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UNSIGNED MEMORANDUM OF AGREEMENT NSA PANAMA CITY FL  
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MEMORANDUM OF AGREEMENT  
BETWEEN  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
THE  
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
AND THE  
U.S. DEPARTMENT OF THE NAVY  
COASTAL SYSTEMS STATION, PANAMA CITY, FLORIDA

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the U.S. Environmental Protection Agency ("U.S. EPA"), the Florida Department of Environmental Protection ("FDEP") and the U.S. Department of the Navy, Coastal Systems Station, Panama City, Florida ("CSS Panama City" or "Station") also referred to herein as "the Parties," for the specific purposes hereinafter set forth.

I. BACKGROUND

Environmental investigative activities being undertaken on CSS Panama City have revealed and may in the future reveal certain areas of environmental contamination ("sites") on the Station. These sites include those where CERCLA hazardous substances, RCRA hazardous wastes or hazardous constituents, and/or petroleum products or their derivatives were or may have been released into the environment as a result of activities conducted over the history of the installation. Such sites may generally be categorized as follows:

- (i) Those that have been fully investigated and site specific remedy(ies) previously implemented;
- (ii) Those that have been fully investigated and for which site remedy(ies) have been selected but have not yet been implemented;
- (iii) Those that have been fully investigated but for which final remedy selection decisions have not yet been made;
- (iv) Those that are in need of initial or further site investigative activities before the appropriate final remedy(ies) can be selected and implemented.

Because CSS Panama City is currently and will likely remain a multi-use facility with industrial, recreational and residential land uses, the Station desires that future site remedy determinations take land use into account in order to facilitate the use of risk-based cleanup criteria. The Parties agree that when land use controls (LUCs) are necessary to assure the reliability of land use assumptions, it is essential that appropriate procedures be put in place to ensure that such controls will be maintained for as long as necessary to keep the chosen remedy fully protective of human health and the environment.

## II. DEFINITION

As used herein, the term "land use control" or "LUC" means any restriction or control arising from the need to protect human health and the environment, that limits the use of and/or exposure to, environmentally contaminated media (e.g. soils, surface water, ground water ) at any site on CSS Panama City . The term includes controls on access (e.g., engineered and non-engineered mechanisms such as fences, caps, security guards.) Additionally, the term encompasses both affirmative measures to achieve the desired control (e.g., night lighting of an area) and prohibitive directives (e.g., no drilling of drinking water wells). The term also includes "institutional controls," which are non-engineered mechanisms for ensuring compliance with necessary land use limitations (e.g., public advisories, Base Master Plan notations, applicable legal restrictions on land or water usage).

## III. PURPOSE

The Parties intend to accomplish the following specific objectives through execution of this Agreement:

a). To implement a process to ensure appropriate long term maintenance of those LUCs which may have already or which may hereafter be selected for implementation as part of remedy selection for any site on the Station. It is intended that such a process will in turn:

1. Facilitate the application of Federal and/or State risk-based cleanup criteria to site cleanups through consideration of assumed future land usage at those sites where LUCs will be necessary to make such assumptions reliable;
2. Elevate the general level of awareness amongst CSS Panama City personnel as to the need to maintain such controls in order to ensure long term protection of human health and the environment.

b). To implement a process for CSS Panama City to periodically advise U.S. EPA and FDEP representatives of the continued maintenance of any LUCs implemented on board the Station and of any planned changes in land use which might impact any site remediated in accordance with risk-based criteria based on the assumption that land usage would be controlled, (e.g., restricted to industrial use);

c). To implement procedures for integrating all site remedies which include LUCs into the Base Master Planning Process;

d). To provide, in part, through CSS Panama City's good faith compliance with this Agreement, reasonable assurances to U.S. EPA and FDEP that those specific pathway and exposure assumptions relied upon in applying a risk-based cleanup standard to a given site will remain valid until such time as the Parties agree that either different site controls or unrestricted site usage would be appropriate.

#### IV. APPENDICES

Within thirty (30) days after execution of this Agreement, CSS Panama City agrees to develop the following Agreement Appendices:

a). A draft site listing (Appendix A) for those presently known sites on CSS Panama City which appropriately should be covered under the terms of this Agreement. That draft will be sent to U.S. EPA and FDEP for review and concurrence prior to finalization and should include a site location reference tied to the Base Master Plan. Once finalized, that initial Appendix will be updated on at least a quarterly basis by CSS Panama City to reflect any additions or deletions of sites as may hereafter be agreed to by the Parties. Copies of all agreed upon updates shall be promptly distributed to U.S. EPA and FDEP. If no site additions or deletions have been made during a previous quarter, then no Appendix update need be prepared or distributed for that period.

b). Individual Land Use Control Implementation Plans ("LUCIPs" ) (Appendix B) for all known sites to be covered under the terms of this Agreement. Each LUCIP shall identify both the LUC objective for the site being addressed as well as those particular LUCs which will be relied upon to achieve that objective. Each LUCIP will also specify what must be done in order to implement and maintain the specific LUC's required for the site and should contain a cross reference to whatever decision document(s) apply to that site. As future decisions involving LUCs are made at sites on CSS Panama City, these sites will become covered under this Agreement and listed in Appendix A, and a new LUCIP appropriate to each such newly covered site will be added to Appendix B. In conjunction with the CSS Panama City Base Master Plan, these plans should serve as a central LUC reference source to assist Station personnel with completing those periodic site inspections, reviews, and certifications required under Paragraph V of this Agreement.

#### V. SITE INSPECTION / REVIEW / CERTIFICATION

Within thirty (30) days of finalizing the Appendices to be developed in accordance with the requirements of Paragraph IV above, CSS Panama City agrees to initiate the following specific actions:

a). Conduct quarterly visual inspections of all sites where LUCs have previously or may hereafter be implemented as such sites shall be identified in Appendix A to this Agreement. These inspections shall be for the purposes of verifying that all necessary LUCs have been implemented and are being properly maintained. The Station's Environmental Program Manager will be responsible for ensuring that all required inspections are performed; that U.S. EPA and FDEP are provided with thirty days advance notice of, and opportunity to observe Station personnel as they conduct at least one of the quarterly inspections each year; that U.S. EPA and FDEP are notified of any deficiencies noted; and, with U.S. EPA and FDEP concurrence, that all appropriate measures are undertaken in a timely fashion to correct any such deficiency(ies). Routine maintenance related deficiencies shall be corrected as soon as possible.

b). Conduct quarterly reviews by the Station's Environmental Compliance Board (ECB) as established IAW Paragraph 1-2.14 of OPNAVINST 5090.1B) of the Station's status in complying with all previously implemented LUCs. Any non-compliance issues will be appropriately resolved with U.S. EPA and FDEP.

c). Prepare and forward an annual report to U.S. EPA and FDEP signed by the Station Commanding Officer (with copy to SOUTHNAVFACENGCOM), certifying the continued retention of all implemented LUCs associated with those sites identified in Appendix A to this Agreement (as last updated).

## VI. AGENCY COORDINATION

Effective upon execution of this Agreement, CSS Panama City agrees to implement the following agency notification and concurrence procedures:

a). At least sixty days (except in emergency situations) prior to implementation of any major change in land usage (as hereinafter defined) at any site subject to LUCs, the Station shall provide notification of any such change to U.S. EPA and FDEP. Such notifications shall be provided for the purpose of obtaining U.S. EPA and/or FDEP concurrence with the Station's determination as to whether the contemplated change will or will not necessitate the need for re-evaluation of the selected remedy or implementation of specific measures to ensure continued protection of human health and the environment. No major land use change should be implemented until such concurrence is obtained, consistent with the timeliness requirements set forth in subparagraph (b) below. For major land use changes affecting petroleum contaminated sites, although such notifications will be sent to both U.S. EPA and FDEP, the Station need only obtain FDEP's concurrence with the proposed change. Each notification / request for concurrence shall include:

1. an evaluation of whether the anticipated land use change will pose unacceptable risks to human health and the environment or negatively impact the effectiveness of the selected site remedy;
2. an evaluation of the need for any additional remedial action or LUCs resulting from implementation of the anticipated major land use change; and,
3. a proposal for any necessary changes in the selected site remedy.

b). Upon being notified by the Station of an anticipated major land use change at a site U.S. EPA and/or FDEP shall evaluate the information provided pursuant to paragraph (a) above, and respond in a timely fashion so as minimize potential adverse impacts to planned Station activities or operations.

c). The Parties agree that the following shall constitute a major change in land usage:

1. Any change in land use (e.g., from industrial or recreational to residential) that would be inconsistent with those specific exposure assumptions in the human health and/or ecological risk assessments that served as the basis for the LUCs that were implemented at the site;

2. Any site activity that may disrupt the effectiveness of the implemented LUC. For example, excavation at a landfill; groundwater pumping that may impact a groundwater pump and treat system; a construction project that may impact ecological habitat protected by the remedy; removal of a fence; unlocking of a gate, or removal of warning signs.

3. Any site activity intended to alter or negate the need for the specific LUC(s) implemented at the site.

d). The Station also agrees to immediately notify U.S. EPA and FDEP if, despite its best efforts to ensure compliance with Paragraph (a) above, any major change in land use at any site with an implemented LUC is discovered which has not been previously reviewed and concurred in by U.S. EPA and/or FDEP in accordance with that Paragraph. Such notifications will provide all pertinent information as to the nature and extent of the change and describe any measures implemented or to be implemented (to include a timetable for future completion) to reduce or prevent human health or ecological impacts.

#### VII. MOA INTEGRATION

The Parties agree that when site-specific LUCS are to be implemented, an adequate description of the same along with conditions for their use should be included in whatever Decision Document reflects the selected remedy for a site as well as in the associated LUCIP. Additionally, Appendix C contains standard language for inclusion in such documents which may consist of CERCLA Records of Decision (RODs) or Decision Documents (DDs), Remedial Action Plans (RAPs), closure or post closure plans for RCRA regulated units or formal modifications to a facility's RCRA / HSWA permit, or in separate approval or No-Further-Action (NFA) letters issued by U.S. EPA or FDEP whichever has oversight authority over the site in question.

#### VIII. FUNDING COMMITMENT

The Station agrees to use its best efforts to obtain all necessary funding through the appropriate authorities or source(s) to ensure the continued maintenance of all LUCs covered under this Agreement and, where necessary, the timely re-implementation of any LUCs and/or completion of site restoration activities necessitated by any inappropriate change to an implemented LUC. It is not intended by the Parties that this Paragraph be construed in any way to limit the rights otherwise reserved by U.S. EPA and FDEP under Paragraph XIV of this Agreement.

#### IX. FUTURE PROPERTY CONVEYANCE

Should the decision later be made to transfer to any other agency, private person or entity, either title to, or some lesser form of property interest (e.g., an easement, or right of way) in any site on CSS Panama City with an existing LUC(s), then the Station shall ensure that:

a). U.S. EPA and FDEP are provided with notice at least sixty days prior to any such intended conveyance. Such notice shall indicate the mechanism(s) which it is intended will be used to reasonably ensure that any LUC(s) which may need to remain in place after interest conveyance will be maintained, and

b). Each LUC is reviewed and incorporated into those property disposal procedures (e.g., preparation of the Environmental Baseline Survey for Transfer (EBST) and Finding of Suitability for Transfer (FOST) ) to be utilized to meet CERCLA and 40 CFR 373 notice requirements so that the transferee(s) is given adequate notice of existing site condition(s).

It is understood that the planned conveyance of any site with LUCs may prompt U.S. EPA or FDEP to re-evaluate the continued appropriateness of any previously agreed upon LUC(s) based upon the level of assurance provided, that necessary LUCs will be maintained.

#### X. CHANGE IN APPLICABLE STANDARDS

Nothing herein should be construed to preclude CSS Panama City from proposing at any time or from the Parties otherwise agreeing to effect the deletion of any site from coverage under the terms of this Agreement on account of either: (i) a post-remedy implementation change to applicable Federal or State risk-based cleanup standards, or (ii) a change in previously documented contaminant concentration levels allowing for unrestricted use solely as a result of the effects of man induced or naturally occurring bioremediation / attenuation.

#### XI. FUTURE COMMUNICATIONS

Within ten days of execution of this Agreement each Party shall notify the other Parties as to the name(s), address(es), telephone number(s), electronic mail address(es) and facsimile number(s) of their respective representative(s) who shall receive all correspondence and communications on behalf of that Party pertaining to all matters falling under the terms of this Agreement. A listing of agency POCs shall be attached hereto as Appendix D and updated by the Parties as appropriate.

#### XII. SITE ACCESS

CSS Panama City herein agrees to provide U.S. EPA and FDEP representatives, contractors or consultants access to all sites to be covered by this Agreement at all reasonable times consistent with military mission and health/safety requirements. Nothing in this Agreement is intended or shall be construed to limit in any way the right of entry or inspection that either U.S. EPA or FDEP may otherwise have by operation of law. U.S. EPA and FDEP representatives shall have the authority to enter and move freely around any site at all reasonable times for purposes including, but not limited to, reviewing the efforts performed by CSS Panama City in complying with the terms of this Agreement; conducting such tests as these agencies may deem necessary and verifying all information / data submitted by CSS Panama City personnel pursuant to this Agreement.

### XIII. DISPUTES

All Parties agree to use Partnering principles in a good-faith effort to resolve any and all disputes which may hereafter arise with regards to the Station's substantial good-faith compliance with the terms of this Agreement or other matters relating to the Sites addressed hereunder

### XIV. RESERVATION OF RIGHTS

It is agreed and understood that U.S. EPA and FDEP reserve all rights and authorities each agency may currently have or hereafter acquire by law to require that CSS Panama City comply with those federal and state laws and regulations applicable to the investigation, cleanup and long term maintenance of those sites to be covered by this Agreement. It is also understood that the Commanding Officer, CSS Panama City herein reserves those rights and authorities granted to the Department of Defense (DoD) by federal or state law, regulation, or executive order. On behalf of the Department of the Navy, the Commanding Officer CSS Panama City further reserves the right to put all property under his cognizance to those uses deemed necessary in his discretion for mission accomplishment or otherwise deemed necessary by appropriate military authority to meet the needs of the DoD.

### XV. ANTI-DEFICIENCY ACT

Nothing in this Agreement shall be construed as obligating the Navy or U.S. EPA, their officers, employees, or agents to expend any funds in excess of appropriations authorized for such purposes in violation of the federal Anti-Deficiency Act (31 U.S.C. Section 1341).

### XVI. AMENDMENT

Any amendments to this Agreement shall be in writing and will be executed by the undersigned signatories or their duly authorized designees or successors and shall be attached to this original Agreement.

### XVII. TERMINATION

This Agreement shall terminate at such time as the undersigned representatives of the Parties or their successors, mutually concur that the aforesaid objectives of the Parties have been fulfilled and that the need for such an Agreement no longer exists. Alternatively, any Party may unilaterally withdraw from this Agreement upon sixty (60) days written notice to the other Parties but only after reasonable efforts have first been made by all Parties to resolve the dispute(s) leading to the taking of such action. If any Party decides to unilaterally withdraw, the Parties shall nonetheless work towards resolving any outstanding issues as may exist between them. It is understood that should the Navy choose to unilaterally withdraw from this Agreement, that U.S. EPA and FDEP may choose to reconsider any remedy(ies) associated with any site with a LUC still in place at the time of such withdrawal.

XVIII. REPRESENTATIVE AUTHORITY

Each undersigned representative of the Parties to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute the same so as to effectively bind each Party to its terms.

XIX. EXECUTION

This Agreement shall become effective on the date the last of the authorized representatives of the Parties signs.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IV

By: \_\_\_\_\_

Title: \_\_\_\_\_

FOR THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: \_\_\_\_\_

Title: \_\_\_\_\_

FOR THE DEPARTMENT OF THE NAVY, \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Commanding Officer

APPENDIX A  
LAND USE CONTROL  
SITE LISTING

Date last updated : \_\_\_\_\_

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

APPENDIX B

LAND USE CONTROL  
IMPLEMENTATION PLAN  
FOR SITE \_\_\_\_\_

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1. **Site Description:** (e.g., former fire fighting training area, approximate size 150' x200' and contaminant(s) of concern )
  
2. **Site Location:** (e.g., northeast corner of the Station between buildings 250 and 260 as reflected on BMP page \_\_\_\_ / GIS index under IR Site \_\_\_\_ ).
  
3. **LUC Objective(s):** (e.g., to restrict public access to an area for recreational use).
  
4. **LUC(s) Implemented to Achieve Objective(s):** (e.g., installation of a fence, warning signs, etc..., or BMP notations restricting residential or recreational usage).
  
5. **Decision Document:** (e.g., RoD / DD dated \_\_\_\_\_ or No Further Action (NFA) letter dated \_\_\_\_\_).
  
6. **Other Pertinent Information:**

## APPENDIX C

### SAMPLE ROD / DD MOA INCORPORATION LANGUAGE

Insert the following language in those RODs / DDs providing for the use of LUCs).

By separate Memorandum of Agreement (MOA) dated \_\_\_\_\_, with U.S. Environmental Protection Agency (U.S. EPA) and the Florida Department of Environmental Protection (FDEP), \_\_\_\_\_, on behalf of the Department of the Navy, agreed to implement base-wide, certain periodic site inspection, condition certification and agency notification procedures designed to ensure the maintenance by Station personnel of any site-specific Land Use Controls (LUCs) deemed necessary for future protection of human health and the environment. A fundamental premise underlying execution of that agreement was that through the Navy's substantial good-faith compliance with the procedures called for therein, reasonable assurances would be provided to U.S. EPA and FDEP as to the permanency of those remedies which included the use of specific LUCs.

Although the terms and conditions of the MOA are not specifically incorporated herein by reference, it is understood and agreed by the Navy, U.S. EPA and FDEP that the contemplated permanence of the remedy reflected herein shall be dependent upon the Station's substantial good-faith compliance with the specific LUC maintenance commitments reflected therein. Should such compliance not occur or should the MOA be terminated, it is understood that the protectiveness of the remedy concurred in may be reconsidered and that additional measures may need to be taken to adequately ensure necessary future protection of human health and the environment.