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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 10
AND THE
UNITED STATES DEPARTMENT OF THE NAVY**

IN THE MATTER OF:

**The U.S. Department of the Navy,

Jackson Park Housing Complex
Naval Hospital Bremerton, Washington**

**INTERAGENCY AGREEMENT
UNDER CERCLA SECTION 120**

**Administrative Docket No.:
CERCLA-10-2005-0023**

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7 **AND THE**
8 **UNITED STATES DEPARTMENT OF THE NAVY**
9

10 **IN THE MATTER OF:**

11 **INTERAGENCY AGREEMENT**
12 **The U.S. Department of the Navy, UNDER CERCLA SECTION 120**
13

14 **Jackson Park Housing Complex Administrative Docket No.:**
15 **Naval Hospital Bremerton, Washington CERCLA-**
16

17
18 Based on the information available to the Parties on the Effective Date of this
19 Interagency Agreement ("IAG" or "this Agreement"), and without trial or adjudication of
20 any issues of fact or law, the Parties agree as follows:

21 **I. FINDINGS OF FACT**
22

23 1.1. In 1994, the Jackson Park Housing Complex/Naval Hospital Bremerton (JPHC-NHB)
24 (the Site) Bremerton, Washington, was placed on the National Priorities List. The JPHC-
25 NHB properties served as part of Naval Ammunition Depot (NAD) Puget Sound from 1904
26 through 1959. During that time naval ammunition was manufactured, stored, transported,
27 and destroyed at the site. Ammunition was dumped into or burned on-site and washed into
28 Ostrich Bay. As a result of past operations, ordnance was disposed on land and in the marine
29 environment, contaminating soil, groundwater, and sub-tidal areas of Ostrich Bay. In May
30 1995, the Site was administratively divided into Operable Unit (OU) 1, which addresses the
31 terrestrial environment and human health risks for both terrestrial and marine environment;
32 and OU 2, which addresses the marine environment. OU 3 was added in 2000 to address
33 abandoned ordnance in both the marine and terrestrial environments. This Agreement further
34 divides OU 3 into OU 3T-JPHC, OU 3T-NHB, and OU 3-M for specific geographical areas,
35 both terrestrial (T) and marine (M), as areas of potential concern for ordnance contamination.
36

37 1.2 The alternatives considered for OU 1 were presented and evaluated in the Proposed
38 Plan made available to the public in October 1999. A Record of Decision (ROD) that
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1 selected remedial actions for OU 1 was executed on August 10, 2000. The ROD is hereby
2 incorporated by reference.

3 4 **II. JURISDICTION**

5
6 2.1 The United States Environmental Protection Agency, Region 10 (EPA), enters into
7 this Agreement pursuant to Section 120(e)(2) and (4) of the Comprehensive Environmental
8 Response, Compensation and Liability Act, 42 U.S.C. § 9620(e)(1), (2) and (4), as amended
9 by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 (hereinafter
10 referred to as CERCLA); Sections 6001, 3008(h) and 3004(u) and (v) of the Resource
11 Conservation and Recovery Act, 42 U.S.C. § 6961, 5928(h), 6924(u) and (v), as amended by
12 the Hazardous and Solid Waste Amendments of 1984 and the Federal Facility Compliance
13 Act of 1992 (hereinafter jointly referred to as RCRA); and Executive Order 12580.

14
15 2.2 The United States Navy (Navy) enters into this Agreement pursuant to Section
16 120(e)(2) and (4) of CERCLA, 42 U.S.C. § 9620(e)(2) and (4), Executive Order 12580, and
17 the Defense Environmental Restoration Program, 10 U.S.C. § 2701 *et. seq.*

18 19 **III. DEFINITIONS**

20
21 3.1 The terms used in this Agreement shall have the same definition as the terms defined
22 in Section 101 of CERCLA, 42 U.S.C. § 9601, and the National Contingency Plan (NCP), 40
23 CFR Part 300.

- 24
25 A. "Agreement" shall mean this document and shall include all attachments and
26 amendments to this document. All such attachments and amendments shall be
27 appended to or integrated into and considered an integral and enforceable part of
28 this document.
29
30 B. "Days" shall mean calendar days unless otherwise specified.
31
32 C. "Deadlines" shall mean the Near Term Milestones specifically established for the
33 current fiscal year under the SMP. Deadlines are subject to stipulated penalties in
34 accordance with Part XI (Stipulated Penalties).
35
36 D. "Facility" shall mean that property owned by the United States and operated by
37 the U.S. Department of the Navy and known as the Jackson Park Housing
38 Complex/Naval Hospital Bremerton and adjacent sub-tidal areas of Ostrich Bay,
39 located in Bremerton, Washington. This definition is for the purpose of
40 describing a geographical area and not a governmental entity.
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- 1
- 2 E. "Fiscal year" shall mean the time period used by the United States Government
- 3 for budget management and commences on October 1 and ends September 30th of
- 4 the following calendar year.
- 5
- 6 F. "Land use control" or "LUC" shall mean any restriction or administrative action,
- 7 including engineering and institutional controls, arising from the need to reduce
- 8 risk to human health and the environment.
- 9
- 10 G. "Milestones" shall mean the dates established by the Parties in the SMP for the
- 11 initiation or completion of work and the submission of required documents and
- 12 Project End Dates. Milestones shall include Near Term Milestones, Out Year
- 13 Milestones, Primary Actions, and Project End Dates.
- 14
- 15 H. "Near Term Milestones" shall mean the Milestones within the current fiscal year
- 16 (FY), the next fiscal year or "budget year" (FY+1), and the year for which the
- 17 budget is being developed or "planning year" (FY+2).
- 18
- 19 I. "Out Year Milestones" shall mean the Milestones within those years occurring
- 20 after the planning year until the completion of the cleanup or phase of the cleanup
- 21 (FY+3 through Project End Date).
- 22
- 23 J. "Part" when used to refer to a portion of this Agreement, corresponds to any
- 24 portion of this Agreement identified by Roman numeral.
- 25
- 26 K. "Parties" shall mean the Navy and EPA.
- 27
- 28 L. "Plan," unless the context indicates otherwise, shall refer to the Site Management
- 29 Plan (SMP) as may be amended from time to time.
- 30
- 31 M. "Primary Actions" as used in these definitions shall mean those specified major,
- 32 discrete actions that the Parties identify as such in the Plan. The Parties should
- 33 identify all major, discrete actions for which there is sufficient information to be
- 34 confident that the date for taking such action is implementable.
- 35
- 36 N. "Project End Dates" shall mean the dates established by the Parties in the SMP
- 37 for the completion of major portions of the cleanup or completion of the cleanup
- 38 of the facility. The Parties recognize that, in many cases, a higher degree of
- 39 flexibility is appropriate with Project End Dates due to uncertainties associated
- 40 with establishing such dates.
- 41

- 1
- 2 O. "Site" shall include the Facility and any other areas where a hazardous substance,
- 3 hazardous waste, hazardous constituent, pollutant, or contaminant from the
- 4 Facility has been deposited, stored, disposed of, or placed, or has migrated or
- 5 otherwise come to be located. This definition is not intended to include hazardous
- 6 substances or wastes intentionally transported from the Facility.
- 7
- 8 P. "Target Dates" shall mean dates established for the completion and transmission
- 9 of Secondary Documents. Target Dates are not Milestones and are not subject to
- 10 dispute resolution.
- 11

12 IV. PURPOSE

13

14 4.1 The general purposes of this Agreement are the following:

15

- 16 1. Ensure that the environmental impacts associated with past and present activities
- 17 at the Site are thoroughly investigated and appropriate remedial action taken as
- 18 necessary to protect the public health, welfare and the environment;
- 19
- 20 2. Establish a procedural framework and schedule for developing, implementing,
- 21 and monitoring appropriate response actions at the Site in accordance with
- 22 CERCLA, the NCP, Superfund guidance and policy, RCRA, RCRA guidance and
- 23 policy; and;
- 24
- 25 3. Facilitate cooperation, exchange of information, and participation of the Parties in
- 26 such actions.
- 27

28 4.2 Specifically, the purposes of this Agreement are the following:

29

- 30 1. Establish requirements for the performance of an RI to determine fully the nature
- 31 and extent of the threat to the public health or welfare or the environment caused
- 32 by release and threatened release of hazardous substances, pollutants or
- 33 contaminants at the Site and to establish requirements for the performance of an
- 34 FS for the Site to identify, evaluate and select alternatives for the appropriate
- 35 remedial actions to prevent, mitigate, or abate the release or threatened release of
- 36 hazardous substances, pollutants, or contaminants at the Site in accordance with
- 37 CERCLA;
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- 1 2. Identify the nature, objective and schedule of response actions to be taken at the
2 Site. Response actions at the Site shall attain that degree of cleanup of hazardous
3 substances, pollutants, or contaminants mandated by CERCLA.
4
- 5 3. Implement the selected remedial actions in accordance with CERCLA and meet
6 the requirements of Section 120(e)(2) of CERCLA for an interagency agreement
7 between the Navy and EPA.
8
- 9 4. Assure compliance, through this Agreement, with RCRA and other federal and
10 state hazardous waste laws and regulations for matters covered herein.
11
- 12 5. Coordinate response actions at the Site with the mission and support activities at
13 the Jackson Park Housing Complex/Naval Hospital Bremerton.
14
- 15 6. Expedite the cleanup process to the extent consistent with protection of human
16 health and the environment.
17

18 **V. REVIEW AND COMMENT PROCESS ON DELIVERABLES** 19

20 5.1 Applicability. The provisions of this Part establish the procedures that shall be used
21 by the Navy and EPA to provide the Parties with appropriate notice, review, comment, and
22 response to comments regarding RI/FS and RD/RA documents. In accordance with Section
23 120 of CERCLA and 10 U.S.C. § 2705, the Navy will normally be responsible for issuing
24 drafts to EPA. As of the effective date of this Agreement, all draft and final reports for any
25 deliverable document identified herein shall be prepared, distributed and subject to dispute in
26 accordance with Paragraphs 5.2 through 5.7 below. The designation of a document as
27 “draft” or “final” is solely for purposes of consultation with EPA in accordance with this
28 Part. Such designation does not affect the obligation of the Parties to issue documents,
29 which may be referred to herein as “final,” to the public for review and comment as
30 appropriate and as required by law.
31

32 5.2 General Process for RI/FS and RD/RA documents.
33

34 5.2.1 Primary Documents include those documents that are major, discrete portions
35 of RI/FS or RD/RA activities. Primary Documents are initially issued by the Navy in draft
36 subject to review and comment by the EPA. Following receipt of comments on a particular
37 draft Primary Document, the Navy will respond to the comments received and issue a draft
38 final Primary Document subject to dispute resolution. The draft final Primary Document will
39 become the final Primary Document 30 days after issuance if dispute resolution is not
40 invoked or as modified by decision of the dispute resolution process.
41

1
2 5.2.2 Secondary Documents include those documents that are discrete portions of
3 the Primary Documents and are typically input or feeder documents. Secondary Documents
4 are issued by the Navy in draft subject to review and comment by the EPA. Although the
5 Navy will respond to comments received, the draft Secondary Documents may be finalized
6 in the context of the corresponding draft final Primary Documents. A Secondary Document
7 may be disputed at the time the corresponding draft final Primary Document is issued.
8

9 5.3 Primary Documents.
10

11 5.3.1 All Primary Documents shall be prepared in accordance with the NCP and
12 applicable EPA guidance. The Navy shall complete and transmit drafts of the following
13 Primary Documents and their amendments to the EPA for review and comment in
14 accordance with the provisions of this Part:
15

- 16 1. RI and FS Work Plans (including Baseline Risk Assessment for human
17 health and the environment)
- 18 2. Remedial Investigation Reports (including Baseline Risk Assessments
19 for human health and the environment)
- 20 3. FS Reports
- 21 4. Proposed Plans
- 22 5. Records of Decision
- 23 6. Final Remedial Designs
- 24 7. Remedial Action Work Plans
- 25 8. Remedial Action Completion Reports
- 26 9. Site Management Plan

27
28 5.3.2 Only the draft final Primary Documents identified above (and their
29 amendments) shall be subject to dispute resolution in accordance with Part IX (Dispute
30 Resolution) of this Agreement. The Navy shall complete and transmit draft Primary
31 Documents in accordance with the Schedule and Deadlines established in this Part.
32
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1 5.4 Secondary Documents.

2
3 5.4.1 All Secondary Documents shall be prepared in accordance with the NCP and
4 applicable EPA guidance. The Navy shall complete and transmit drafts of the following
5 Secondary Documents to the EPA for review and comment in accordance with the provisions
6 of this Part:

- 7
8 1. Health and Safety Plans
9
10 2. Non-Time Critical Removal Plans (40 C.F.R. § 300.415(b)(4) (ii))
11
12 3. Pilot/Treatability Study Work Plans
13
14 4. Pilot/Treatability Study Reports
15
16 5. Engineering Evaluation/Cost Analysis Report
17
18 6. Well Closure Methods and Procedures
19
20 7. Preliminary/Conceptual Designs, or Equivalents
21
22 8. Prefinal Remedial Designs
23
24 9. Removal Action Memoranda
25
26

27 5.4.2. Although the EPA may comment on the draft Secondary Documents listed
28 above, such documents shall not be subject to dispute resolution except as provided by
29 Subparagraph 8.2.2 hereof. Target Dates shall be established for the completion and
30 transmission of draft Secondary Documents pursuant to this Part.
31

32 5.5 Meetings of the Project Managers on Development of Reports. The Project Managers
33 shall meet approximately every 30 days, except as otherwise agreed by the Parties, to review
34 and discuss the progress of work being performed at the Site. Prior to preparing any draft
35 deliverable document specified in this Part, the Project Managers shall meet to discuss the
36 report results in an effort to reach a common understanding, to the maximum extent
37 practicable, with respect to the results to be presented in the draft document.
38

39 5.6 Identification and Determination of Potential ARARs.
40
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1 5.6.1 For those primary reports or secondary documents that consist of or include
2 ARAR determinations, prior to the issuance of a draft report, the Project Managers shall meet
3 to identify and propose, to the best of their ability, all potential ARARs pertinent to the
4 report being addressed. Draft ARAR determinations shall be prepared by the Navy in
5 accordance with CERCLA Section 121(d)(2), the NCP, and pertinent EPA guidance which is
6 not inconsistent with CERCLA and the NCP.

7
8 5.6.2 In identifying potential ARARs, the Parties recognize that actual ARARs can
9 be identified only on a site-specific basis and that ARARs depend on the specific hazardous
10 substances, pollutants and contaminants at a site, the particular actions proposed as a remedy
11 and the characteristics of a site. The Parties recognize that ARAR identification is
12 necessarily an iterative process and that potential ARARs must be re-examined throughout
13 the RI/FS process until a ROD is issued.

14 15 5.7 Review and Comment on Draft Documents.

16
17 5.7.1 The Navy shall complete and transmit each draft primary report to EPA on or
18 before the corresponding Deadline for the issuance of the report established in the SMP. The
19 Navy shall complete and transmit each draft secondary document in accordance with the
20 Target Date for the issuance of such document established in the SMP. Unless the Parties
21 mutually agree to another time period, all draft documents shall be subject to a 30-day period
22 for review and comment. Review of any document by the EPA may concern all aspects of
23 the report (including completeness) and should include, but is not limited to, technical
24 evaluation of any aspect of the document, and consistency with CERCLA, the NCP, and any
25 pertinent EPA guidance or policy. Comments by EPA shall be provided with adequate
26 specificity so that the Navy may respond to the comment and, if appropriate, make changes
27 to the draft. Comments shall refer to any pertinent sources of authority or references upon
28 which the comments are based, and, upon request of the Navy, EPA shall provide a copy of
29 the cited authority or reference. In cases involving complex or unusually lengthy reports,
30 EPA may extend the 30-day comment period for an additional 20 days by written notice to
31 the Navy prior to the end of the 30-day period. On or before the close of the comment
32 period, EPA shall transmit by next-day mail their written comments to the Navy.

33
34 5.7.2 Representatives of the Navy shall make themselves readily available to EPA
35 during the comment period for purposes of informally responding to questions and comments
36 on draft documents. Oral comments made during such discussions need not be the subject of
37 a written response by the Navy on the close of the comment period.

38
39 5.7.3 In commenting on a draft report which contains a proposed ARAR
40 determination, EPA shall include a reasoned statement with any objections to any portion of

1 the proposed ARAR determination. To the extent that EPA does object, it shall explain the
2 bases for its objection in detail and shall identify any ARARs which it believes were not
3 properly addressed in the proposed ARAR determination.
4

5 5.7.4 Following the close of the comment period for a draft report, the Navy shall
6 give full consideration to all written comments on the draft report submitted during the
7 comment period. Within 30 days of the close of the comment period on a draft secondary
8 report, the Navy shall transmit to EPA its written response to comments received within the
9 comment period. Within 30 days of the close of the comment period on a draft primary
10 report, the Navy shall transmit to EPA a draft final report, which shall include the Navy's
11 response to all written comments received within the comment period. While the resulting
12 draft final report shall be the responsibility of the Navy, it shall be the product of consensus
13 to the maximum extent possible.
14

15 5.7.5 The Navy may extend the 30-day period for either responding to comments on
16 a draft document or for issuing the draft final primary report for an additional 20 days by
17 providing notice to EPA. In appropriate circumstances, this time period may be further
18 extended in accordance with Part XII (Extensions).
19

20 5.7.6 Availability of Dispute Resolution for Draft Final Documents. Dispute
21 resolution shall be available to the Parties for draft final primary report as set forth in Part IX.
22 When dispute resolution is invoked on a draft primary report, work may be stopped in
23 accordance with the procedures set forth in Paragraph 9.8.
24

25 5.7.7 Finalization of Documents. The draft final primary report shall serve as the
26 final primary report if no Party invokes dispute resolution regarding the document or, if
27 invoked, at completion of the dispute resolution process should the Navy's position be
28 sustained. If the Navy's determination is not sustained in the dispute resolution process, the
29 Navy shall prepare, within not more than 35 days, a revision of the draft final document
30 which conforms to the results of dispute resolution. In appropriate circumstances, the time
31 period for this revision period may be extended in accordance with Part XII (Extensions).
32

33 5.7.8 Subsequent Modifications of Final Documents. Following finalization of any
34 primary report pursuant to Subparagraph 5.7.7 above, EPA or the Navy may seek to modify
35 the report, including seeking additional field work, pilot studies, computer modeling or other
36 supporting technical work, only as provided in Subparagraphs 5.7.8.1 and 5.7.8.2 below.
37

38 5.7.8.1 EPA or the Navy may seek to modify a report after finalization if it
39 determines, based on new information (i.e., information that became available, or conditions
40 that became known, after the document was finalized) that the requested modification is
41

1 necessary. EPA or the Navy may seek such a modification by submitting a concise written
2 request to the Project Manager of the other Party. The request shall specify the nature of the
3 requested modification and how the request is based on new information.

4
5 5.7.8.2 In the event that a consensus is not reached by the Project Managers
6 on the need for a modification, either EPA or the Navy may invoke dispute resolution to
7 determine if such modification shall be conducted. Modification of a report shall be required
8 only upon a showing that: (1) the requested modification is based on significant new
9 information, and (2) the requested modification could be of significant assistance in
10 evaluating impacts on the public health or the environment, in evaluating the selection of
11 remedial alternatives, or in protecting human health and the environment.

12
13 5.7.9 Nothing in this Subpart shall alter EPA's ability to request the performance of
14 additional work which was not contemplated by this Agreement. The Navy obligation to
15 perform such work must be established by either modification of a document or by
16 amendment to this Agreement.

17 18 **VI. PROJECT MANAGERS**

19
20 6.1 Within 14 days of the effective date of this Agreement, EPA and the Navy shall
21 identify in writing their Project Managers for purposes of implementing this Agreement and
22 inform each other via letter of who they are. The EPA and Navy Project Managers will meet
23 or confer approximately every 30 days to review and discuss work being performed under
24 this Agreement. The EPA and Navy Project Managers shall have the following authorities:

25
26 1. To review and comment on deliverables.

27
28 2. To coordinate dispute resolution, invoke dispute resolution, and issue the written
29 statement of dispute under the formal dispute resolution procedures.

30
31 3. By mutual agreement, to modify deliverables, to approve Deadlines, revise
32 Deadlines and schedules and to modify deliverable review periods in accordance with written
33 justification. If the Project Managers cannot reach agreement, the matter will be referred to
34 their immediate supervisors for resolution who will attempt to resolve the dispute informally.
35 If that is not possible, the matter will be referred for formal dispute resolution in accordance
36 with Part IX (Dispute Resolution).

37
38 6.2 The Navy and EPA may unilaterally change their respective Project Managers by
39 sending written notification to the other Party no later than five days before the date of such
40 change.

1
2 **VII. SITE ACCESS**
3

4 7.1 Without any limitation on any authority conferred on them by law, EPA, and/or its
5 authorized representatives, shall have authority to enter the Site at all reasonable times for
6 the purposes of, among other things: (1) inspecting records, operating logs, contracts, and
7 other documents relevant to implementation of this Agreement; (2) reviewing the progress of
8 the Navy, its response action contractors, or agents in implementing this Agreement; (3)
9 conducting such tests as they deem necessary of this Agreement; and (4) verifying the data
10 submitted by the Navy. The Navy shall honor all reasonable requests for such access,
11 subject only to presentation of proper credentials showing the bearer's identification and that
12 he/she is an employee or agent of EPA. The Navy reserves the right to require an escort for
13 EPA representative when visiting the site; however, the Navy agrees to make best efforts to
14 ensure that conformance with security regulations and the provision of an escort will not
15 unduly delay access. To the extent consistent with the purpose of a particular site visit, EPA
16 shall provide reasonable notice to the Navy prior to a Site visit. Such notice shall not be
17 construed as limiting EPA's statutory authority for access or information gathering.
18

19 7.2 To the extent that this Agreement requires access to property not owned and
20 controlled by the Navy, the Navy shall take all reasonable steps to obtain access including,
21 but not limited to, relying on its authority under Section 104(3) of CERCLA, 42 U.S.C.
22 § 9604(E). If the Navy obtains access to the property by agreement with the property owner,
23 the Navy will make every reasonable effort to obtain identical access rights for EPA and the
24 State of Washington (State), and provide EPA with copies of such agreements. The Navy
25 may request the assistance of EPA in obtaining such access, and, upon such request, EPA
26 will take all reasonable steps to obtain the required access.
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VIII. WORK AND BUDGET CONSULTATION

8.1 Site Management Plan.

8.1.1 This Agreement includes a Site Management Plan (SMP), to be provided in draft by the Navy within 30 days of the Effective Date of this Agreement and to be attached as Appendix 1. Milestones established in the SMP or in a final amendment to the SMP remain unchanged unless otherwise agreed by the Parties or unless directed to be changed pursuant to the agreed dispute resolution process set out in Paragraphs 8.17 or 8.23.

In addition, if an activity is fully funded in the current fiscal year (FY), Milestones associated with the performance of work and submittal of documents associated with such activity (even if they extend beyond the current FY) shall be enforceable.

8.1.2 SMP includes proposed actions for both CERCLA responses and actions which would otherwise be handled pursuant to RCRA corrective actions per Part XIX (RCRA/CERCLA Integration), 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.

8.2 Remedial Design and Remedial Action.

8.2.1 The SMP shall include a Target Date for submission of a Conceptual Remedial Design (RD) document (30 percent design report); a Target Date for submission of a Prefinal RD (90 percent design); and a Deadline for the final RD, which documents shall be prepared in accordance with this Agreement and applicable guidance issued by the EPA, including the EPA-Navy Principles and Procedures for Specifying, Monitoring and Enforcement of Land Use Controls and Other Post-ROD Actions (as may be amended by EPA and the Navy).

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

1 8.3 Finalization of Remedial Actions

2
3 8.3.1 The Navy agrees that it shall submit to the EPA Remedial Action Completion
4 Report (RACR) in accordance with the SMP following the completion of the RA for each
5 OU. The RACR shall document the cleanup activities that took place at the OU, and that
6 performance standards specified in the ROD have been met. For each Long-Term Response
7 Action (LTRA), a RACR shall be prepared when the physical construction of the system is
8 complete and the unit is operating as designed. Such RACR shall be amended and finalized
9 when the LTRA performance standards specified in the ROD are achieved. The RACR shall
10 outline in detail, and provide an explanation for, any activities that were not conducted in
11 accordance with the final RD and/or RA Work Plan(s).

12
13 8.3.2 EPA and the Navy have committed to streamlining procedures and
14 documentation for post-ROD activities. Revised procedures may be amended to this
15 Agreement upon consensus by the Parties. Until any new procedures and documentation are
16 agreed upon, the following provisions will be applicable.

17 8.4 Construction Completion.

18
19 8.4.1 The Navy agrees that it shall submit to EPA information required to document
20 completion of physical construction of the remedial action for all OUs within 30 days of
21 completing physical construction at the Site as part of the final, amended RACR. This
22 information must satisfy the NCP and provide a schedule for any remaining activities
23 necessary to reach Site completion. The information will also address any five-year review
24 requirements.

25
26 8.4.2 When the Navy determines that remedial actions at all OUs have been
27 completed, it shall document this event by amending the final RACR and submitting it to
28 EPA for review. The information provided therein shall document compliance with statutory
29 requirements and provide a consolidated record of all remedial activities for all OUs at the
30 Site. In order for a Site to be eligible for completion, the following criteria must be met:

- 31
32
33 1. Performance standards specified in all RODs have been met, and all cleanup
34 actions and other measures identified in the RODs have been successfully
35 implemented.
36
37 2. The constructed remedies are operational and performing according to
38 engineering specifications.
39
40 3. All sites are protective of human health and the environment.

1 4. The only remaining activities, if any, at the site are operation and maintenance
2 activities (which may include long-term monitoring).
3

4 8.4.3 Information provided shall summarize work at the entire site (i.e., all UAs).
5 The RACR for each OU, including the final OU, is required to document that Work was
6 performed according to design specifications. Information amended to the final RACR to
7 indicate remedial action completion shall include a discussion regarding any operation and
8 maintenance requirements and/or land use restrictions at the Site.

9 8.4.4 Information provided for remedial action completion shall be signed by the
10 Navy's signatory authority or designee, certifying that remedial activities have been
11 completed in full satisfaction of the requirements of this Agreement, and shall include a
12 request for EPA certification of remedial action completion at the Site. Within 90 days of
13 EPA's receipt of the Navy's request for certification of Site completion, EPA, in consultation
14 with the State, shall:

- 15 1. Certify that all response actions have been completed at the Site in accordance
16 with CERCLA, the NCP and this Agreement, based on conditions known at
17 the time of certification; or
- 18 2. Deny the Navy's request for certification of Site completion, stating the basis
19 of its denial and detailing the additional Work needed for completion and
20 certification.

21 8.4.5 If EPA, in consultation with the State, denies the Navy's request for
22 certification for Site completion in accordance with this Agreement, the Navy may invoke
23 dispute resolution in accordance with Part IX (Dispute Resolution) of this Agreement within
24 20 days of receipt of the written denial of certification or determination that additional Work
25 is necessary. If the denial of certification is upheld through the dispute resolution process,
26 the Navy will perform the requested additional Work.

27 8.4.6 If dispute resolution is not invoked, or if a denial of certification is upheld
28 through dispute resolution, the Navy shall, in the next draft Amended Site Management Plan
29 submitted after receipt of the written denial of certification or dispute resolution finding,
30 propose a Deadline for the submittal of a draft supplemental Work Plan. The draft
31 supplemental Work Plan shall contain a schedule for completion of the additional Work
32 required. This schedule, once approved, will be incorporated in the Site Management Plan.
33 After performing the additional Work, the Navy may resubmit a request for certification to
34 EPA as outlined in this Paragraph 8.4. EPA, in consultation with the State, shall then grant
35 or deny certification pursuant to the process set forth in this Paragraph 8.4.

1 8.5 Setting Milestones.

2
3 8.5.1 In the SMP reflect the priorities agreed to by the Parties through a process of
4 “Risk Plus Other Factors” Priority Setting. Site activities have been prioritized by weighing
5 and balancing a variety of factors, including, but not limited to: (i) the DoD relative risk
6 rankings for the Site; (ii) current, planned, or potential uses of the Site; (iii) ecological
7 impacts; (iv) impacts on human health; (v) intrinsic and future value of affected resources;
8 (vi) cost effectiveness of the proposed activities; (vii) environmental justice considerations;
9 (viii) regulatory requirements; and (ix) actual and anticipated funding levels. While
0 Milestones should not be driven by budget targets, such targets should be considered when
1 setting Milestones. Furthermore, in setting and modifying Milestones, EPA and the Navy
2 agree to make good faith efforts to accommodate federal fiscal constraints, which include
3 budget targets established by the Navy.
4

5 8.5.2 The Navy shall submit proposed amendments to the SMP on an annual basis.
6 All proposed amendments to the SMP shall conform to all of the requirements set forth in
7 this Part.
8

9 8.5.3 The SMP and its annual amendments include the following:
10

- 11 a. A description of actions necessary to mitigate any immediate
12 threat to human health or the environment
13
- 14 b. A listing of all currently identified Operable Units, Interim
15 Remedial Actions, and Critical and Non-Time Critical
16 Removal Actions covered or identified pursuant to this
17 Agreement;
18
- 19 c. Activities and schedules for response actions covered by the
20 SMP, including at a minimum:
 - 21 - Identification of any Primary Actions;
 - 22 - All Deadlines;
 - 23 - All Near Term Milestones
 - 24 - All Out Years Milestones
 - 25 - All Target Dates
 - 26 - A schedule for initiation of Remedial Designs,
27 Interim Response Actions, Non-Time Critical
28 Removal Actions, and any initiation of other
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planned response actions covered by this
agreement; and,
- All Project End Dates.

8.6 The Milestones established in accordance with this Part remain the same unless otherwise agreed by the Parties, or unless changed in accordance with the dispute resolution procedures set out in Paragraphs 8.17 and 8.23. The Parties recognize that possible bases for requests for changes or extensions of the Milestones include but are not limited to the following:

1. The identification of significant new site conditions at this installation;
2. Reprioritization of activities under this Agreement caused by changing priorities or new site conditions elsewhere in the Navy;
3. Reprioritization of activities under this Agreement caused by budget adjustments (e.g., rescissions, inflation adjustments, and reduced Congressional appropriations);
4. An event of *force majeure*;
5. A delay caused by another party's failure to meet any requirement of this Agreement;
6. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
7. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and Deadline or schedule; and
8. Any other event or series of events mutually agreed to by the Parties as constituting good cause.

8.7 The Deadlines established in the SMP and its amendments shall be published by EPA.

8.8 Budget Development and SMP Amendment. The Navy, as a federal agency, is subject to fiscal controls, hereinafter referred to as the Future Years Defense Plan (FYDP). The planning, programming, and budgeting process, hereinafter referred to as the POM process, is used to review total requirements for DoD programs and make appropriate

adjustments within the FYDP for each program while adhering to the overall FYDP control. The Parties recognize that the POM process is a multi-year process. The Parties also agree that all Parties should be involved in the full cycle of POM activities as specified in this Agreement. Further, the Parties agree that each Party should consider the factors listed in Subparagraph 8.5.1, 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.

8.9 Facility-Specific Budget Building.

8.9.1 In order to promote effective involvement by the Parties in the POM process, the Parties will meet at the Project Manager level for the purpose of (1) reviewing the FYDP controls; (2) developing a list of requirements/work to be performed at the Site for inclusion in the Navy POM process; and (3) participating in development of the Navy submission to the 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 EPA within 10 days of receipt, at the Project Manager level, that budget controls have been received. Unless the Parties agree to a different time frame or agree that a meeting is not necessary, the Parties will meet, at the Project Manager level, within 5 days of receiving such notification to discuss the budget controls. However, this consultation must occur at least 10 days prior to the Navy's initial budget submission to the Naval Facilities Engineering Command.

8.9.2 In the event that the Project Managers cannot agree on funding levels required to perform all work outlines 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 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 EPA.

8.9.3 If all Parties do not concur in the resolution, the Navy will forward through Naval Facilities Engineering Command to the Navy Headquarters its budget request with the views of EPA and also inform Navy Headquarters of the possibility of future enforcement action should the money requested not be sufficient to perform the work subject to disagreement. In addition, if the Navy's budget submission to 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 that fully disclose the work required by the existing SMP, but not included in the budget request due to fiscal controls (e.g., a projected budget shortfall).

1 These supplemental reports shall accompany the cleanup budget that the Navy submits
2 through its higher Headquarters levels until the budget shortfall has been satisfied. If the
3 budget shortfall is not satisfied, the supplemental reports shall be included in the Navy's
4 budget submission to the DoD Comptroller. The Deputy Under Secretary of Defense
5 (Installations & Environment) shall receive information copies of any supplemental reports
6 submitted to the DoD Comptroller.

7
8 8.10 Navy Budget for Clean-Up Activities. The Navy shall forward to EPA
9 documentation of the budget requests (and any supplemental reports) for the Site, as
10 submitted by the Navy to Naval Facilities Engineering Command, and by Naval Facilities
11 Engineering Command to the Navy Headquarters, within 14 days after the submittal of such
12 documentation to the Navy Headquarters by Naval Facilities Engineering Command. If the
13 Navy proposes a budget request relating to the terms and conditions of this Agreement that
14 impacts other installations, discussions with other affected EPA Regions and states regarding
15 the proposed budget request need to take place.

16
17 8.11 Amended Plan. No later than June 15 of each year after the Effective Date of this
18 Agreement, the Navy shall submit to EPA a draft SMP Amendment. When formulating such
19 draft amendments, the Navy shall consider funding circumstances (including OMB
20 targets/guidance) and "risk" plus other factors outlined in Subparagraph 8.5.1 to evaluate
21 whether the existing Milestones should change. Prior to proposing changes to Milestones in
22 its annual SMP amendment, the Navy will first offer to meet with EPA to discuss the
23 proposed changes. Parties will attempt to agree on Milestones before the Navy submits its
24 annual Amendment by June 15, but failure to agree on such proposed changes does not
25 modify the June 15 date, unless agreed by EPA. Any proposed extensions or other changes
26 to Milestones must be explained in a cover letter to the draft SMP amendment. The draft
27 SMP amendment should reflect any agreements made by the Parties during the POM process
28 outlined in this Part. Resolution of any disagreement over adjustment of Milestones pursuant
29 to this Paragraph shall be resolved pursuant to Paragraph 8.23.

30
31 8.12 The Parties shall meet as necessary to discuss the draft SMP amendment. The Parties
32 shall use the consultation process contained in this Part, except that none of the Parties will
33 have the right to use the extension provisions provided therein. Accordingly, comments on
34 the draft amendment will be due to the Navy no later than 30 days after EPA receives the
35 draft amendment. If EPA provides comments and is not satisfied with the draft amendment
36 during this comment period, the Parties shall meet to discuss the comments within 15 days of
37 the Navy's receipt of comments on the draft amendment. The draft final SMP amendment
38 will be due from the Navy no later than 30 days after the end of the EPA comment period.
39 During this second 30-day time period, the Navy will, as appropriate, make revisions and re-
40 issue a revised draft herein referred to as the draft final amendment. To the extent that this

1 Part contains time periods differing from these 30-day periods, these provisions will control
2 for consultation on the SMP amendment.

3
4 8.13 If the Navy proposes, in the draft final SMP amendment, modifications of Milestones
5 to which EPA has not agreed, those proposed modifications shall be treated as a request by
6 the Navy for an extension. Milestones may be extended during the SMP review process by
7 following Paragraphs 8.11 through 8.17. All other extensions will be governed by Part XII
8 (Extensions).

9
0 8.14 The time period for EPA to respond to the request for extension will begin on the date
1 EPA receives the draft final SMP amendment, and EPA shall advise the Navy in writing of
2 its respective positions on the request within 30 days. If EPA approves of the Navy's draft
3 final amendment, the document shall then await finalization in accordance with Paragraphs
4 8.18 and 8.19.

5
6 8.15 If EPA denies the request for extension, then the Navy may amend the SMP in
7 conformance with EPA comments or seek and obtain a determination through the dispute
8 resolution process established in Part IX (Dispute Resolution), within 21 days of receipt of
9 notice of denial. Within 21 days of the conclusion of the dispute resolution process, the
0 Navy shall revise and reissue, as necessary, the draft final SMP amendment. If EPA initiates
1 a formal request for a modification to the SMP to which the Navy does not agree, EPA may
2 initiate dispute resolution as provided in Part IX (Dispute Resolution) with respect to such
3 proposed modification. In resolving a dispute, the persons or person resolving the dispute
4 shall give full consideration to the bases for changes or extensions of the Milestones referred
5 to in Paragraph 8.6 asserted to be present, and the facts and arguments of each of the parties.

1 8.16 Notwithstanding Paragraphs 8.13 through 8.15, if the Navy proposes, in the draft
2 final amendment to the SMP, modifications of Project End Dates to reflect the time needed
3 for implementing the remedy selected in the Record of Decision, those proposed
4 modifications shall not be treated as a request for an extension. Consistent with Part IX
5 (Dispute Resolution), EPA may initiate dispute resolution with respect to such modifications.

6
7 8.17 In any dispute under this Part, the time periods for the standard dispute resolution
8 process contained in Paragraphs 9.4 and 9.5 of Part IX (Dispute Resolution), shall be
9 reduced by half in regard to such dispute, unless the Parties agree to dispute directly to the
10 SEC level.

11
12 8.18 The Navy shall finalize the draft final amendment as a final SMP amendment
13 consistent with the mutual consent of the Parties, or in the absence of mutual consent, in
14 accordance with the final decision of the dispute resolution process. The draft final SMP
15 amendment shall not become final until 21 days after the Navy receives official notification
16 of Congress' authorization and appropriation of funds if funding is sufficient to complete
17 work in the draft final SMP or, in the event of a funding shortfall, following the procedures
18 in Paragraph 8.21. However, upon approval of the draft final amendment or conclusion of
19 the dispute resolution process, the parties shall implement the SMP while awaiting official
20 notification of Congress' authorization and appropriation.

21
22 8.19 Although the State is not a Party to this Agreement, it shall nevertheless be entitled to
23 participate in the consultation process for the SMP amendment as if it were a Party; however,
24 this shall not include a right to dispute resolution.

25
26 8.20 Resolving Appropriations Shortfalls. After authorization and appropriation of funds
27 by Congress and within 21 days after the Navy has received official notification of the
28 Navy's allocations based on the current year's Environmental Restoration, Navy (ER,N)
29 Account, the Navy shall determine if planned work (as outlined in the draft final SMP
30 amendment) can be accomplished with the allocated funds. If the allocated funds are
31 sufficient to complete all planned work for that fiscal year and there are no changes required
32 to the draft final SMP amendment, the Navy shall immediately forward a letter to EPA
33 indicating that the draft final SMP amendment has become the final SMP amendment.

34
35 8.21 If the Navy determines within the 21-day period specified above that the allocated
36 funds are not sufficient to accomplish the planned work for the Site (an appropriation
37 shortfall), the Navy shall immediately notify EPA. The Project Managers shall meet within
38 30 days to determine if planned work (as outlined in the draft final SMP amendment) can be
39 accomplished through: (1) rescoping or rescheduling activities in a manner that does not
40 cause previously agreed upon Near Term Milestones and Out Year Milestones to be missed;

1 or (2) developing and implementing new cost-saving measures. If, during this 30-day
2 discussion period, the Parties determine that rescoping or implementing cost-saving
3 measures are not sufficient to offset the appropriations shortfall such that Near Term
4 Milestones, Out Year Milestones, and Project End Dates should be modified, the Parties shall
5 discuss these changes and develop modified Milestones. Such modifications shall be based
6 on the "Risk Plus Other Factors" prioritization process discussed in Subparagraph 8.5.1, and
7 shall be specifically identified by the Navy.

8
9 8.22 The Navy shall submit a new draft final SMP amendment to EPA within 30 days of
10 the end of the 30-day discussion period. In preparing the revised draft final SMP
11 amendment, the Navy shall give full consideration to EPA and State input during the 30-day
12 discussion period. If EPA concurs with the modifications made to the draft final SMP
13 amendment, EPA shall notify the Navy and the revised draft final amendment shall become
14 the final amendment. In the case of modifications of Milestones due to appropriations
15 shortfalls, those proposed modifications shall, for purposes of dispute resolution, be treated
16 as a request by the Navy for an extension, which request is treated as having been made on
17 the date that EPA receives the new draft final SMP or draft final SMP amendment. EPA
18 shall advise the Navy in writing of its respective positions on the request within 21 days.
19 The Navy may seek and obtain a determination through the dispute resolution process
20 established in Part IX (Dispute Resolution).

21
22 8.23 The Navy may invoke dispute resolution within 14 days of receipt of a statement of
23 nonconcurrence with the requested extension. In any dispute concerning modifications under
24 this Part, the Parties will submit the dispute directly to the SEC level, unless the Parties agree
25 to utilize the standard dispute resolution process, in which case the time periods for the
26 dispute resolution process contained in Paragraphs 9.4 and 9.5 of Part IX (Dispute
27 Resolution), shall be reduced by half in regard to such dispute. Within 21 days after the
28 conclusion of the dispute resolution process, the Navy shall revise and reissue, as necessary,
29 the final SMP amendment.

30
31 8.24 It is understood by all Parties that the Navy will work with EPA representatives to
32 reach consensus on the reprioritization of work made necessary by any annual appropriations
33 shortfalls or other circumstances as described in Paragraph 8.21. This may also include
34 discussions with other EPA Regions and states with installations affected by the
35 reprioritization; the Parties may participate in any such discussions with other states.

1
2 8.25 Public Participation.
3

4 8.25.1 In addition to any other provision for public participation contained in this
5 Agreement, the development of the SMP, including its annual amendments, shall include
6 participation by members of the public interested in this action. The Navy must ensure that
7 the opportunity for such public participation is timely, but this Paragraph 8.25 shall not be
8 subject to Part XI (Stipulated Penalties).
9

10 8.25.2 The Parties will meet, after seeking the views of the general public, and
11 determine the most effective means to provide for participation by members of the public
12 interested in this action in the POM process and the development of the SMP and its annual
13 amendments. The “members of the public interested in this action” may be represented by
14 inclusion of a restoration advisory board or technical review committee, or by other
15 appropriate means.
16

17 8.25.3 The Navy shall provide timely notification under Paragraph 8.21, regarding
18 allocation of ER,N to the members of the public interested in this action. The Navy shall
19 provide opportunity for discussion under Paragraphs 8.9, 8.12, 8.20, 8.21, and 8.24 to the
20 members of the public interested in this action.
21

22 8.25.4 The Navy shall ensure that public participation provided for in this Paragraph
23 8.25 complies with Executive Order 12898, *Federal Actions to Address Environmental*
24 *Justice in Minority Populations and Low-Income Populations*.
25

26 8.26 Funding.
27

28 8.26.1 It is the expectation of the Parties to this Agreement that all obligations of the
29 Navy arising under this Agreement will be fully funded. The Navy agrees to seek sufficient
30 funding through its budgetary process to fulfill its obligations under this Agreement. In
31 accordance with CERCLA Section 120(e)(5)(B), 42 U.S.C. § 9620(e)(5)(B), the Navy shall
32 submit to DoD for inclusion in its annual report to Congress the specific cost estimates and
33 budgetary proposals associated with the implementation of this Agreement.
34

35 8.26.2 Any requirement for the payment or obligation of funds, including stipulated
36 penalties, by the Navy established by the terms of this Agreement shall be subject to the
37 availability of appropriated funds, and no provision herein shall be interpreted to require
38 obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In
39 cases where payment or obligation of funds would constitute a violation of the Anti-
40

1 Deficiency Act, the dates established requiring the payment or obligation of such funds shall
2 be appropriately adjusted.

3
4 8.26.3 If appropriated funds are not available to Navy's obligations under this
5 Agreement, EPA reserves the right to initiate an action against any other person, or to take
6 any response action, which would be appropriate absent this Agreement.

7
8 8.26.4 Funds authorized and appropriated annually by Congress under the
9 Environmental Restoration, Navy (ER,N) appropriation in the Department of Defense
10 Appropriations Act will be the source of funds for activities required by this Agreement
11 consistent with 10 U.S.C. § 160. However, should the ER,N appropriation be inadequate in
12 any year to meet the total Navy's implementation requirements under this agreement, the
13 Navy will, after consulting with EPA and discussing the inadequacy with the members of the
14 public interested in the action in accordance with this Part, prioritize and allocate that year's
15 appropriation.

16 17 **IX. DISPUTE RESOLUTION**

18
19 9.1 Except as specifically set forth elsewhere in this Agreement, the procedures of this
20 Part shall apply.

21
22 9.2 All Parties to this Agreement shall make reasonable efforts to informally resolve
23 disputes at the Project Manager or immediate supervisor level. If resolution cannot be
24 achieved informally, the procedures of this Part shall be implemented to resolve a dispute.

25
26 9.3 Prior to any Party's issuance of a written statement of dispute, the disputing Party
27 shall engage the other Party in informal dispute resolution among the Project Managers
28 and/or their immediate supervisors. During this informal dispute resolution period, the
29 Parties shall meet as many times as are necessary to discuss and attempt resolution of the
30 dispute.

31
32 9.4 Dispute Resolution Committee.

33
34 9.4.1 Within 30 days after (1) the period established for review of a draft final
35 document pursuant to Part V (Review and Comment Process on Deliverables) of this
36 Agreement, or (3) any action which leads to or generates a dispute, the disputing Party shall
37 submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting
38 forth the nature of the dispute, the work affected by the dispute, the disputing Party's
39 position with respect to the dispute, and the technical, legal or factual information the
40 disputing Party is relying upon to support its position.

1
2 9.4.2 The DRC will serve as a forum for resolution of disputes for which agreement
3 has not been reached through informal dispute resolution. The Parties shall each designate
4 one individual and an alternate to serve on the DRC. The individuals designated to serve on
5 the DRC shall be employed at the policy level (SES or equivalent) or be delegated the
6 authority to participate on the DRC for the purposes of dispute resolution under this
7 Agreement. The EPA representative on the DRC is the Director of the Environmental
8 Cleanup Office, EPA Region 10. The Navy's designated member is the Director,
9 Environmental Department, Engineering Field Activity, Northwest. Written notice of any
10 delegation of authority from a Party's designated representative on the DRC shall be
11 provided to all other Parties. Following elevation of a dispute to the DRC, the DRC shall
12 have 21 days to unanimously resolve the dispute and issue a written decision.
13

14 9.5 Senior Executive Committee. If the DRC is unable to unanimously resolve the
15 dispute within the 21-day period, the written statement of dispute shall be forwarded to the
16 Senior Executive Committee (SEC) for resolution, within seven days after the close of the
17 21-day resolution period. The SEC will serve as the forum for resolution of disputes for
18 which agreement has not been reached by the DRC.9.5.2 The EPA representative on the
19 SEC is the Regional Administrator of EPA Region 10. The Navy's representative on the
20 SEC is the Deputy Assistant Secretary of the Navy (Environment and Safety). The SEC
21 members shall, as appropriate, confer, meet, and exert their best efforts to resolve the dispute
22 and issue a written decision. If unanimous resolution of the dispute is not reached by the
23 SEC within 21 days, the EPA Regional Administrator shall issue a written position on the
24 dispute.
25

26 9.6 EPA Administrator Resolution.
27

28 9.6.1 The Secretary of the Navy may, within 14 days of the Regional
29 Administrator's issuance of EPA's position, issue a written notice elevating the dispute to
30 the EPA Administrator for resolution in accordance with all applicable laws and procedures.
31 In the event that the Secretary elects not to elevate the dispute to the Administrator within
32 the designated 14-day elevation period, the Navy shall be deemed to have agreed with
33 Regional Administrator's written position with respect to the dispute.
34

35 9.6.2 If a dispute is elevated to the Administrator, the Administrator will review and
36 resolve the dispute in accordance with applicable law and regulations within 21 days. Upon
37 request, and prior to resolving the dispute, the Administrator shall meet and confer with the
38 Navy to discuss the matters under dispute. Upon resolution, the Administrator shall provide
39 the Navy with a written final decision setting forth resolution of the dispute. The duties of
40 the Administrator pursuant to this Subparagraph shall not be delegated.
41

1
2 9.7 The pendency of any dispute under this Part shall not affect the Navy's responsibility
3 for timely performance of the work required by this Agreement, except that the time period
4 for completion of work affected by such dispute shall be extended for a period of time
5 usually not to exceed the actual time taken to resolve any good faith dispute in accordance
6 with the procedures specified herein. All elements of the work required by this Agreement
7 which are not affected by the dispute shall continue and be completed in accordance with the
8 applicable schedule.
9

10 9.8 When dispute resolution is in progress, work affected by the dispute will immediately
11 be discontinued if the Director of the Environmental Cleanup (ECL) Office, EPA Region 10,
12 requests, in writing, that work related to the dispute be stopped because, in EPA's opinion,
13 such work is inadequate or defective, and such inadequacy or defect is likely to yield an
14 adverse effect on human health or the environment, or is likely to have a substantial adverse
15 effect on the remedy selection or implementation process. To the extent possible, EPA shall
16 consult with the Navy prior to initiating a work stoppage request. After stoppage of work, if
17 the Navy believes that the work stoppage is inappropriate or may have potential significant
18 adverse impacts, the Navy may meet with the ECL Director to discuss the work stoppage.
19 Following this meeting, and further consideration of the issues, the ECL Director will issue,
20 in writing, a final decision with respect to the work stoppage. The final written decision of
21 the ECL Director may immediately be subjected to formal dispute resolution. Such dispute
22 may be brought directly to either the DRC or the SEC, at the discretion of the Navy.
23

24 9.9 Within 21 days of resolution of a dispute pursuant to the procedures specified in this
25 Part, the Navy shall incorporate the resolution and final determination into the appropriate
26 plan, schedule or procedures and proceed to implement this Agreement according to the
27 amended plan, schedule or procedures.
28

29 9.10 Resolution of a dispute pursuant to this Part of the Agreement constitutes a final
30 resolution of any dispute arising under this Agreement. All Parties shall abide by all terms
31 and conditions of any final resolution of dispute obtained pursuant to this Part of this
32 Agreement.
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X. ENFORCEABILITY

10.1 The Parties agree that:

10.1.1 on the effective date of this Agreement, any standard, regulation, condition, requirement or order which has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person pursuant to Section 310 of CERCLA and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under Sections 109 and 310(c) of CERCLA; and

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

10.1.3 all terms and conditions of this Agreement which relate to interim or final remedial actions, including corresponding timetables, Deadlines, or schedules, and all work associated with the interim or final remedial actions, shall be enforceable by any person pursuant to Section 310(c) of CERCLA, and any violation of such terms or conditions will be subject to civil penalties under Sections 310(c) and 109 of CERCLA; and

10.1.4 any final resolution of a dispute pursuant to this Agreement that establishes a term, condition, schedule, or Deadline shall be enforceable by any person pursuant to Section 310 of CERCLA, and any violation of such term, condition, schedule, or Deadline will be subject to civil penalties under Sections 109 and 310(c) of CERCLA.

10.2 Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any action or work where review is barred by any provision of CERCLA including Section 113(h) of CERCLA.

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

XI. STIPULATED PENALTIES

11.1 In the event that the Navy fails to submit a Primary Document, as listed in Part V (Review and Comment Process on Deliverables) to EPA pursuant to the appropriate timetable or Deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an interim or final remedial action, EPA may assess a stipulated penalty against the Navy. A stipulated penalty

1 may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and
2 \$10,000 for each additional week (or part thereof) for which a failure set forth in this
3 Paragraph occurs.

4
5 11.2 Upon determining that the Navy has failed in a manner set forth in Paragraph A, EPA
6 shall so notify the Navy in writing. If the failure in question is not already subject to dispute
7 resolution at the time such notice is received, the Navy shall have 15 days after receipt of the
8 notice to invoke dispute resolution on the question of whether the failure did in fact occur.
9 The Navy shall not be liable for the stipulated penalty assessed by EPA if the failure is
10 determined, through the dispute resolution process, not to have occurred. No assessment of a
11 stipulated penalty shall be final until the conclusion of dispute resolution procedures related
12 to the assessment of the stipulated penalty.

13
14 11.3 The annual reports required by Section 120(e)(5) of CERCLA shall include, with
15 respect to each final assessment of a stipulated penalty against the Navy under this
16 Agreement, each of the following:

- 17
18 1. The facility responsible for the failure;
- 19
20 2. A statement of the facts and circumstances giving rise to the failure
- 21
22 3. A statement of any administrative or other corrective action taken at
23 the Site, or a statement of why such measures were determined to be
24 inappropriate;
- 25
26 4. A statement of any additional action taken by or at the Site to prevent
27 recurrence of the same type of failure; and
- 28
29 5. The total dollar amount of the stipulated penalty assessed for the
30 particular failure.

31
32 11.4 Stipulated penalties assessed pursuant to this Part shall be payable to the Hazardous
33 Substances Response Trust Fund only in the manner and to the extent expressly provided for
34 in Acts authorizing funds for, and appropriations to, the DoD.

35
36 11.5 In no event shall this Part give rise to a stipulated penalty in excess of the amount set
37 forth in Section 109 of CERCLA.

38
39 11.6 This Part shall not affect the Navy's ability to obtain an extension of a timetable,
40 Deadline or schedule pursuant to Part XII of this Agreement.

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

XII. EXTENSIONS

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

1. The timetable and Deadline or the schedule that is sought to be extended;
2. The length of the extension sought;
3. The good cause(s) for the extension; and
4. Any related timetable and Deadline or schedule that would be affected if the extension were granted.

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

1. An event of *force majeure*;
2. Delay caused by another Party's failure to meet any requirement of this Agreement;
3. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
4. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and Deadline or schedule; and
5. Any other event or series of events mutually agreed by the Parties as constituting good cause.

12.3 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 whether good cause exists.

12.4 Within seven days of receipt of a request for an extension of a timetable and Deadline or a schedule, EPA shall advise the Navy in writing of its respective position on the request. Any failure by EPA to respond within the seven-day period shall be deemed to constitute concurrence in the request for extension. If EPA does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

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

12.6 Within seven days of receipt of a statement of nonconcurrence with the requested extension, the Navy may invoke dispute resolution.

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

XIII. FORCE MAJEURE

13.1 A *force majeure* shall mean any event arising from causes beyond the control of a Party that causes delay in or prevents the performance of any obligation under this Agreement, including, but not limited to, the following:

1. Acts of God; fire; war; insurrection; civil disturbance; or explosion;
2. Unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance;
3. Adverse weather conditions that could not be reasonably anticipated;
4. Unusual delay in transportation;

5. Restraint by court order or order of public authority;
6. Inability to obtain, at reasonable cost and after exercise of due diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the Navy;
7. Delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence;
8. Delays caused by any strike or other labor dispute, whether or not within the control of the Parties affected thereby; and
9. Insufficient availability of appropriated funds, if the Navy shall have made timely request for such funds as part of the budgetary process as set forth in Part XI of this Agreement. If such an event occurs, EPA shall be bound by this *force majeure* and shall not assess stipulated penalties.

13.2 *Force majeure* shall not include increased costs or expenses of response actions, whether or not anticipated at the time such response actions were initiated.

13.3 Any claim of *force majeure* shall be subject to dispute.

XIV. TRANSFER OF PROPERTY

14.1 Conveyance of title, easement, or other interest in property on the Site shall be in accordance with Section 120(h) of CERCLA, 42 U.S.C. § 9620(h), and the Navy shall notify EPA of any such intention at least 90 days prior to such proposed transfer.

14.2 Pursuant to Section 120(h) of CERCLA and Part 373 of the NCP, should the United States enter into a contract for the sale or other transfer of property within the Site, the United States will give notice of hazardous substances that have been stored, disposed of, or released on the property. Pursuant to Section 120(h)(3) of CERCLA, the United States will include in each deed entered into for the transfer of the property a covenant stating that the remedial action(s) are completed and any additional remedial action found to be necessary after the transfer shall be conducted by the United States. In addition to the covenants required by Section 120(h) of CERCLA, the Navy may include restrictive covenants/deed restrictions to effectuate the ROD, which appear in the conveyance document in the event of

1 transfer of the property to a non-federal entity. Such covenants/deed restrictions will address
2 any limits to remain in effect after the time of transfer to restrict land use, restrict the use of
3 groundwater, and manage excavation. The deed covenants will also include provisions
4 addressing the continued operation, maintenance, and monitoring of the selected remedy.
5

6 **XV. AMENDMENT OF AGREEMENT**

7

8 15.1 This Agreement may be amended by agreement of the Navy and EPA. Any such
9 amendment shall be in writing, shall have as the effective date that date on which it is signed
10 by both Parties, and shall be incorporated into this Agreement.

11 **XVI. SEVERABILITY**

12

13
14 16.1 If any provision of this Agreement is ruled invalid, illegal, or unconstitutional, the
15 remainder of the Agreement shall not be affected by such ruling.
16

17 **XVII. RESERVATION OF RIGHTS**

18

19 17.1 EPA reserves the right to issue orders and/or penalties pursuant to available statutory
20 authority, or to take any other enforcement action allowable by law, under the following
21 circumstances:
22

- 23 1. In the event or upon the discovery of a release or threatened release
24 not addressed by this Agreement and which the Parties choose not to
25 address by modification of this Agreement;
26
- 27 2. Upon EPA's determination that action beyond the terms of this
28 Agreement is necessary to abate an emergency situation which
29 threatens the public health or the environment; or
30
- 31 3. Upon the occurrence of discovery of a situation beyond the scope of
32 this Agreement, to which EPA would be empowered to take an
33 enforcement action and which the Parties choose not to address by
34 modification of this Agreement.
35

36 17.2 The Navy reserves all of its rights to contest any enforcement action brought under
37 this Part.
38
39
40
41

1 17.3 Consistent with this Part, for matters subject to this Agreement, EPA agrees to
2 exhaust their rights under Part XII, and remedies as provided in this Agreement, prior to
3 exercising any rights to administrative or judicial review that they may have.
4

5 **XVIII. TERMINATION**

6

7 18.1 Any Party may propose in writing that this agreement be terminated. Termination
8 requires agreement among all Parties. If the Parties fail to agree, any Party may invoke
9 dispute resolution. Upon completion of remediation, this Agreement shall terminate upon
10 written notice to the Navy of termination.
11

12 **XIX. RCRA/CERCLA INTEGRATION**

13

14 19.1 The Parties intend to integrate the Navy's CERCLA response obligations and RCRA
15 corrective action obligations which relate to the release of hazardous substances, hazardous
16 wastes, pollutants, or contaminants covered by this Agreement into this comprehensive
17 agreement. Therefore, the Parties intend that activities covered by this Agreement will be
18 deemed to achieve compliance with CERCLA, 42 U.S.C. § 9601 *et. seq.*; to satisfy the
19 corrective action requirements of Sections 3004(u) and (v) of RCRA, 42 U.S.C. § 6925(u)
20 and (v), for a RCRA permit, and Section 3008(h), 42 U.S.C. § 6928(h), for interim status
21 facilities; and to meet or exceed all applicable or relevant and appropriate federal and state
22 laws and requirements, to the extent required by Section 121 of CERCLA, 42 U.S.C. § 9621.
23

24 19.2 Based upon the foregoing, the Parties intend that any remedial action selected,
25 implemented and completed under this Agreement shall be deemed by the Parties to be
26 protective of human health and the environment such that remediation of releases covered by
27 this Agreement shall obviate the need for further corrective action under RCRA (i.e., no
28 further corrective action shall be required). The Parties agree that, with respect to releases of
29 hazardous waste covered by this Agreement, RCRA shall be considered an applicable or
30 relevant and appropriate requirement pursuant to Section 121 of CERCLA.
31

32 19.3 The Parties recognize that the requirement to obtain permits for response actions
33 undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP.
34 The Parties further recognize that on-going hazardous waste management activities at the
35 Site may require the issuance of permits under federal and state laws. This Agreement does
36 not affect the requirements, if any, to obtain such permits. However, if a permit is issued to
37 the Navy for on-going hazardous waste management activities at the Site, EPA shall
38 reference and incorporate any appropriate provisions, including appropriate schedules (and
39 the provision for extension of such schedules), of this Agreement into such permit. The
40 Parties intend that the judicial review of any permit conditions which reference this
41

1 Agreement shall, to the extent authorized by law, only be reviewed under the provisions of
2 CERCLA.

3
4 19.4 Nothing in this Agreement shall alter the Navy's authority with respect to removal
5 actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.


6
7 **XX. EFFECTIVE DATE**

8
9 20.1 This Agreement shall be effective upon signature by all Parties to this Agreement.

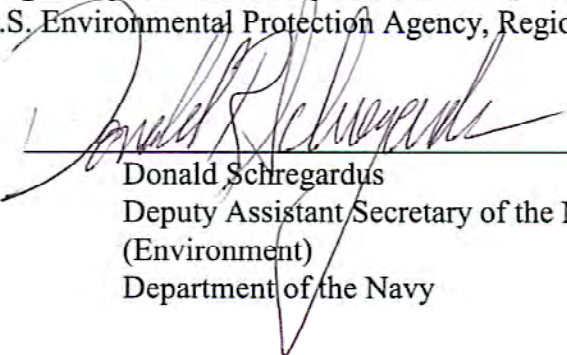
XXI. APPROVAL OF AGREEMENT

21.1 Each undersigned representative of a Party certifies that he or she is fully authorized to enter into this Agreement and to legally bind such Party to this Agreement.

Signature sheet for the foregoing Interagency Agreement for the Jackson Park Housing Complex/Naval Hospital Bremerton, between the U.S. Department of the Navy and the U.S. Environmental Protection Agency, Region 10.

BY:  DATE: 11/1/04
~~L. John Iani~~ Ronald A. Kreizenbeck
Acting Regional Administrator
U.S. Environmental Protection Agency

Signature sheet for the foregoing Interagency Agreement for the Jackson Park Housing Complex/Naval Hospital Bremerton, between the U.S. Department of the Navy and the U.S. Environmental Protection Agency, Region 10.

BY:  DATE: 10/26/2004
Donald Schregardus
Deputy Assistant Secretary of the Navy
(Environment)
Department of the Navy