

BUREAU OF WASTE CLEANUP
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FEDERAL PROGRAMS SECTION

FEDERAL FACILITIES AGREEMENT

BETWEEN

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4

THE

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

FOR THE

STATE OF FLORIDA

AND

UNITED STATES DEPARTMENT OF THE NAVY

FOR THE

NAVAL AIR STATION, WHITING FIELD

MILTON, FLORIDA

MAR 09 2009

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 4
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
UNITED STATES DEPARTMENT OF THE NAVY

IN THE MATTER OF:

THE UNITED STATES
DEPARTMENT OF THE NAVY
NAVAL AIR STATION
WHITING FIELD
MILTON, FLORIDA

FEDERAL FACILITY AGREEMENT
UNDER CERCLA SECTION 120

USEPA Administrative
Docket Number:

**BUREAU OF WASTE CLEANUP
RECEIVED**

FL. OGC Case
Number:

MAR 09 2009

FEDERAL PROGRAMS SECTION

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. PARTIES

The Parties to this Agreement are the United States Environmental Protection Agency, Region 4 (USEPA), the State of Florida (State) acting through the Florida Department of Environmental Protection (FDEP), and the United States Department of the Navy (Navy). The terms of this Agreement shall apply to and be binding upon the Parties and their respective agents, employees, and response action contractors for the NAS Whiting Field (Site) and all subsequent owners, operators, and lessees of NAS Whiting Field. The undersigned representative of each Party certifies he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

II. JURISDICTION

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

A. USEPA enters into those portions of this Agreement relating to the Remedial Investigation/Feasibility Study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA) and Sections 6001, 3008(h), 3004(u), and 3004(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. USEPA enters into those portions of this Agreement relating to remedial actions/corrective actions pursuant to Section 120(e)(2) of CERCLA, Sections 6001, 3008(h), 3004(u) and (v) of RCRA, and Executive Order 12580.

C. The Navy enters into those portions of this Agreement relating to the RI/FS pursuant to CERCLA Section 120(e)(1), Sections 6001, 3008(h), 3004(u) and (v) of RCRA, Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. Section 4321, et seq., 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 relating to Remedial Actions for Operable Units and final Remedial Actions pursuant to CERCLA Section 120(e)(2); Sections 6001, 3008(h), 3004(u) and (v) of RCRA; Executive Order 12580; and DERP.

E. The State, acting through FDEP, enters, into this Agreement pursuant to CERCLA Sections 120(f) and 121(f); Sections 6001 and 3006 of RCRA; Chapters 376 and 403 Florida Statutes (F.S.); and Section 120.57(4), F.S.

III. DEFINITIONS

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

In addition:

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

B. "Administrative Record" shall have the same meaning as defined in CERCLA. The official Administrative Record will be maintained at Naval Facilities Engineering Command Southeast, Naval Air Station Jacksonville, FL, and a copy of the Administrative Record will be maintained in a repository near the Facility.

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

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

E. "Community Relations" means the program to inform and involve the public in the Installation Restoration (IR) process and to respond to community concerns.

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

G. "Deadlines" shall mean the Near Term Milestones specifically established for the current Fiscal Year under the Site Management Plan. Deadlines are subject to Stipulated Penalties in accordance with Section XXII (Stipulated Penalties).

H. "Documents" mean plans, reports, records, and studies.

I. "EPA" or "USEPA" means the United States Environmental Protection Agency, its successors and assigns, and its duly authorized representatives, including its employees, agents, and contractors, as necessary.

J. "FAC" means Florida Administrative Code.

K. "Facility" means the physical boundaries of NAS Whiting Field.

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

M. "Feasibility Study" or "FS" means the study that evaluates and develops Remedial Action alternatives designed to prevent or mitigate the migration or the release of Hazardous Substances and Pollutants or Contaminants at and from the Site.

N. "FDEP" means the Florida Department of Environmental Protection, its successors and assigns, and its duly authorized representatives, including its employees, agents, and contractors, as necessary.

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 30th of the following calendar year.

P. "Focused Feasibility Study" shall mean a comparison of alternatives concentrating on a particular contaminated media or a discrete portion of the Site not needing additional investigation in order to move forward in the remedial process.

Q. "F.S." means Florida Statutes.

R. "Guidance" shall mean recommendations or policy interpretations published by EPA or published by the State of Florida which are of general application to environmental matters and which are otherwise applicable to the Navy's work under this Agreement.

S. "Hazardous Substances" shall have the meaning set forth in CERCLA Section 101(14) and includes hazardous constituents as defined by RCRA.

T. "Land Use Control" or "LUC" means any restriction or administrative action, including engineering and institutional controls, arising from the need to reduce risk to human health and the environment.

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

V. "National Contingency Plan" or "NCP" means the plan promulgated pursuant to CERCLA Section 105, and codified at 40 C.F.R. Part 300, as amended.

W. "Navy" means the U. S. Department of the Navy as represented by Naval Facilities

Engineering Command Southeast, the Naval Air Station Whiting Field, Milton, Florida, 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 this Agreement, including, but not limited to, appropriations and Congressional reporting requirements.

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

Y. "Operable Unit" or "OU" means 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 a release, or pathway of exposure related to the Site. Operable units may address geographical portions of the site, specific site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of a 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, applicable 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" means the Navy, USEPA, and FDEP.

BB. "Pollutant or Contaminant" shall have the same meaning as defined in CERCLA Section 101(33).

CC. "Potential Source(s) of Contamination" or "PSC" means Hazardous Substances contained in drums, tanks, surface impoundments, waste piles, landfills, or contaminated media.

DD. "Primary Actions" shall mean those specified major, discrete actions the Parties identify as such in the Site Management Plan.

EE. "Project End Dates" shall mean the dates established by the Parties in the Site Management Plan for the completion of the Primary Actions.

FF. "Project Managers" are the individuals designated by the USEPA, FDEP, and the Navy who oversee and provide technical assistance for the activities at the Site.

GG. "Proposed Plan" briefly summarizes the alternatives studied in the detailed analysis phase of the RI/FS, highlighting the key factors that led to identifying the preferred alternative.

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

II. "RCRA" shall mean the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (hereinafter collectively referred to as RCRA), 42 U.S.C. § 6901 et seq.

JJ. "Record of Decision" or "ROD" means, per 40 C.F.R. Section 300.430(f)(5), the public document explaining which alternative will be implemented for the final Remedial Actions and includes the basis for the selection of the remedy.

KK. "Release" shall have the meaning set forth in CERCLA Section 101(22).

LL. "Remedial Action" or "RA" shall have the meaning set forth in CERCLA Section 101(24).

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

NN. "Remedial Investigation" or "RI" shall have the meaning set forth in 40 C.F.R. Section 300.5.

OO. "Removal" or "remove" shall have the meaning set forth in CERCLA Section 101(23).

PP. "Response Action" shall mean "response" as defined in CERCLA Section 101(25).

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

RR. "Significant New Information" means information of material assistance in protecting or evaluating impacts on the public health, welfare, or the environment or in evaluating the selection of response/corrective action alternatives that become known after a document was finalized.

SS. "Significant New Site Conditions" means those conditions of geology, hydrogeology, or contamination not reasonably foreseeable or known at the time a Remedial Investigation was initiated.

TT. "Site" shall include the Facility and any other areas contaminated by the migration of any Hazardous Substance or Pollutant or Contaminant from the Facility as discussed in Section IV (Purpose) of this Agreement.

UU. "Site Management Plan" or "SMP" means the yearly plan submitted by the Navy with a list of PSC, priorities, and Schedule of actions to be taken for the current year and projections for subsequent year(s) prepared in accordance with Section XV (Contents of the SMP).

VV. "NAVFAC SE" means Naval Facilities Engineering Command Southeast, or its successor organization, which shall be the Navy command that will designate the Navy Project Manager who is tasked to manage the fiscal and technical aspects of the Installation Restoration Program at the Site.

WW. "Target Dates" shall mean dates established for the completion and transmission of secondary Documents.

XX. "Work Plan" shall mean the detailed plans prepared by the Navy to implement the requirements of the SMP and its Amendments.

IV. PURPOSE

A. The general purposes of this Agreement are to:

1. Ensure the environmental impacts associated with past and present activities at the Site are thoroughly investigated and appropriate Response Actions are developed and implemented as necessary to protect human health and the environment.
2. Establish a procedural framework and Schedule for developing, implementing, and monitoring appropriate Response Actions at the Site in accordance with CERCLA/SARA, the NCP, RCRA, applicable federal or state laws and regulations, and pertinent written USEPA Guidance or policies. Such framework and Schedule shall also be in accordance with pertinent written state-issued Guidance or policies where adherence thereto is required by CERCLA.
3. Facilitate cooperation, exchange of information, and participation by the Parties in such actions.

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

1. Identify appropriate Removal or Interim Remedial Actions prior to the implementation of final Response Actions. Any Party may propose Removal or Interim Remedial Actions to the other Parties and should do so as soon as the need for such actions is identified. These Removal or Interim Remedial Actions are not intended as a substitute for Remedial Actions in order to avoid the oversight requirement imposed by CERCLA Section 120(e). The Parties do not intend that this process will preclude the timely initiation of emergency actions necessary to address immediate threats to human health, welfare, or the environment pursuant to Section XI (Imminent and Substantial Endangerment) of this Agreement.
2. Establish requirements for the performance of RIs at the Site and to establish requirements for the performance of FSs to identify, evaluate, and select alternatives for the appropriate Response Actions.
3. Identify the nature, objective, and Schedule of Response Actions to be taken at the Site. Such Response Actions at the Site shall attain the degree of remediation of Hazardous Substances, Pollutants or Contaminants, or constituents mandated by CERCLA and ARARs.
4. Implement the selected Response Actions in accordance with CERCLA, RCRA, and applicable state law.
5. Meet the requirements of CERCLA Section 120(e)(2) for an interagency agreement among the Parties.

6. Assure compliance with RCRA and other federal and state hazardous waste laws and regulations for matters covered herein as consistent with the NCP.
7. Coordinate Response Actions at the Site with the mission and support activities of units at NAS Whiting Field.
8. Expedite the remediation process to the extent consistent with protection of human health, welfare, and the environment.
9. Provide for FDEP involvement in the initiation, development, selection, and enforcement of Response Actions to be undertaken at the Site, including the review of all applicable data as it becomes available and the development of studies, reports, and action plans and to identify and integrate State ARARs into the Response Action processes subject to CERCLA Sections 121(d)(4) and (f)(3).
10. Provide for operation and maintenance of any Response Actions selected and implemented pursuant to this Agreement.

V. SCOPE OF AGREEMENT

- A. This Agreement shall apply to all releases or threats of release of Hazardous Substances, Pollutants or Contaminants, or constituents where response authorities are provided under CERCLA.
- B. The Navy shall conduct the work identified within this Agreement in accordance with CERCLA and the NCP as amended, the authorities cited in Section II (Jurisdiction) and those other applicable federal or state laws and regulations, pertinent written USEPA Guidance or policies, and pertinent written state-issued Guidance or policies where adherence thereto is required by CERCLA.
- C. The USEPA and FDEP shall identify all pertinent written Guidance in response to written requests by the Navy for said Guidance to assist the Navy in satisfying the requirements of this Agreement.
- D. This Agreement does not extend to the following:
 1. solid or hazardous waste generation, transportation, treatment, storage, disposal, or other requirements under RCRA;
 2. petroleum releases excluded under CERCLA Sections 101(14) and 101(33) and addressed under FAC Chapter 62-770;
 3. discharges of oil and Hazardous Substances addressed under the Oil Pollution and Hazardous Substances Control Act, Section 311(b) of the Clean Water Act, 33 U.S.C. § 1321(b), as amended by the Oil Pollution Act of 1990.

VI. SITE DESCRIPTION

A. NAS Whiting Field is located in Santa Rosa County in the northwest Florida Panhandle approximately 5.5 miles north of Milton and about 25 miles northeast of Pensacola on State Route 87A. NAS Whiting Field presently consists of two airfields known as North and South Airfields separated by an industrial area. The Facility comprises approximately 3,842 contiguous acres. Appendix A is a site map reflecting the general location of NAS Whiting Field. The Facility was constructed in the early 1940s and officially commissioned as the Naval Auxiliary Air Station in July 1943, after which it served solely as a naval aviation training facility. The NAS Whiting Field's mission has been to provide both basic and advanced instrument, formation, and tactical flight training for student aviators designated to fly fixed-wing propeller-driven aircraft and helicopters.

B. NAS Whiting Field lies within a coastal plain area known as the Western Highlands and is located on a plateau between Big Coldwater Creek and Clear Creek which are tributaries of the Blackwater River. Elevations in the area range from 50 to 190 feet above mean sea level. Three major groundwater aquifers underlie the Facility: the upper Sand-and-Gravel Aquifer, both an artesian and non-artesian shallow aquifer; and two deeper artesian aquifers known as the Upper and Lower Floridan aquifers. Virtually all groundwater withdrawn in Santa Rosa County, as well as adjacent Escambia County, comes from the upper Sand-and-Gravel Aquifer which extends to a depth of about 350 feet below land surface (bls) and is subdivided into two units. The water table, or upper unit, of the Sand-and-Gravel Aquifer does not constitute a major water supply source but rather serves to recharge the lower more productive zone of the aquifer. Most large capacity water supply wells in the area, such as those on NAS Whiting Field, are screened in the lower part of this aquifer from about 180 to 330 feet bls.

C. Underlying the sediments of the Sand-and-Gravel Aquifer is the thick (> 300 feet), relatively impermeable Pensacola clay. Under the Pensacola clay, there are thick layers of limestone and shale to a depth of nearly 2,000 feet. The limestone layers constitute the regionally extensive Floridan Aquifer System. It is divided into the Upper and Lower Aquifers which are separated by the Bucatunna Clay member of the Byram Formation. The Upper Floridan Aquifer is an important source of water in areas east of Santa Rosa County; however, toward the west, it is increasingly mineralized and is generally not used as a water supply. The Lower Floridan Aquifer is highly mineralized in the NAS Whiting Field area and is designated for use as a waste disposal injection zone. The Floridan Aquifers receive little or no recharge from the Sand-and-Gravel Aquifer because of the Pensacola clay confining unit.

D. Hydrogeologic data collected during the RI Phase I field program indicates groundwater beneath the western part of NAS Whiting Field flows in a southwesterly direction toward Clear Creek at a relatively steep gradient, while groundwater beneath the eastern half of NAS Whiting Field flows in a southeasterly direction and towards Big Coldwater Creek at a more moderate gradient. At the center of NAS Whiting Field, groundwater migrates in a southeasterly direction at a relatively flat gradient.

VII. FINDINGS OF FACT

A. For the purposes of this Agreement, the following constitutes a summary of the findings this Agreement is based on. None of the facts related herein shall be considered

admissions by any Party. This Subsection contains findings of fact determined solely by the Parties and shall not be used by any person related or unrelated to this Agreement for purposes other than determining the basis of this Agreement.

B. A Remedial Investigation and Feasibility Study (RI/FS), currently being conducted at the Site, is part of the Department of Defense (DOD) Installation Restoration program. Prior to initiation of the RI/FS process, two previous environmental investigations were conducted at the Site. These investigations included an Initial Assessment Study (IAS) and a subsequent Verification Study. Like a Preliminary Assessment, the IAS, completed in 1985, included a review of available historical data and aerial photographs, field inspections, and interviews with Facility personnel. Nineteen contaminated disposal or spill sites and/or potential sources for contaminant migration were initially identified in the IAS.

C. A phased approach was implemented to conduct the RI. Phase I was completed in May 1992. Other subsequent phases of the RI were designated as Phase IIA, IIB, and IIC. The objective of Phase I was to assess the nature and extent of contamination at sites identified during the IAS and Verification Study. Five additional sites were identified during the RI Phase I and subsequently added to the RI Phase IIA program for investigation. Field work for Phase IIA was completed in March 1994. A soil assessment has been performed to characterize soil contamination at the Site. Field work for Phases IIB and IIC was finished in June 1997 and June 1998, respectively. Data obtained from these assessments was used to evaluate the nature and extent of soil contamination and support feasibility studies, baseline risk assessments, and proposed plans and RODs for nineteen sites. In 1995, because of information obtained in Phase IIA, four more sites were added to the program. In 1996, because of information obtained from Phase IIB, Clear Creek was added as a site. In 1997, groundwater was removed from individual sites and combined into a separate site because the existing data showed groundwater contamination had multiple sources and crossed multiple sites. Making groundwater a separate site will facilitate a better definition of the nature and extent of groundwater contamination and earlier completion of other Response Actions.

D. An HRS score was generated by USEPA for NAS Whiting Field in 1993. In January 1994, USEPA formally proposed NAS Whiting Field for inclusion on the National Priorities List (See 59 Federal Register 2568, January 18, 1994). NAS Whiting Field was officially included on the NPL on May 31, 1994 (See 40 C.F.R. Section 300, Appendix B, 59 Federal Register 27989, May 31, 1994). To date, 30 sites have been identified on NAS Whiting Field. Appendix B to this Agreement provides a listing of these sites and a summarization of prior site investigations conducted in connection with each site.

VIII. STATUTORY COMPLIANCE / RCRA-CERCLA INTEGRATION

A. At this time, the Facility has no RCRA permit or related HSWA Corrective Action obligations. If a RCRA permit is issued to NAS Whiting Field for hazardous waste management activities at the Facility, the permit shall reference and incorporate any appropriate provisions, including appropriate Schedules (and the provision for extension of such Schedules), of this Agreement. The Parties intend to integrate the Navy's CERCLA response obligations and RCRA corrective action obligations relating to the release(s) of Hazardous Substances, hazardous wastes, hazardous constituents, and Pollutants or Contaminants into this Agreement. Therefore, the Parties intend activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. Section 9601 et seq., and

meet or exceed all applicable or relevant and appropriate federal and state laws and regulations to the extent required by CERCLA Section 121 and applicable state law.

B. Based upon the foregoing, the Parties intend any Remedial Action selected, implemented, and completed under this Agreement will be protective of human health, welfare, or the environment and that such remediation of releases covered by this Agreement shall be recognized as an equivalent action under the RCRA permit, if issued. The Parties agree that with respect to releases of hazardous waste or hazardous constituents covered by this Agreement, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to CERCLA Section 121. Releases or other hazardous waste activities not covered by this Agreement remain subject to all applicable state and federal environmental requirements.

C. The Parties recognize that the requirement to obtain permits for Response Actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that the on-going hazardous waste management activities at the Site may require the issuance of permits under federal and state laws. This Agreement does not affect the requirements, if any, to obtain such permits. With respect to those portions of this Agreement incorporated by reference into permits, the Parties intend that the administrative or judicial review of the incorporated portions shall, to the extent review is authorized by law, only occur under the provisions of CERCLA or applicable state law.

D. Nothing in this Agreement shall alter the Parties' authorities with respect to removal actions conducted pursuant to CERCLA Section 104 or state law.

IX. CONSULTATION WITH USEPA AND FDEP

Review and Comment Process for Draft and Final Documents

A. Applicability:

1. The provisions of this Section establish the procedures to be used by the Parties to provide each other with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA Documents, specified herein as either primary or secondary Documents. In accordance with CERCLA Section 120, and 10 U.S.C. Section 2705, the Navy will normally be responsible for issuing primary and secondary Documents to USEPA and FDEP. As of the effective date of this Agreement, all draft and final Documents for any deliverable identified herein shall be prepared and distributed in accordance with Subsections B through J below and subject to the dispute resolution provisions in Section XX (Resolution of Disputes).

2. The designation of a document as "draft" or "final" is solely for purposes of consultation with USEPA and FDEP in accordance with this Section. Such designation does not affect the obligation of the Parties to issue final Documents to the public for review and comment or as deemed appropriate and as required by law and the NCP. All Documents identified below shall be considered "reports" for the purposes of this Agreement.

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

1. "Primary Documents" include those reports, plans, and studies having major, discrete portions of RI/FS or RD/RA activities. The primary Documents are listed in subsection C of this Section. Primary Documents are initially issued by the Navy in draft subject to review and comment by USEPA and FDEP. 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 which shall be 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 through the dispute resolution process.
2. "Secondary Documents" include those reports, plans, and studies that comprise discrete portions of the primary Documents and are typically input or feeder Documents. The secondary Documents are listed in subsection D of this Section. Secondary Documents are issued by the Navy in draft subject to review and comment by USEPA and FDEP. Although the Navy will respond to comments received, the draft secondary Documents may be finalized in the context of the corresponding primary Documents. A secondary Document may be disputed at the time the corresponding draft final primary Document is issued.

C. Primary Documents:

1. The Navy shall complete and transmit drafts of the following primary Documents to USEPA and FDEP for review and comment in accordance with the provisions of this Section. Unless otherwise specified, the Documents shall be for a specific Operable Unit(s).

- a. Site Management Plan and amendments (this includes all OUs)
- b. Remedial Investigation/Feasibility Study Work Plans
- c. Remedial Investigation Reports (including Baseline Risk Assessments for human health and the environment)
- d. Feasibility Study and Focused Feasibility Study
- e. Proposed Plans
- f. Records of Decision
- g. Remedial Designs (including a Land Use Control component in which such controls are employed as part of the remedy)
- h. Remedial Action Work Plans
- i. Remedial Action Completion Reports (this includes all completed OUs)

2. Except as otherwise provided in this Agreement, only the draft final primary Documents identified above shall be subject to dispute resolution. The Navy shall complete and transmit draft primary Documents in accordance with the Schedules and Deadlines established in Section XV (Contents of the SMP).

D. Secondary Documents:

1. The Navy shall complete and transmit drafts of the following secondary Documents to USEPA and FDEP for review and comment in accordance with the provisions of this Section. Unless otherwise specified, the Documents shall be for specific Operable Unit(s). Secondary Documents include:

- a. Preliminary Characterization Summary Reports
- b. Site Health and Safety Plan (this includes all OUs)
- c. Non-Time Critical Removal Actions Plans
- d. Treatability Study Work Plans
- e. Treatability Study Reports
- f. Well Closure Methods and Procedures
- g. Preliminary/Conceptual Designs or Equivalents
- h. Pre-Final Remedial Designs
- i. Removal Action Memoranda

2. Although USEPA and FDEP may comment on the drafts for the secondary Documents listed above, such Documents shall not be subject to dispute resolution except as provided by Subsection B hereof. Target Dates shall be established for the completion and transmission of draft secondary Documents pursuant to Section XV (Contents of the SMP).

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

The Project Managers shall confer monthly, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site and the completion of all primary and secondary Documents. Prior to preparing any draft primary or secondary Document, the Project Managers shall discuss the data to be reported in an effort to reach a common understanding, to the maximum extent practicable, of the results to be presented in the draft document.

F. Identification and Determination of Potential ARARs:

1. For those primary or secondary Documents consisting of or including ARAR determinations, prior to the issuance of a draft document, the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the Document being addressed. FDEP shall identify all potential State ARARs as early in the remedial process as possible consistent with the requirements of CERCLA Section 121 and the NCP. The Navy shall consider any written interpretations of ARARs provided by FDEP. Draft ARAR determinations shall be prepared by the Navy in accordance with CERCLA Section 121(d)(2), the NCP, and those other applicable federal and state laws and regulations and pertinent written USEPA Guidance or policies or pertinent written state-issued Guidance or policies where adherence thereto is required by CERCLA.

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

G. Review and Comment on Draft Documents:

1. The Navy shall complete and transmit each draft primary Document to USEPA and FDEP on or before the corresponding Deadline established for the issuance of the Document in the SMP. The Navy shall complete and transmit the draft secondary

Documents in accordance with the Target Dates established for the issuance of such Documents pursuant to Section XV (Contents of the SMP).

2. Unless the Parties mutually agree to another time period, they shall review and comment on all draft Documents within 45 days. USEPA and FDEP may review all aspects of the document including, but not limited to, completeness, technical evaluation, and consistency with CERCLA and the NCP, as amended, and those other applicable federal and state laws and regulations and pertinent written USEPA Guidance or policies and pertinent written state-issued Guidance or policies where adherence thereto is required by CERCLA. USEPA and FDEP shall comment with adequate specificity so 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 USEPA and FDEP shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy Documents, USEPA or FDEP may extend the 45 day comment period for an additional 20 days by sending written notice to the Navy prior to the end of the 45 day period.

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

4. Whenever the USEPA or FDEP objects to a proposed ARAR determination, it shall explain in writing the basis for its objections in detail and shall identify any ARARs it believes were not properly addressed in the proposed ARAR determination.

5. The Navy shall give full consideration to all written comments submitted during the comment period on draft primary Documents. Within 60 days of the transmittal of those written comments, the Navy shall transmit to USEPA and FDEP a draft final primary Document which includes the Navy's response to all written comments received within the comment period.

6. The Navy may extend the 60 day period for issuing the draft final primary Document for an additional 30 days by providing written notice to USEPA and FDEP. In appropriate circumstances, these time periods may be further extended in accordance with Section XVIII (Extensions).

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

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

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

I. Finalization of Primary Documents:

The draft final primary document shall become the final primary Document if no Party invokes dispute resolution within 30 days of issuance of the document or, if invoked, at

completion of the dispute resolution process should the Navy's position be sustained. If the Navy's determination is not sustained in the dispute resolution process, the Navy shall submit to USEPA and FDEP, within not more than 60 days of the final decision, a revision of the draft final Document conforming to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section XVIII (Extensions).

J. Subsequent Modifications of Final Primary Documents:

Following finalization of any primary Document pursuant to Subsection 1 above, any Party 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 1 and 2 below.

1. Any Party may seek to modify a report after finalization if it determines, based on new information (i.e., information that became available, or conditions that became known, after the report was finalized), that the requested modification is necessary. A Party may seek such a modification by submitting a concise written request to the other Project Managers specifying the nature of the requested modification and providing justification for such modification.
2. In the event a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke dispute resolution to determine if such modification shall be made. Modification of a document shall be required only upon a showing: (a) that the requested modification is based on Significant New Information, and (b) that the requested modification could be of significant assistance in selecting remedial alternatives, evaluating impacts on human health, welfare, or the environment or in protecting human health, welfare, or the environment.

K. Post-ROD Activities.

1. USEPA, the Navy, and FDEP have committed to streamlining procedures and documentation for post-ROD activities. In addition, USEPA and the Navy have agreed that those procedures should be consistent with the EPA-Navy Principles and Procedures for Specifying, Monitoring and Enforcement of Land Use Controls and Other Post-ROD Actions (October 2003). Revised procedures may be appended to this Agreement upon consensus by the Parties. Until any new procedures and documentation are agreed upon, the following provisions will be applicable.
2. Construction Completion. The Navy agrees that it shall submit to the EPA and FDEP a Remedial Action Completion Report (RACR) in accordance with the Schedule in the SMP following the completion of the RA for each OU. The RACR shall document the cleanup activities that took place at the OU, and that remedial action objectives and performance standards specified in the ROD have been met. For each long-term response action, a Remedial Action Completion Report shall be prepared when the physical construction of the system is complete, and the unit is operating as designed. The RACR(s) shall be prepared in accordance with this Agreement and the DoD and EPA Joint Guidance for Recommended Streamlined Site Closeout and NPL Deletion Process for DoD Facilities (2006).

3. 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 Remedial Action Completion Report and submitting it to USEPA and FDEP 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. All cleanup goals 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 long term management activities (which may include long-term monitoring).

b. Information provided shall summarize work at the entire Site (i.e., all OUs). The Remedial Action Completion Report for each OU, including the final OU, is required to document that work was performed according to design specifications. Information amending the final Remedial Action Completion Report shall include a discussion regarding any operation and maintenance requirements and/or Land Use Controls 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 USEPA certification of remedial action completion at the Site. Within 90 days of USEPA's receipt of the Navy's request for certification of Site completion, USEPA, in consultation with FDEP, 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 remedial action completion at the Site, stating the basis of its denial and detailing the additional work needed for completion and certification.

4. If USEPA, in consultation with FDEP, denies the request for certification for Site completion in accordance with this Agreement, the Navy may invoke dispute resolution in accordance with Section XX (Resolution of Disputes) of this Agreement within 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.

5. If dispute resolution is not invoked, or if a denial of certification is upheld through dispute resolution, the Navy shall, in the next draft Amendment to the 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 time period for completion of the additional work required. This time period, once approved, will be incorporated in the Site Management Plan. After performing the additional work, the Navy may resubmit a request for certification to USEPA as set forth in this Subsection. USEPA, in consultation with FDEP, shall then grant or deny certification pursuant to the process set forth in this Subsection.

L. Nothing in this Section shall alter USEPA's or FDEP's ability to request the performance of additional work not contemplated by this Agreement. The Navy is not obligated to perform additional work unless it is required in a modified Document by amendment to this Agreement or otherwise required by law (See Section XXXIV - Amendment of Agreement).

X. PERMITS

A. The Parties recognize, under CERCLA Section 121(e)(1), and the NCP, portions of the Response Actions called for by this Agreement and conducted entirely on-Site are exempted from the procedural requirement to obtain a federal, state, or local permit but must satisfy applicable or relevant and appropriate federal and state standards, requirements, criteria, or limitations that would have been included in any such permit.

B. When the Navy proposes a Response Action, other than an emergency removal action, to be conducted entirely on-Site that, in the absence of CERCLA Section 121(e)(1) and the NCP, would require a federal or state permit, the Navy shall include in the Work Plan:

1. Identification of each permit otherwise required;
2. Identification of the standards, requirements, criteria, or limitations to have been met to obtain each such permit;
3. Explanation of how the Response Action proposed will meet the standards, requirements, criteria, or limitations identified in Subsection B.2. in this Section but only to the extent this information is not covered by the statutory obligations of the Parties to identify ARARs. Upon request of the Navy, USEPA and FDEP will provide their position with respect to Subsection B.2. in this Section in a timely manner.

C. Subsection A above is not intended to relieve the Navy from complying with federal, state, or local waste management requirements whenever it proposes a Response Action involving the shipment or movement of a Hazardous Substance off of the Site.

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

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

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

XI. IMMINENT AND SUBSTANTIAL ENDANGERMENT

A. An authorized Navy official can order a temporary cessation of work on either his own volition or at the request of a USEPA or FDEP Project Manager in order to respond to a situation creating an imminent and substantial endangerment to human health, welfare, or the environment.

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

C. Notwithstanding any other provision of this Agreement, the Navy retains the right, consistent with Executive Order 12580, to conduct such emergency actions as may be necessary to alleviate immediate threats to human health, welfare, or the environment from the release or threat of release of Hazardous Substances, Pollutants or Contaminants, or constituents at or from the Site. Such actions may be conducted at any time and shall be conducted in accordance with all applicable laws. Consistent with 10 U.S.C. Section 2705, the Navy shall provide an adequate opportunity for timely review and comment by USEPA, FDEP, and local officials. The preceding sentence does not apply if the action is an emergency removal taken because of imminent and substantial endangerment to human health, welfare, or the environment and consultation would be impractical.

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

the action provided in the written notice provided pursuant to the second sentence of this Subsection.

E. This Section shall not be construed to relieve the Navy from compliance with state and federal notice requirements applicable to releases.

XII. REPORTING

Upon request, the Navy shall submit to USEPA and FDEP a written report identifying and briefly describing the actions the Navy has taken since the last SMP was approved and will take in the next six months to implement the requirements of this Agreement. The progress reports shall include a statement of the manner and extent the requirements and Schedules and Deadlines set out in this Agreement and approved Work Plans are being met. In addition, the progress reports shall identify any anticipated delays in meeting the Schedules and Deadlines, the reason(s) for the delay, and actions taken to prevent or mitigate the delay. The Navy shall submit notice of a significant new site condition within 7 days of such determination by the Navy.

XIII. NOTIFICATION

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

1. Any report provided pursuant to a Schedule or Deadline identified in or developed under this Agreement.
2. Any notice of significant new site conditions.
3. Any decisions on Remedial Action selected by the Parties.
4. Any notice of dispute and response thereto submitted under Section XX (Resolution of Disputes) of this Agreement.
5. Any request, and response thereto, for extensions under Section XVIII (Extensions) of this Agreement.
6. Any notice of Force Majeure under Section XIX (Force Majeure) of this Agreement.
7. Any notice to cease work due to an imminent and substantial endangerment situation under Section XI (Imminent and Substantial Endangerment) of this Agreement.
8. Any comments on draft Documents submitted under Section XV (Contents of the SMP)

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

Mail:

USEPA: U.S. Environmental Protection Agency, Region 4
Federal Facilities Branch
Attn: NAS Whiting Field Remedial Project Manager
61 Forsyth Street, SW
Atlanta, GA 30303

FDEP: Florida Department of Environmental Protection
Attn: NAS Whiting Field Remedial Project Manager
Bob Martinez Center
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Navy: Naval Facilities Engineering Command Southeast
Attn: NAS Whiting Field Remedial Project Manager
Building 903, P.O. Box 30
NAS Jacksonville
Jacksonville, FL 32212-0030

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

NAS Whiting Field
Facility IR Manager
Public Works Department
7183 Langley Street
Milton, FL 32570-6159

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

D. The telephone numbers and email addresses for the above identified representatives are shown in Appendix C to this Agreement.

XIV. PROJECT MANAGERS

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

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

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

1. Take samples, request split samples, and ensure the work is performed properly, pursuant to Section XXVIII (Sampling and Data Document Availability), as well as pursuant to the Appendices and plans incorporated into this Agreement;
2. Observe all activities performed pursuant to this Agreement;
3. Take photographs subject to national security-related restrictions imposed by military authorities at specific locations pursuant to CERCLA Section 120(j);
4. Make such other reports on the progress of the work as are appropriate;
5. Review records, files, and Documents relevant to this Agreement; and
6. Request and if necessary, direct the cessation of work pursuant to Section XI (Imminent and Substantial Endangerment).

C. Any Project Manager may request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures, or designs utilized in carrying out this Agreement, which are necessary for the completion of the project. Any minor field modifications requested by any Party must be approved orally by all Project Managers to be effective. If unanimous agreement cannot be reached on the proposed minor field modification, the Parties shall use the procedures of Section XX (Resolution of Disputes). Within five days following a modification made pursuant to this paragraph, the Project Manager who requested the modification shall provide written notification describing the modification and reasons therefore to the other Project Managers.

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

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

XV. CONTENTS OF THE SMP

A. This Agreement establishes a process for creating the SMP. The SMP and its yearly amendments identify ongoing Remedial Actions, set Milestones, and propose future activities at the Site. Within 90 days after the effective date of this Agreement, the Navy shall submit an SMP, which will be attached to this Agreement as Appendix D. The SMP and each annual Amendment to the SMP are 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 dispute resolution process set out in Section XVI, Subsections E and F. In addition, if an activity is

fully funded in the current FY, Milestones associated with the performance of work and submittal of primary Documents associated with such work (even if they extend beyond the current FY) shall be enforceable.

B. The SMP includes remedial and non-time critical removal actions and outlines all response activities and associated documentation to be undertaken at the Site. 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.

C. 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, including budget targets established by the Navy.

D. The SMP and its annual Amendments include:

1. A description of actions necessary to mitigate any immediate threat to human health, welfare, or the environment;
2. A listing of all PSCs and Operable Units, Interim Remedial Actions, Supplemental Response Actions, and Critical and Non-Time Critical Removal Actions covered or identified pursuant to this Agreement;
3. For all Operable Units where Response Actions are required, the following information, which addresses activities and schedules for response actions, shall be included at a minimum:
 - Identification of any Primary Actions;
 - All Deadlines;
 - All Near Term Milestones;
 - All Out Year Milestones;
 - All Target dates;
 - Schedules for initiation of Remedial Designs, Interim Response Actions, Non-Time Critical Removal Actions, and initiation of any other planned response action(s) covered by this Agreement; and,
 - All Project End Dates.

E. The Navy shall submit an Amendment to the SMP on an annual basis as provided in Section XVI (Budget Development and Amendment of the SMP). All Amendments to the SMP shall conform to all of the requirements set forth in this Section.

F. The Milestones established in accordance with this Section and Section XVI (Budget Development and Amendment of the SMP), remain the same unless otherwise agreed to by the Parties or unless changed in accordance with the dispute resolution procedures set out in Section XVI, Subsections E and F. The Parties recognize the possible bases for requests for changes or extensions of the Milestones include but are not limited to: (i) the identification of significant new site conditions at this installation; (ii) reprioritization of activities under this Agreement caused by changing priorities or new site conditions elsewhere in the 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 is likely to be caused, by the grant of an extension in regard to another Schedule or Deadline; and (viii) any other event or series of events mutually agreed to by the Parties as constituting good cause.

G. The Deadlines established in the SMP and its Amendments shall be made available to the public by USEPA and FDEP.

XVI. BUDGET DEVELOPMENT AND AMENDMENT OF THE SMP

A. The purpose of this Section is to coordinate, integrate, and reconcile the Navy's budgeting process with the development of the annual Amendment to the SMP. 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 the total requirements for Department of Defense (DOD) programs and make appropriate adjustments within the FYDP for each program while adhering to the overall FYDP control. The Parties recognize 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 Section XV, Subsection C, 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

B. 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's POM process; and (3) participating in development of the Navy's submission to the proposed President's budget, based on POM decisions for the year currently under consideration. Unless the Parties agree to a different time frame, the Navy agrees to notify the other Parties within ten 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 a meeting is not necessary, the Parties will meet, at the Project Manager level, within five

days of receiving such notification to discuss the budget controls. However, this consultation must occur at least ten days prior to the Navy's initial budget submission to Headquarters, Naval Facilities Engineering Command. In the event 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 Headquarters, Naval Facilities Engineering Command. 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 Headquarters, Naval Facilities Engineering Command to the Chief of Naval Operations (CNO) its budget request with the views of the Parties not in agreement and also inform the CNO 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 Headquarters, Naval Facilities Engineering Command 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 fully disclosing 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 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. Deputy Undersecretary of Defense for Installations and Environment DUSD(IE) shall receive information copies of any supplemental reports submitted to the DOD Comptroller.

Navy's Budget for Clean Up Activities

C. 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 Headquarters, Naval Facilities Engineering Command and by Headquarters, Naval Facilities Engineering Command to the CNO, within 14 days after the submittal of such documentation to the CNO by Headquarters, Naval Facilities Engineering Command. If the Navy proposes a budget request relating to the terms and conditions of this Agreement that impacts other installations, discussions with other affected USEPA Regions and states regarding the proposed budget request need to take place.

Amended SMP

D. 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 Plan, the Navy shall consider funding circumstances (including OMB targets/guidance) and "Risk Plus Other Factors" outlined in Subsection XV.C. 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 Subsections XVI. E and F.

E.

1. The Parties shall meet as necessary to discuss the draft Amendment to the SMP. The Parties shall use the consultation process contained in Section IX (Consultation with USEPA and FDEP), except that none of the Parties will have the right to use the extension provisions provided therein. Accordingly, comments on the draft Amendments will be due to the Navy no later than 30 days after receipt by USEPA and FDEP of the draft amendment. If either USEPA or FDEP provides comments 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 USEPA and FDEP 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 Section IX (Consultation with USEPA and FDEP) contains time periods differing from these 30-day periods, this provision will control for consultation on the Amendment to the SMP.

2.

(a) If the Navy proposes, in the draft final Amendment to the SMP, modifications of Milestones to which either USEPA or FDEP 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 XVI. D. through G. All other extensions will be governed by Section XVIII (Extensions). The time period for USEPA and FDEP to respond to the request for extension will begin on the date USEPA and FDEP receives the draft final Amendment to the SMP, and USEPA and the FDEP shall advise the Navy in writing of their respective positions on the request within 30 days. If USEPA and FDEP approve of the Navy's draft final Amendment, the document shall then await finalization in accordance with Subsections XVI. E.2 and F. If USEPA or FDEP deny the request for extension, then the Navy may amend the SMP in conformance with USEPA and FDEP comments or seek and obtain a determination through the dispute resolution process established in Section XX (Resolution of Disputes) 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 USEPA or the FDEP initiates a formal request for a modification to the SMP to which the Navy does not agree, USEPA or FDEP may initiate dispute resolution as provided in Section XX (Resolution of Disputes) with respect to such proposed modification. In resolving a dispute, the persons or person resolving the dispute shall give full consideration to the bases described in Subsection XV. F for changes or extensions of the Milestones asserted to be present and the facts and arguments of each of the Parties.

(b) Notwithstanding Subsection XVI. E.2(a), if the Navy proposes, in the draft final Amendment to the SMP, modifications of Project End Dates intended to reflect the time needed for implementing the remedy selected in the Record of Decision but to which either USEPA or FDEP have not agreed, those proposed modifications shall

not be treated as a request by the Navy for an extension, but, consistent with Section XX, Resolution of Disputes), USEPA or FDEP may initiate dispute resolution with respect to such Project End Date.

(c) In any dispute under this Section, the time periods for the standard dispute resolution process contained in Section XX (Resolution of Disputes) shall be reduced by half in regard to such dispute, unless the Parties agree to bring the dispute directly to the SEC level.

3. 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, after following the procedures in Subsection XVI. F. 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

F. After authorization and appropriation of funds by Congress and within 21 days after the Navy has received official notification of the 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 the 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 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 the planned work (as outlined in the draft final Amendment to the SMP) can be accomplished through: 1) rescoping or rescheduling activities in a manner not causing 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 the rescoping or implementing cost-saving measures are not sufficient to offset the appropriations shortfall so 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 XV. C. 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 USEPA and FDEP input during the 30-day discussion period. If the USEPA and FDEP concur with the modifications made to the draft final Amendment to

the SMP, USEPA and the FDEP 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. The request will be treated as having been made on the date USEPA and FDEP receive the new draft final SMP or draft final Amendment to the SMP. USEPA and the FDEP 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 (Resolution of Disputes). The Navy may invoke dispute resolution within 14 days of receipt of a statement of non-concurrence with the requested extension. In any dispute concerning modifications under this Section, the Parties will submit the dispute directly to the SEC level unless the Parties agree to utilize the standard dispute resolution process. In this case the time periods for the dispute resolution process contained in Section XX (Resolution of Disputes) 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.

G. 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 XVI. This may also include discussions with other USEPA Regions and states with installations affected by the reprioritization. The Parties may participate in any such discussions with other states.

Public Participation

H. 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 the opportunity for such public participation is timely, but this Subsection H shall not be subject to Section XXII (Stipulated Penalties).

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 Facility, or by other appropriate means.
2. The Navy shall provide timely notification to the members of the public interested in this action under Section XVI, Subsection F, regarding allocation of the Environmental Restoration, Navy (ER,N) Account.
3. The Navy shall provide opportunity for discussion under Section XVI, Subsections B, E, F, and G, to the members of the public interested in this action.
4. The Navy shall ensure public participation provided for in this Section XVI, Subsection H, complies with Executive Order 12898 entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations."

XVII. FUNDING

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

B. In accordance with CERCLA Section 120(e)(5)(B) and as provided for in Section XVI (Budget Development and Amendment of SMP), 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.

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

D. If funds are not available to fulfill the Navy's obligations under this Agreement, USEPA and FDEP reserve the right to initiate an action against any other person or to take any Response Action which would be appropriate absent this Agreement.

E. Funds authorized and appropriated annually by Congress under the Environmental Restoration, Navy (ER,N) Account appropriation in the Department of Defense Appropriations Act will be the source of funds for activities required by this Agreement consistent with 10 U.S.C. Section 2701, et seq. However, should the ER,N appropriation be inadequate in any year to meet the total Navy CERCLA implementation requirements under this Agreement, in accordance with Section XVI (Budget Development and Amendment of SMP), the Navy will, after consulting with the other Parties and discussing the inadequacy with the members of the public interested in the action, prioritize and allocate that year's appropriation.

XVIII. EXTENSIONS

A. Unless otherwise provided herein, any time period, including Milestones and Deadlines and review and comment periods, shall be extended upon receipt of a timely request for an extension and when good cause exists for the requested extension. Any request for an extension by the Navy shall be submitted in writing and shall specify:

1. The time period for which an extension is sought;
2. The length of the extension sought;
3. The good cause(s) for the extension; and
4. Any related time period that would be affected if the extension were granted.

B. Good cause exists for an extension for the following reasons:

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

2. A delay caused by another Party's failure to meet any requirement of this Agreement;
3. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
4. A delay caused, or is likely to be caused, by the grant of an extension in regard to another time period; or
5. Any other event or series of events mutually agreed to by the Parties as constituting good cause, including but not limited to the following:
 - a) fire;
 - b) unanticipated breakage or accident to machinery, equipment, or lines of pipe despite reasonably diligent maintenance;
 - c) unusual delay in transportation;
 - d) delays caused by compliance with applicable statutes or regulations governing contracting, procurement, or acquisition procedures, despite the exercise of reasonable diligence.

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

D. Within ten days of receipt of a request for an extension of a time period, USEPA and FDEP shall advise the Navy in writing of their respective positions on the request. If USEPA or FDEP does not concur in the requested extension, it shall include in its statement of non-concurrence an explanation of the basis for its position. Any failure by USEPA or FDEP to respond in writing within ten days shall be deemed a non-concurrence with the request for an extension.

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

F. Within ten days of non-concurrence with the requested extension, any Party may invoke dispute resolution in accordance with Section XX (Resolution of Disputes).

G. A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected Schedule or Milestones and Deadlines 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 time period. 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 time period as most recently extended.

H. It shall not be grounds for an extension of time if the delay is caused by the Navy's failure to provide a copy of this Agreement to its agents, employees, or Response Action contractors for the Site.

XIX. FORCE MAJEURE

A Force Majeure shall mean any event arising from causes beyond the control of a Party causing a delay in or preventing the performance of any obligation under this Agreement, including, but not limited to: acts of God; war; insurrection; civil disturbance; explosion; unusually severe weather conditions not reasonably anticipated; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority other than the Navy; and insufficient availability of appropriated funds, if the Navy made a timely request for such funds as part of the budgetary process as set forth in Section XVII (Funding) of this Agreement. A Force Majeure shall also include any strike or other labor dispute against a Navy contractor. Force Majeure shall not include increased costs or expenses of Response Actions whether anticipated at the time such Response Actions were initiated unless sufficient additional appropriated funds are not available.

XX. RESOLUTION OF DISPUTES

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

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

C. Formal Resolution:

1. Within 30 days after: (1) the period established for review of a draft final primary Document pursuant to Section IX (Consultation with USEPA and FDEP) of this Agreement, or (2) any action leading to or generating a dispute, the disputing Party shall submit to the other Parties a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute, and the technical, legal, or factual information the disputing Party is relying upon to support its position.

2. The Dispute Resolution Committee (DRC) will serve as a forum for resolution of disputes where an 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 or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section XIII (Notification). The membership of the DRC includes:

(a) USEPA:

Principal: Director
Superfund Division
USEPA, Region 4

Alternate: Deputy Director
Superfund Division
USEPA, Region 4

(b) State:

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

Alternate: Assistant Director
Division of Waste Management
Florida Department of Environmental Protection

(c) Navy:

Principal: Environmental Services Business Line Coordinator
Naval Facilities Engineering Command Southeast

Alternate: Head, Environmental Restoration Branch
Naval Facilities Engineering Command Southeast

3. 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.

4. The SEC will serve as the forum for resolution of disputes where an agreement has not been reached by the DRC. The SEC members shall, as appropriate, confer, meet, and exert their best efforts to resolve the dispute and issue a written decision signed by all Parties. If unanimous resolution of the dispute is not reached within 21 days, USEPA's Regional Administrator shall issue a written position on the dispute. The Secretary of the Navy or the Secretary of FDEP may, within 21 days of the Regional Administrator's issuance of USEPA's position, issue a written notice elevating the dispute to the Administrator of USEPA for resolution in accordance with all applicable laws and procedures. In the event a Party elects not to elevate the dispute to the Administrator within the designated 21 days escalation period, the Parties shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute. The membership of the SEC includes:

- (a) USEPA: Regional Administrator USEPA, Region 4
- (b) State: Deputy Secretary for Regulatory Programs
Florida Department of Environmental Protection
- (c) Navy: Deputy Assistant Secretary of the Navy, Environment

5. Upon escalation of a dispute to the Administrator of USEPA pursuant to Subsection 4 above, the Administrator will review and resolve the dispute within 21 days. Upon request, and prior to resolving the dispute, the USEPA Administrator shall meet and confer with the Assistant Secretary of the Navy (Installations and Environment) and the Secretary of the Florida Department of Environmental Protection to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other Parties with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Section shall not be delegated.

D. FDEP reserves its right to maintain an action under CERCLA Section 121(f)(3)(B) to challenge the selection of a Remedial Action not attaining a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation.

E. The pendency of any dispute under this Section shall not affect the Navy's responsibility for timely performance of the work required by this Agreement, except 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 Subsection C of this Section. All elements of the work required by this Agreement, not affected by the dispute, shall continue and be completed in accordance with the applicable Schedule.

F. When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Superfund Division Director for USEPA Region 4 directs, in writing, the work related to the dispute be stopped because, in USEPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health, welfare, or the environment or is likely to have a substantial adverse effect on the remedy selection or implementation process. FDEP may request the USEPA Region 4 Superfund Division Director to direct work stopped for the reasons set out above. To the extent possible, the Party seeking a work stoppage shall consult with the other Parties prior to initiating a work stoppage directive. After stoppage of work, if a Party believes the work stoppage is inappropriate or may have potentially significant adverse impacts, the Party may meet with the Party directing the work stoppage to discuss the stoppage. Following this meeting and further consideration of the issues, the USEPA Superfund Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the USEPA Superfund Division Director may immediately be subject to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC at the discretion of the Party requesting dispute resolution.

G. Within 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.

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

XXI. ENFORCEABILITY

A. The Parties agree that:

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

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

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

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

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

C. Nothing in this Agreement shall be construed as a restriction or waiver of any rights the USEPA or FDEP may have under CERCLA or state law, including, but not limited to, any rights under CERCLA Sections 113 and 310 and 10 U.S.C. Section 2701 et seq. The Department of Defense (DOD) does not waive any rights it may have under CERCLA Section 120, 42 U.S.C. Section 9620, SARA Section 211, 10 U.S.C. Section 2701 et seq., and Executive Order 12580.

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

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

F. Notwithstanding any provision in this Section to the contrary, nothing in this Agreement shall be construed as preventing a person not subject to this Agreement from initiating judicial or administrative review of any final action made or taken by FDEP as provided under state law.

XXII. STIPULATED PENALTIES

A. In the event the Navy fails to submit a primary Document to USEPA or FDEP pursuant to the appropriate Deadline in accordance with the requirements of this Agreement or fails to comply with a term or condition relating to an interim or final Remedial Action at the Site, USEPA 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) if a failure set forth in this Section occurs.

B. Upon determining that the Navy has failed in a manner set forth in Subsection A above, USEPA or FDEP 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 30 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 USEPA if the failure is determined, through the dispute resolution process, not to have occurred. If dispute resolution is not invoked, a stipulated penalty shall be final upon assessment. If dispute resolution is invoked, stipulated penalties shall be final upon conclusion of dispute resolution procedures.

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

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

D. Stipulated penalties assessed pursuant to this Section shall be payable only in the manner and to the extent expressly provided for in Acts authorizing funds for and appropriations to the DOD.

E. Stipulated penalties assessed pursuant to Subsection A shall be payable as follows: one-half to the Hazardous Substances Response Trust Fund and one-half to the FDEP Water Quality Assurance Trust Fund.

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

G. This Section shall not affect the Navy's ability to obtain an extension of a time period pursuant to Section XVIII (Extensions).

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

XXIII. SITE ACCESS

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

1. Inspecting records, operating logs, contracts, and other Documents relevant to implementation of this Agreement;
2. Reviewing the progress of the Navy and its Response Action contractors or lessees in implementing this Agreement;
3. Gathering samples and conducting such analyses of those samples as is necessary to implement this Agreement; and
4. Verifying the data submitted to the USEPA and FDEP by the Navy.

The Navy shall honor all reasonable requests for such access by the USEPA and FDEP conditioned only upon presentation of proper credentials. However, such access shall be obtained in conformance with Navy security regulations and in a manner minimizing interference with any military operations at NAS Whiting Field. The Parties recognize that the Facility is a national security installation thereby requiring that the USEPA and FDEP refrain from using cameras or recording devices at the Facility without the prior permission of the Navy. Such permission shall not be unreasonably withheld. The Navy may provide an escort for purposes consistent with the provisions of this Agreement. The USEPA and FDEP shall provide reasonable notice to the Facility IR Manager to allow him to request any necessary escorts.

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

C. During negotiations with property owners on whose property Navy monitoring wells, pumping wells, treatment facilities, or other Response Actions are to be located, the Navy will request that the owners notify the Parties by registered/return receipt mail at least 45 days prior to any conveyance or any other transfer of any interest in the property. The Navy will use its best efforts to ensure the continued operation of all Response Actions on

those properties.

D. Should the Navy be denied access to non-federal property, it will notify the Parties of the denial and will describe those actions to be taken to gain access within 30 days of the denial. Within 15 days of such notice, the Navy shall submit appropriate modifications to the affected Work Plans.

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

XXIV. THE STATE'S RESERVATION OF RIGHTS

By entering into this Agreement, the State does not waive any right or authority it may have under state law but expressly reserves all of the rights and authority it may have thereunder, including the right to order abatement of an imminent hazard to the public health or the environment, and reserves all rights it may have under CERCLA Section 121. FDEP expressly agrees to exhaust any applicable remedies provided in Section IX (Consultation with USEPA and the State) and Section XX (Resolution of Disputes) of this Agreement before pursuing any remedies it may have under the statutes providing the jurisdictional basis for this Agreement. Unless expressly waived by law, the State does not waive its Sovereign Immunity by entering into this Agreement.

XXV. CONFIDENTIAL INFORMATION

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

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

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

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

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

F. Notwithstanding the foregoing, the Parties recognize the Documents submitted to FDEP, whether draft or final in form, are subject to provisions of Chapter 119 F.S.

XXVI. FIVE YEAR REVIEW

A. Consistent with CERCLA Section 121(c) and OSWER Directive 9320.2-09A-P entitled "Close Out Procedures for National Priorities List Sites," dated January 2000, or as amended, the Parties agree that the Navy will initiate review of any Remedial Action resulting in any Hazardous Substances or Pollutants or Contaminants remaining at an Operable Unit to assure the Remedial Action is protective of human health and the environment. The review shall take place no less than 5 years after initiation of the Remedial Action. The Navy shall report its findings in a manner consistent with the "Comprehensive Five-Year Review Guidance," OSWER Directive 9355.7-03B-P, including revisions thereto. The report, to be entitled "5-Year Review Report," shall be submitted to FDEP and USEPA for review and comment. Target dates for submission of the 5-Year Review Report to FDEP and USEPA shall be established pursuant to Section XV (Contents of the SMP). If the Parties agree that additional action or modification of the Remedial Action is appropriate, the Navy shall take such steps as necessary to address the identified shortcoming.

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

XXVII. ADMINISTRATIVE RECORD AND PUBLIC PARTICIPATION

A. The Parties recognize that this Agreement and all Response Actions arising thereunder shall comply with the Administrative Record and public participation requirements of CERCLA, including CERCLA Sections 113(k) and 117 and the NCP.

B. The Navy shall develop and implement a Community Relations Plan consistent with CERCLA Section 117, the NCP, and USEPA issued Guidance set forth in USEPA's Community Relations Handbook and any modifications thereto.

C. To the extent practicable, any Party issuing any press release to the media or publishing a notice regarding any of the work required by this Agreement shall advise the other Parties of such press release or notice and the contents thereof at least 48 hours before the issuance of such press release or notice or any significant changed version of a previously distributed draft press release or notice unless associated with an enforcement action. This provision for notice, however, does not extend to contract solicitations for work, or modifications thereto, routinely publicized for competition purposes.

D. The Navy agrees to establish and maintain a copy of the Administrative Record at or near the Facility in accordance with CERCLA Section 113(k). A copy of each Navy document placed in the Administrative Record shall be supplied to USEPA and FDEP. An index of Documents in the Administrative Record will be updated on at least a quarterly basis and provided to the USEPA and FDEP.

XXVIII. SAMPLING AND DATA DOCUMENT AVAILABILITY

A. The Parties shall provide as soon as possible, but no later than 120 days after collection, all data, including raw data, and quality assured results of sampling, tests, or other data generated by such Party as part of the implementation of this Agreement. The Parties shall use the following USEPA or FDEP-approved quality assurance and quality control and chain of custody procedures throughout all sample collection and analysis activities:

- U.S. Environmental Protection Agency (USEPA) Region 4 Environmental Investigation Standard Operating Procedures and Quality Assurance Manual (EISOPQAM)
- Florida Department of Environmental Protection (FDEP) Standard Operating Procedures for Field Activities (DEP-SOP-001/01)
- The Navy will follow the March 2005 "Uniform Federal Policy for Quality Assurance Project Plans" which conveys project-level guidance for implementing a systematic planning process for environmental data collection based on the American National Standard ANSI/ASQ E4-2004.

The Parties shall make use of the latest versions of the above referenced Documents. Any deviation from the above referenced procedures shall be submitted and approved as part of the site sampling analysis plan.

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

XXIX. RETENTION OF RECORDS

Each Party to this Agreement shall preserve all records and Documents in their possession that relate to actions taken pursuant to this Agreement for a minimum of ten years after termination of this Agreement regardless of any other document retention statute, regulation, or policy to the contrary. After the ten year period, any Party desiring to destroy or dispose of Document(s) or record(s) shall notify the other Parties at least 45 days prior to destruction or disposal of any such Documents or records. Upon request by any Party, all records and Documents pending destruction or disposal shall be made available for the requesting Party's review and retention.

XXX. CONVEYANCE OF TITLE

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

XXXI. RECOVERY OF EXPENSES

A. Reimbursement of USEPA's Expenses:

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

B. Reimbursement of State's Expenses:

The Navy agrees to use the Defense State Memorandum of Agreement, DSMOA, signed on June 14, 1990, for the reimbursement of services provided in direct support of the Navy's environmental restoration activities at the Site pursuant to this Agreement. The Navy and FDEP may also determine by mutual agreement to transfer from DSMOA to the Navy Cost Reimbursement program in the future.

XXXII. OTHER CLAIMS

A. Nothing in this Agreement shall constitute or be construed as a bar or release by any of the Parties from any claim, cause of action, or demand in law or equity by or against any person, firm, partnership, or corporation not a signatory to this Agreement for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any Hazardous Substances, Pollutants or Contaminants, or constituents found at, taken to, or taken from the Facility.

B. Neither the USEPA nor FDEP shall be held as a party to any contract entered into by the Navy to implement the requirements of this Agreement.

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

XXXIII. PUBLIC COMMENT

A. Within 15 Days after the Parties have executed what they intend to be the final version of this Agreement (or any subsequent amendments thereto), the USEPA shall notify the public of the availability of the Agreement (or any such amendment) for public review and comment for a period of 45 Days after such notification is published. The notification shall be published in a newspaper of general circulation in the Santa Rosa County, Florida, as a notice of proposed state agency action in a form approved in advance by the FDEP. Within 21 Days after completion of the public review and comment period, the USEPA 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 all comments received and shall either:

1. Determine the Agreement should be effective in its executed form, in which case the USEPA shall promptly notify the Navy and FDEP of the effective date of the Agreement; or
2. Determine further negotiation of the Agreement is necessary. If agreement among the Parties is reached after further negotiation, the revised Agreement and Responsiveness Summary may be published again for public comment under Subsection A, in accordance with the procedures of CERCLA Section 117 and 10 U.S.C. 2701 et seq., and may be re-noticed as proposed state agency action.

B. If within 30 Days from transmittal of the comments, the Parties cannot mutually agree on those changes necessary to address any public comments received during the 45 Day public review and comment period, then each Party shall submit their written notices of position directly to the DRC and the dispute resolution procedures set forth in Section XX (Resolution of Disputes) shall apply.

XXXIV. AMENDMENT OF AGREEMENT

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

B. This Agreement may be amended by the unanimous written agreement of the Parties. If the Parties do not reach unanimous agreement to the proposed amendment, they may enter into negotiations with a view toward resolving all points of disagreement. If, following negotiation, unanimity cannot be achieved, the amendment will not occur. Amendment proposals under this Agreement are not subject to Section XX (Resolution of Disputes).

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

XXXV. TERMINATION

A. 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 USEPA certification of all the Response Actions at the Site pursuant to Section IX (Consultation

with U.S. EPA and FDEP), 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 upon receipt by the Navy of written notice from the USEPA, with concurrence of the FDEP, 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 additional actions needed to grant a termination notice to the proposing Party within 90 days of receipt of the proposal.

B. Any disputes arising from the termination process shall be resolved pursuant to the provisions of Section XX (Resolution of Disputes).

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

XXXVI. EFFECTIVE DATE

A. This Agreement shall not be effective until all public comment(s) received during the 45 Day comment period on this Agreement pursuant to Section XXXIII (Public Comment) have been addressed by the Parties and incorporated into the Agreement to the extent deemed appropriate.

B. This Agreement is final agency action of the State pursuant to Section 120.69, F.S., and it is final and effective with respect to the State on the date filed with the Clerk of the FDEP. Upon timely filing of a Petition for Administrative Hearing filed in accordance with Chapter 120, F.S., this Agreement will not be effective as to the State, until further order of the FDEP.

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

D. The Schedules, Deadlines and Milestones under this Agreement will not commence until the Navy receives written notification from USEPA that the Agreement is effective as provided for under Section XXXIII (Public Comment).

XXXVII. TOTAL INTEGRATION

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

IT IS SO AGREED:

FOR U.S. DEPARTMENT OF THE NAVY

By: 

DONALD R. SCHREGARDUS
Deputy Assistant Secretary of the Navy
(Environment)

DATE: 3/4/2009

FOR THE STATE

By: 

MICHAEL W. SOLE
Secretary
Florida Department of Environmental Protection

DATE: 3/9/2009

FOR THE U.S. ENVIRONMENTAL AGENCY

By: 

A. STANLEY MEIBURG
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 4

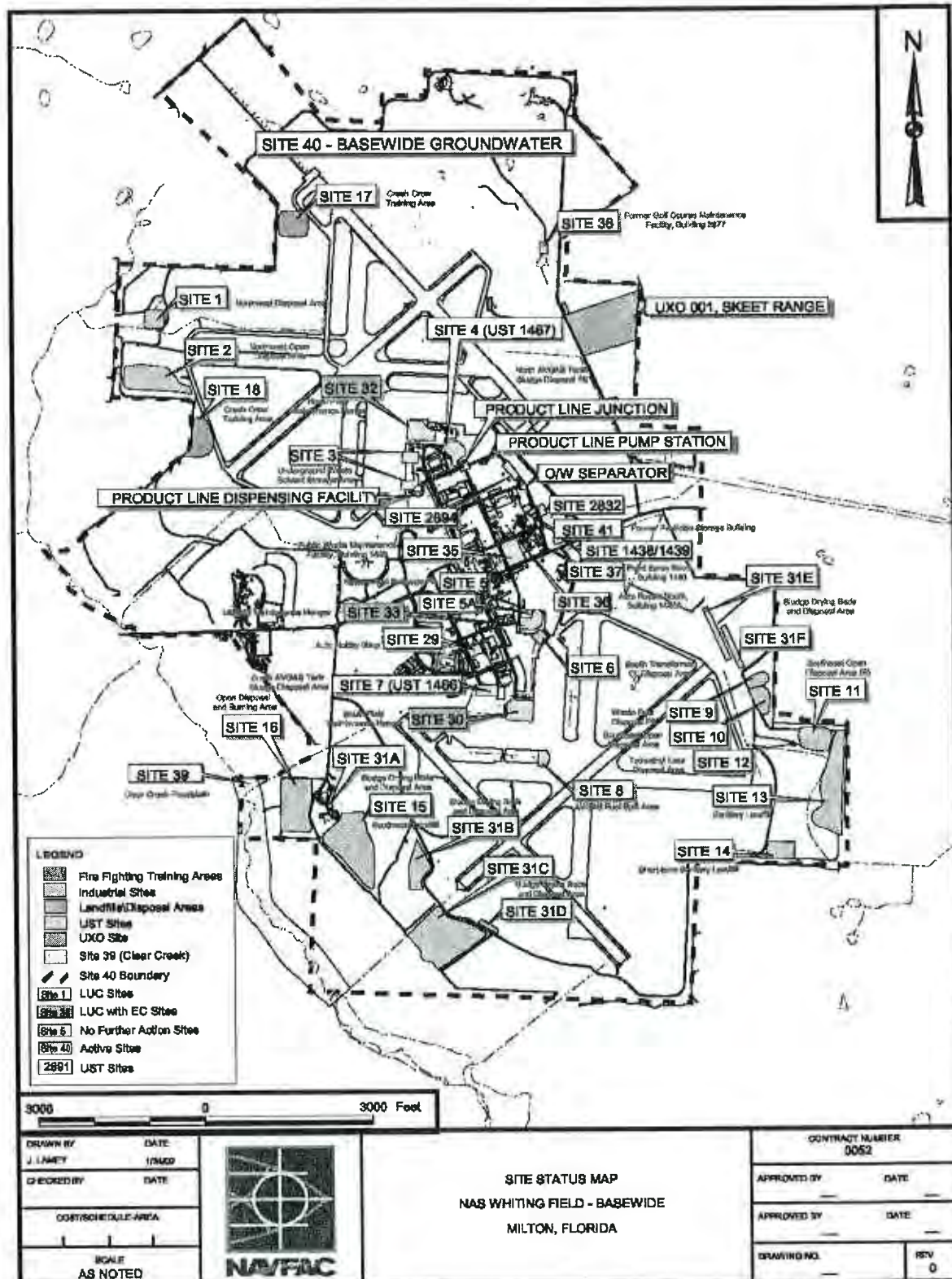
DATE: 2/6/2009

Appendices

Appendix A:

**Naval Air Station
Whiting Field
Milton, FL**

Facility Map



Appendix B:

**NAVAL AIR STATION
WHITING FIELD
MILTON, FLORIDA**

SITE LISTING

Part 1: No Further Action Sites

OU No.	Site No.	Description	Statute
03	03	Underground Waste Solvent Storage Area	CERCLA
04	04	N. AVGas Tank Sludge Disposal Area	FDEP Petroleum
05	05A	Battery Acid Seepage Pit	CERCLA
06	06	South Transformer Oil Disposal Area	CERCLA
07	07	S. AVGas Tank Sludge Disposal Area	FDEP Petroleum
	08	AVGas Fuel Spill Area	CERCLA
11	12	Tetraethyl Lead Disposal Area	CERCLA
13	14	Short-Term Sanitary Landfill	CERCLA
26	29	Auto Hobby Shop	CERCLA
19	31	Sludge Drying Beds and Disposal Area	CERCLA
	36	Auto Repair Booth	CERCLA
	37	Paint Spray Booth	CERCLA
23	38	Former Golf Course Maintenance Building	CERCLA

Part II: PSCs Requiring A RI/FS

OU No.	Site No.	Description	Statute
08	09		
09	10	Southeast Open Disposal Area A	CERCLA
10	11	Southeast Open Disposal Area B	CERCLA
15	16	Open Disposal and Burning Area	CERCLA
24	39	Clear Creek Floodplain	CERCLA
25	40	Basewide Groundwater	CERCLA
27	41	Pesticide Storage Building 1485C	CERCLA

Part III: RODs with Land Use Controls

OU No.	Site No.	Description	Statute
01	01	Northwest Disposal Area	CERCLA
02	02	Northwest Open Disposal Area	CERCLA
08	09	Waste Fuel Disposal Area	CERCLA
12	13	Sanitary Landfill	CERCLA
14	15	Southwest Landfill	CERCLA
16	17	Northwest Crash Crew Training Area	CERCLA
17	18	Crash Crew Training Area	CERCLA
18	30	South Field Maintenance Hangar	CERCLA
20	32	North Field Maintenance Hangar	CERCLA
21	33	Midfield Maintenance Hangar	CERCLA
22	35	Public Works Maintenance Facility	CERCLA

Appendix C:

**NAVAL AIR STATION
WHITING FIELD
MILTON, FLORIDA**

**POINT OF CONTACT
LIST**

For USEPA:

**U.S. Environmental Protection Agency, Region 4
Federal Facilities Branch
Attn: Mr. Craig A. Benedikt
61 Forsyth Street, SW
Atlanta, Georgia 30303**

For FDEP:

**Florida Department of Environmental Protection
Attn: Mr. John Winters, P.G.
Bob Martinez Center
2600 Blair Stone Road
Tallahassee, Florida 32399-2400**

For The Navy:

**Mr. Tread Kissam, P.G.
NAVFAC SOUTHEAST
Building 903, P.O. Box 30
NAS Jacksonville
Jacksonville, FL 32212-0030**

Appendix D:

**NAVAL AIR STATION
WHITING FIELD
MILTON, FLORIDA**

**SITE MANAGEMENT
PLAN**

To Be Added