solid Waste Incinerator Site	Bounded by Helicopter Road to the west, 10th St. to the South, and Hewitt Dr. to the East
SWMU 100		Fuel Farm Loading Platform Underground Storage Tank	Adjacent to Desert Cove near Bldg 3867
SWMU 101		Beachmaster Unit 2 Satellite Accumulation Area	Southeast of Site 10
SWMU 103		Stationary Crane Area	Between Piers 10 and 11 located along Little Creek Cove
SWMU 104		Steam Plant Baghouses	In Building 757 between Murray Road and Amphibious Drive
SWMU 106		Steam Plant French Drain	In Building 757 between Murray Road and Amphibious Drive
SWMU 107		Steam Plant Coal Pile Leachate Collection System	In Building 757 between Murray Road and Amphibious Drive
SWMU 108		Steam Plant Fuel Tanks and Associated Pipes	In Building 757 between Murray Road and Amphibious Drive
SWMU 110		90-Day Accumulation Area	Two bays in Bldg 106 and an outdoor storage yard adjacent to Bldg 106
SWMU 112		Pier 10 Sandblasting Area Satellite Accumulation Area	Location cannot be determined
SWMU 120		VC-6 Satellite Accumulation Area	Directly South of Pier 6, Bldg 2074
SWMU 121		Landing Force Trng. Cmnd. Satellite Accumulation Area	Bldg 3532

APPENDIX C – No Further Action Sites

Site ID	Other ID	Name/Description	Location
SWMU 127		Amphibious Base Landfill Transfer Station	South of the intersection of Amphibious Drive and Murray Rd.
SWMU 134		Portable Waste Oil Tanks Piers 51-59	Piers 51-59
SWMU 135		Hydraulic Fuel Leak	Piers 51-59; dog leg of the pier near building 3882
SWMU 136		Mobile Diving Salvage Unit II Salvage Area - Piers 51-59	Piers 51-59
SWMU 139	Cross-referenced with SWMU 45	SEAL Team 4 Waste PD 680 Tank	Bldg 3806 South of Desert Cove
SWMU 140		SEAL Team 4 Spent Battery Staging Area	Bldg 3806 South of Desert Cove
SWMU 142	Cross-referenced with SWMU 139 and SWMU 45	SEAL Delivery Vehicle 4 Waste PD 680 Tank	Bldg 3806 South of Desert Cove
SWMU 143		Former Seabee Vehicle Maintenance Facility - CB201	Bldg CB201: South of Desert Cove
SWMU 145		Fuel Oil Tank	Bldg 3029, Fire Station 1, near the golf course
SWMU 147		Facility Storm Sewers/Drains	Throughout Facility
AOC C		Non-PCB Transformer Leak	Building 366, north of Public Works Facility
AOC E		Non-PCB Transformer Leak	Adjacent to Port Ops, Building 3896
AOC F		Emergency Generator Leak - Pier 59	Pier 59
AOC G		Emergency Generator Leak - Fire Station Number 1	Fire Station #1; Building 3029