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- (h) Identify Removal Actions which are appropriate for the Site in accordance with the terms of this Agreement and provide timely notice to the other Parties of such proposed actions.

## II. PARTIES AND SCOPE OF AGREEMENT

- 2.1 The Parties to this Agreement are the EPA, the National Guard Bureau (NGB) (representing all United States Department of Defense (DOD) agencies who own or control property at the Site) and the United States Coast Guard (USCG). The terms of the Agreement shall apply to and be binding upon EPA, NGB, and USCG.
- 2.2 In selecting contractors to perform Work associated with the Site, the Federal Parties will comply with the Federal Acquisition Regulation (FAR) Subpart 9.4, 48 C.F.R. Subpart 9.4 and 40 C.F.R. Part 32.
- 2.3 Each Party shall be responsible for ensuring that its contractors receive a copy of and comply with the terms and conditions of this Agreement. Failure of NGB and USCG to provide proper direction to its contractors and any resultant noncompliance with this Agreement by a contractor shall not be considered a Force Majeure event or other good cause for Extensions under Section XV (Extensions), unless the Parties so agree. The Parties, upon selection of a contractor and when practicable in advance of their contract performance, shall notify the other Parties to this Agreement of the identity and of the assigned tasks of said contractor.
- 2.4 This Agreement shall apply to and be binding upon the Parties, their respective officers, successors in office, agents and employees and shall not be construed as an agreement to indemnify any person unless specifically provided herein. The NGB and the USCG shall provide notice, or a copy of this Agreement, to appropriate members, employees, agents, lessees and Response Action contractors of the existence of this Agreement. The NGB and USCG agree to include notice of this Agreement in any document transferring ownership or control to any subsequent owners and operators of any portion of the Federal Facility in accordance with CERCLA § 120(h), 40 C.F.R. §§ 264.119 and 264.120 and shall notify EPA of any such change of ownership or control at least sixty (60) days prior to such transfer. This Agreement shall also be binding upon any successors in

interest of either or both the NGB and USCG.

- 2.5 The scope of this Agreement extends to the entire Site, as defined at Section III 3.1 (f,f) herein. The Parties agree that the entire Site is listed as an EPA Superfund Site and therefore the Site cannot be removed from the NPL until EPA determines, in accordance with CERCLA, and this Agreement, that the Site no longer poses a threat to public health, welfare and the environment. Further, the Parties agree that due to the complexity of the Remedial Action(s) at the Site and the methods utilized to identify Hazardous Substances at the Site, Response Actions at the Site shall occur in discrete locations called Study Areas (SA), Areas of Contamination (AOC), or Operable Units (OU) identified at the Site pursuant to this Agreement. For each Study Area, Area of Contamination, or Operable Unit the NGB shall perform all applicable Work identified in Paragraphs 2.6, 2.7 and 2.8 below in accordance with the requirements of this Agreement.
- 2.6 The NGB shall develop, implement and report upon Site Inspections (SI), Decision Documents (DD) and Remedial Investigations (RI) at the Site for each AOC or OU in accordance with Section VI (Work To Be Performed) of this Agreement, the NCP and applicable EPA policy and guidance. All SI, DD, and RI documents, including all those SI, DD, and RI documents produced by the NGB but not reviewed by the EPA prior to the Effective Date of this Agreement, shall be subject to the review and comment procedures described in Section VII (Consultation with EPA), of this Agreement. All SI and RI activities at the Site shall be conducted in accordance with the requirements and Deadlines set forth in Appendix III and Section XIV (Deadlines and Schedules), of this Agreement. All SI and RI activities shall be designed to meet the purposes set forth in Section I (Purpose), of this Agreement.
- 2.7 The NGB shall develop, implement and report upon Feasibility Studies (FS) for each AOC or OU at the Site in accordance with Section VI (Work To Be Performed) of this Agreement, the NCP and applicable EPA regulations, policy and guidance. All Feasibility Study documents, including all those FS documents relating to the Site produced by the NGB but not reviewed by the EPA prior to the Effective Date of this Agreement shall be subject to the review and comment procedures described in Section VII (Consultation with EPA), of this Agreement. All FSs shall be conducted in accordance with the requirements and Timetables set forth in Appendix III and Section XIV (Deadlines and Schedules), of this Agreement. All FSs shall meet the purposes set forth in Section I (Purpose), of this Agreement.
- 2.8 The NGB shall perform Remedial Design, Remedial Action

(RD/RA) and Operation and Maintenance activities at the Site in accordance with CERCLA § 120(e)(2), Section XVII (Records of Decision and Plans for Remedial Action), of this Agreement, CERCLA, the NCP, RCRA and applicable regulations thereof.

- 2.9 Any decision to close the Federal Facility will not affect the NGB or USCG obligation to comply with all the terms of this Agreement. Base closure will not constitute a Force Majeure under Section XVI, (Force Majeure), nor will it constitute good cause for Extensions under Section XV (Extensions), unless mutually agreed by the Parties.

### III. DEFINITIONS

- 3.1 The terms used in this Agreement shall have the same definitions as the terms defined in CERCLA and the National Contingency Plan (NCP) unless specifically otherwise defined in this Agreement. The following terms used in this Agreement are defined as follows:

- (a) "Additional Work" shall mean all activities required by Paragraphs 7.9, 19.3 and 32.4 herein;
- (b) "Agreement" shall refer to this document and shall include all Appendices to this Agreement. Copies of Appendices shall be available as part of the Administrative Record as provided in Section XXXVII. All such Appendices shall be appended to and made part of this Agreement and shall be enforceable hereunder;
- (c) "ARARS" shall mean Federal and State Applicable or Relevant and Appropriate Requirements, standards, criteria, or limitations, identified pursuant to CERCLA § 121. ARARS shall apply under this Agreement in the same manner and to the same extent that ARARS are applied to a non-Federal Facility pursuant to CERCLA § 120(a)(1) and the NCP;
- (d) "Area of Contamination" or "AOC" shall mean (1) Any of the areas listed or described in Section V (Findings of Fact), Paragraph 5.24, of this Agreement as an Area of Contamination, including any area or any group of areas, to or under which a release of Hazardous Substances has come to be located, or threatens to migrate, from any of the above listed areas and as to which a Site Inspection has been completed recommending further action is warranted pursuant to CERCLA or the NCP; and (2) any area or location or group of areas or locations, where a Hazardous Substance has been

deposited, stored, disposed of, or placed, or otherwise come to be located within the Site boundaries and identified by any of the Parties or their agents and added to this Agreement pursuant to Section VI (Work To Be Performed) of this Agreement and as to which a Site Inspection has been completed recommending further action is warranted pursuant to CERCLA or the NCP.

- (e) "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499 and any subsequent amendments;
- (f) "Cleanup Standard(s)" shall mean the numerical criteria representing the degree of cleanup to be achieved at the Site as set forth in each Record of Decision (ROD);
- (g) "Commonwealth" shall mean the Commonwealth of Massachusetts and its employees, agents, authorized representatives, successors and assigns;
- (h) "Comprehensive Plan" shall mean the Primary document which establishes a process for assessing environmental contamination at the Massachusetts Military Reservation and that describes the implementation of the Response Action process, including identification of Study Areas, Site Inspection, Remedial Investigation/Feasibility Study, Remedial Design, Remedial Action and any modifications thereto in accordance with this Agreement. The Comprehensive Plan outlines the philosophy underlying the investigation and Response Actions for all Study Areas, Areas of Contamination and Operable Units. The Comprehensive Plan shall be consistent with CERCLA and the NCP. Any conflict between the Comprehensive Plan and this Agreement shall be resolved by this Agreement;
- (i) "Day" or "Days" means calendar day(s), unless business day(s) are specified. Any submittal or written statement of dispute which under the terms of this Agreement would be due on Saturday, Sunday, or a holiday shall be due on the next occurring business day;
- (j) "Deadline(s)" shall be the time limitation applicable to issuance by the NGB of all Primary

documents up to and including all Record of Decisions (RODs) for which a limitation has been specifically established under the terms of this Agreement;

- (k) "Decision Document" shall mean the document that supports the determination that a Remedial Investigation/Feasibility Study is not required at a Study Area.
- (l) "EPA" shall mean the United States Environmental Protection Agency, its employees, agents, authorized representatives, successors and assigns;
- (m) "Federal Facility" and "Massachusetts Military Reservation (MMR)" shall mean the real property comprising the Massachusetts Military Reservation as described in the EPA Hazard Ranking Scoring package titled "Otis ANGB: UTEs AND PDO sites (Camp Edwards)". Such real property is located on the "upper" western portion of Cape Cod within or bounded by Bourne, Mashpee, Falmouth and Sandwich in Barnstable County, Massachusetts, approximately 60 miles south of Boston, Massachusetts and comprising approximately 22,000 acres. For purposes of this Agreement the term Federal Facility, Massachusetts Military Reservation and MMR shall include such real property even if later transferred from ownership or control of the United States or an agency or department thereof;
- (n) "Feasibility Study" or "FS" shall mean a study conducted pursuant to CERCLA and the NCP, which fully develops, screens and evaluates in detail Remedial Action alternatives to prevent, mitigate, or abate the migration or the release or threatened release of Hazardous Substances, pollutants or contaminants at and from the Site, an Area of Contamination or any aggregate or combination of Areas of Contamination or OU, which satisfies the same requirements;
- (o) "Hazardous Substance(s)" shall mean all those substances which are included under CERCLA § 101(14), 42 U.S.C. § 9601(14); and as hazardous constituents under RCRA § 3008(h) and 40 C.F.R. Part 261 Appendix VII;
- (p) "Meeting" when used in reference to the Parties Project Managers shall mean an in-person meeting at a single location. A conference call will suffice for an in-person meeting at the

concurrence of the Project Managers;

- (q) "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan and any subsequent amendments, promulgated pursuant to CERCLA and found at 40 C.F.R. Part 300;
- (r) "NGB" shall mean the National Guard Bureau, a bureau of the United States Department of Defense, its employees, members, agents, and authorized representatives as well as 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;
- (s) "Operable Unit" or "OU" shall have the same meaning as in the NCP;
- (t) "Operation and Maintenance" or "O&M" shall mean the portion(s) of the Response Action(s) required to maintain its effectiveness;
- (u) "Parties" shall mean the NGB, EPA, and USCG;
- (v) "Performance Standard(s)" shall mean the criteria representing the degree and method of cleanup to be achieved at the Site, including all location-, chemical-, and action- specific ARARs identified in a ROD and the Comprehensive Plan, or by the EPA prior to Certification of the Completion of the Work; and all other health or environmentally related numerical standards in the ROD. Performance Standards include all Cleanup Standards;
- (w) "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et. seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616 and any subsequent amendments;
- (x) "Remedial Design" or "RD" shall have the same meaning as provided in the NCP;
- (y) "Record of Decision" or "ROD" shall mean a public document that describes the Remedial Action alternative(s) selected to be implemented as one or more Operable Units at Areas of Contamination and the basis for the selection. The ROD shall be based on information and technical analysis generated during the RI/FS and consideration of

public comments and community concerns;

- (2) "Remedial Investigation" or "RI" shall mean that investigation conducted pursuant to CERCLA and the NCP. The RI serves as a mechanism for collecting data for site and waste characterization and conducting treatability studies as necessary to evaluate performance and cost of the treatment technologies. The data gathered during the RI will also be used to conduct a risk assessment appropriate to the scope of the RI, including characterization of risk of harm to the public health, welfare and the environment, to perform a Feasibility Study, evaluation of the natural resources damaged by the releases or threatened releases of Hazardous Substances, and to support the design of a selected remedy;
- (a,a) "Remedy" or "Remedial Action" or "RA" shall have the same meaning as provided in CERCLA § 101(24), 42 U.S.C. § 9601(24), and the NCP, and may consist of one or more Operable Units;
- (b,b) "Remove" or "Removal" shall have the same meaning as provided in CERCLA § 102(23), 42 U.S.C. § 9601(23);
- (c,c) "Response Action(s)" shall mean all Removal and Remedial Actions including enforcement activities related to the Site;
- (d,d) "Risk Assessment" shall mean the baseline risk assessment as described in the "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, Interim Final", EPA OSWER Directive 9355-01, as amended, unless the context of the use of the term clearly indicates that some other risk assessment method is identified and intended;
- (e,e) "Schedule(s)" shall mean the time limitations established for the completion of all post ROD activities and documents established pursuant to this Agreement;
- (f,f) "Site" shall encompass land owned, operated, controlled, leased, licensed or used by right of easement by any department or agency of the United States Government in the past and at the present time at the Federal Facility known as the Massachusetts Military Reservation or any area off the Federal Facility to or under which a release of Hazardous Substances has migrated, or threatens

to migrate, from a source on or at Massachusetts Military Reservation. For purposes of obtaining permits, the term "on-Site" shall include areas within the MMR facility, the areal extent of contamination therefrom, and all suitable areas in close proximity to the contamination necessary for implementation of Response Actions;

- (g,g) "Site Inspection " or "SI" shall mean an on-Site investigation to determine whether a release or potential release exists and the nature of the associated threats to the public health, welfare and environment. Sampling and other field data shall be used to augment the Preliminary Assessment (PA) and determine if further investigation or Response Action is required. Such SI shall be conducted to satisfy CERCLA, CERCLA guidance, and the NCP, as supplemented by the substantive provisions of the EPA RCRA Facilities Assessment guidance;
- (h,h) "State" shall mean the Commonwealth of Massachusetts and its employees, agents, authorized representatives, successors and assigns;
- (i,i) "Study Area" or "SA" shall mean an area or areas within the Site, identified pursuant to a PA, or this Agreement, as an area of potential contamination. If, pursuant to the Site Inspection, it is determined that further action is warranted, an RI/FS shall be conducted and the area shall henceforth be designated an Area of Contamination. If a Site Inspection determines that no further action is warranted, a Decision Document shall be prepared to remove the Study Area from the remedial process;
- (j,j) "Timetable(s)" shall be the collective terms for all Deadlines and Schedules established pursuant to this Agreement;
- (k,k) "Technical Environmental Affairs Committee" or "TEAC" shall mean the Committee of federal, State and local government and community representatives as defined at 10 USC § 2705(c) established at MMR in 1985;
- (l,l) "Work" shall mean activities or obligations required by this Agreement and the Comprehensive Plan, including but not limited to SI, RI/FS, RD/RA, Operation and Maintenance (O&M) and any

activities required to be undertaken pursuant to Section VI or the Comprehensive Plan;

- (m,m) "USCG" shall mean the United States Coast Guard, a bureau of the United States Department of Transportation, its employees, members, agents and the Department of Transportation to the extent necessary to effectuate the terms of this Agreement, including, but not limited to, appropriations and Congressional reporting requirements.

#### IV. JURISDICTION

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

- (a) The EPA enters into those portions of this Agreement that relate to SI, RI/FS pursuant to CERCLA § 120(e)(1) and Executive Order 12580;
- (b) EPA enters into those portions of this Agreement that relate to Areas of Contamination, Operable Units, and all final Remedial Actions pursuant to CERCLA § 120(e)(2), and Executive Order 12580;
- (c) The NGB enters into those portions of this Agreement that relate to the SI, DD, RI/FS, Interim, and final Remedial Actions pursuant to CERCLA § 120(e)(1) and (2), Executive Order 12580, and the Defense Environmental Restoration Program (DERP), 10 U.S.C. § 2701 et. seq.;
- (d) The USCG enters into those portions of this Agreement that relate to the SI, DD, RI/FS, Interim, and final Remedial Actions pursuant to CERCLA § 120(e)(1) and (2), and Executive Order 12580, and the Coast Guard Environmental Compliance and Restoration Program, PL 101-225, § 222.

#### V. STATEMENT OF FACTS

##### A. SITE HISTORY

- 5.1 The Massachusetts Military Reservation (MMR) is located on the "upper" western portion of Cape Cod in Barnstable County, Massachusetts, approximately 60 miles south of Boston. The towns of Bourne, Falmouth, Sandwich and Mashpee

are within and border upon the MMR, which occupies almost 22,000 acres.

- 5.2 Military use of the area, now known as the MMR, has occurred since 1911. Since 1935, the MMR has been used for military training and maneuvers, military aircraft operations, and maintenance and support activities. The most intensive periods of activity occurred between 1940-1946 and 1955-1970.
- 5.3 In 1940, the U.S. Army signed a ninety-nine (99) year lease with the Commonwealth for the use of MMR (originally called Camp Edwards). The lease signed between the United States and the Commonwealth placed complete control of Camp Edwards with the United States. The lease did not provide the Commonwealth with a right to break or revise the lease in any way. In 1953, Congress approved the transfer of the post to the Department of the Air Force, for the purpose of operating an air base and supporting facilities. The Air Force held the primary lease with the Commonwealth from 1953-1974. From 1953 to 1974 the Air Force sub-leased the 14,000 acres of Camp Edwards back to the Army. In 1974, the Department of Defense reorganized control of MMR. The Air Force deleted approximately 16,000 acres from its lease with the Commonwealth. The Commonwealth, contemporaneously with the deletion of property from the Air Force lease, signed separate leases with the U.S. Army for 14,000 acres at MMR and the Department of Transportation (Coast Guard) for 1,400 acres at MMR. At the same time, the Commonwealth conveyed 750 acres of MMR to the Veterans Administration to be used as a National Cemetery. In 1973, the Air Force licensed the Massachusetts Air National Guard (ANG) to use and occupy Otis Air Force Base, and in 1975, the Army licensed the Massachusetts Army National Guard to use and occupy Camp Edwards.
- 5.4 Each of the three U.S. federal agencies, Army, Air Force and Coast Guard, are separate and distinct lessors from the Commonwealth. The Veterans Administration owns 750 acres and the Air Force owns approximately 1300 acres at MMR. This situation has created a military complex with no single agency responsible for control of the site on a day-to-day basis or for CERCLA remedial activities. However, based upon provisions in the Air Force lease, statutory authority of the National Guard Bureau (NGB), and a series of formal and informal agreements between the tenants at MMR, the NGB has acquired the primary responsibility of operating and maintaining the MMR and over CERCLA Response Actions at MMR.
- 5.5 The MMR can be divided into three main areas: (1) the 5,000 acre cantonment located in the southern portion of the reservation where Army, Air National Guard, and Coast Guard facilities include aircraft runways, access roads, aircraft

and vehicle maintenance facilities, and housing and personnel support facilities; (2) the 14,000 acre range which is used for a U.S. Air Force Radar Installation and general Army National Guard and Army Reserve training and maneuvers; and (3) the 750 acre Veterans Administration Cemetery, located on the western edge of MMR. A map contained in Attachment (1) shows the various areas within MMR.

- 5.6 The cantonment area has been the most actively used area of the MMR. During World War II, U.S. Army operations in the cantonment included servicing large motor pools, some with as many as 400 vehicles. Between 1955 and 1972, when U.S. Air Force operations were at a peak, the MMR experienced its highest levels of activity in the cantonment. The generation, use and disposal of petroleum products, aviation and motor fuels, solvents, spent acids, laboratory chemicals and wastes were widespread.
- 5.7 In 1978, the Town of Falmouth detected contaminants in a drinking water well located approximately 7,500 feet south of the MMR wastewater treatment plant. As a result of subsequent investigations, the DEP ordered the use of the Falmouth well discontinued in 1979. In an agreement with the Town, the NGB paid for the connection to the municipal water system.
- 5.8 In 1982, the DOD initiated the Installation Restoration Program (IRP) at the Otis Air National Guard portion of MMR. The IRP is designed to identify and evaluate potential hazardous waste sites at military bases. Phase I included a records search of past disposal activities, while Phase II, which occurred in 1983 and 1984, included groundwater and soil sampling of areas identified during Phase I. In 1985, the DOD closed one of two on-site wells serving the majority of MMR residents when sampling detected elevated levels of volatile organic compounds in the MMR water supply.
- 5.9 The NGB expanded the IRP program in 1986 to include investigations of hazardous waste sites at all military units at MMR. Also in 1986, the DEP began to actively review and oversee the expanded IRP program and to meet with NGB personnel to evaluate site investigation reports. The Phase I portion included a records search, an evaluation of past records searches and sampling and analysis results, and interviews with past and present MMR personnel. This resulted in the identification by the NGB of seventy-three (73) locations where contamination was suspected to exist. The Parties acknowledge that this list may require amendment.
- 5.10 In late 1986, Phase II site inspections commenced at twenty-one (21) Study Areas (SA). These inspections

included installation of groundwater monitoring wells, and groundwater, soil, surface water and sediment sampling. Sampling results indicated the presence of volatile organic compounds (VOCs), polychlorinated biphenyls (PCBs), polynuclear aromatic hydrocarbons (PAHs), and other semi-volatile organic compounds, waste oils and metals.

5.11 In March 1987, the DEP issued a Notice of Responsibility (NOR) to the tenants of MMR, notifying the agencies of their responsibility to conduct hazardous waste site assessment activities and Remedial Actions at MMR in accordance with M.G.L. Ch. 21E.

5.12 Of the original 73 Study Areas:

twelve (12) were combined with other Study Areas;

fifteen (15) were proposed for "No Further Action" by the NGB;

three (3) were proposed for deletion from the list; and,

forty-three (43) were identified by the NGB as appropriate for further evaluation;

NGB and DEP signed a No Further Action Decision Document for one (1) Study Area in January 1989. In May 1990, EPA and the State agreed with the NGB that eleven (11) of the fifteen (15) Study Areas were appropriate for No Further Action. EPA is currently reviewing the data for three (3) Study Areas proposed for deletion and one (1) Study Area proposed for No Further Action.

5.13 In 1986 and 1987, at the request of the Town of Mashpee and of residents from the Briarwood section of Mashpee (Briarwood), which is located on the southern portion of MMR, the Barnstable County Health and Environmental Department sampled private wells in this area. Sampling results indicated VOC levels for trichloroethylene (TCE) and tetrachloroethylene (PCE) exceeding federal and State drinking water standards in seven (7) wells. The DEP issued a letter to the NGB requesting that bottled water be provided to all residents in Briarwood, and that arrangements be made to develop a permanent drinking water supply. In 1988 the NGB proposed to supply drinking water to seven (7) homes in Briarwood where contamination concentrations exceeded the federal maximum contaminant levels (MCLs). The DEP considered this response to be inadequate and provided bottled water to the entire Briarwood community threatened by VOC contamination of its water supply from 1988 to July 1990, when a new connection to the Falmouth, Massachusetts water supply was to be

completed. A new water supply connection to the Falmouth water system has now been completed.

- 5.14 In July 1989, EPA proposed the MMR be placed on the National Priorities List (NPL). EPA formally added the MMR site to the NPL on November 21, 1989.
- 5.15 Subsequent to the final listing on the NPL, investigations at MMR have resulted in the identification of four (4) additional areas which will require further investigation (see referenced list in Section 5.24).
- 5.16 For the purposes of this Agreement, the foregoing constitutes a summary of findings upon which this Agreement is based. None of the facts related herein shall be considered an admission by any party, and they shall not be used by any person related or unrelated to this Agreement for purposes other than determining the basis of and enforcing this Agreement.

#### B. DETERMINATIONS

- 5.17 The Massachusetts Military Reservation (MMR) was listed on the National Priorities List (NPL) update of November 21, 1989, 54 Fed. Reg. 134 and is therefore subject to the special provisions for Federal Facility NPL sites in CERCLA § 120.
- 5.18 The MMR is located within or bounded by the towns of Bourne, Falmouth, Sandwich and Mashpee, Massachusetts and is, or has been, at all times relevant to this Agreement controlled by the United States of America.
- 5.19 The MMR is a facility under the jurisdiction, custody, or control of the DOD and USCG, within the meaning of Executive Order 12580, 52 Fed. Reg. 2923, January 29, 1987 and within the meaning of DERP, 10 U.S.C. § 2701 et seq., and CERCLA § 120, 42 U.S.C. §9620. The National Guard Bureau (NGB) is authorized to act on behalf of the Secretary of Defense for all functions delegated by the President through Executive Order 12580 which are relevant to this Agreement.
- 5.20 In 1982, the DOD initiated an Installation Restoration Program (IRP) designed to identify and remediate Hazardous Substance contamination on the Otis Air Force Base portion of MMR that threatened the public health, welfare and environment. The NGB took over the IRP program in 1986 and expanded it to include investigations of the entire MMR. These investigations identified seventy-three (73) areas where Hazardous Substance contamination was suspected to exist. A description of the areas identified during the

investigations are included below at Paragraph 5.24.

- 5.21 The authority of the NGB to exercise the delegated Removal authority of the President pursuant to CERCLA § 104, 42 U.S.C. § 9604 is not altered by this Agreement.
- 5.22 The actions to be taken pursuant to this Agreement are reasonable and necessary to protect the public health, welfare and environment.
- 5.23 On the basis of the facts described in Section V of this Agreement, EPA has determined that:
- (a) The Site is a Federal Facility pursuant to CERCLA § 120(a), 42 U.S.C. § 9620;
  - (b) The Site is a Facility within the meaning of § 101(9) of CERCLA, 42 U.S.C. § 9601(9);
  - (c) Hazardous Substances, pollutants, or contaminants within the meaning of CERCLA §§ 101(14) and 104(a)(2), 42 U.S.C. §§ 9601(14) and 9604(a)(2), including, but not limited to, trichloroethylene, tetrachloroethylene, PCBs, benzene, xylene and toluene have been disposed of and have come to be located at the Site;
  - (d) There have been releases and there continue to be releases and threatened releases of Hazardous Substances, pollutants, or contaminants into the environment within the meaning of CERCLA §§ 101(22), 104, 106, and 107, 42 U.S.C. §§ 9601(22), 9604, 9606, and 9607, at and from the Site; and
  - (e) With respect to those releases and threatened releases at the Site, the NGB, and the USCG, are each a responsible person within the meaning of CERCLA § 107, 42 U.S.C. § 9607.

5.24 As of the Effective Date of this Agreement, the following Study Areas and Areas of Contamination (AOC) have been identified by the Parties:

<u>AOC/IRP Identifier</u>	<u>Description</u>	<u>NCP Status</u>
1 SD-1	Storm Drainage Disposal Site	DD

2	SD-2/FS-6/ FS-8/FS-10/FS-11	Storm Drainage Disposal Site/Airfield Apron/Airfield Apron/Fuel Storage Area PFSA/Fuel Storage Area	# RI/FS
3	SD-4	Storm Drainage Disposal Site	SI
4	SD-5/FS-5	Storm Drainage Disposal Site/Apron Near Aquafarm	# RI/FS
5	LF-1	MMR Main Sanitary Landfill	# RI
6	LF-3	Northeast Landfill	SI
7	LF-4	John's Pond Dump-Off Base	PA
8	LF-5	VA Cemetery Rubble Landfill	DD
9	LF-6	US Navy Rubble Landfill	DD
10	LF-7	Radon Tube Burial Landfill	DD
11	CS-1	North Truck Road Motor Pool	SI
12	CS-2	East Truck Road Motor Pool	SI
13	CS-3/FS-23	South Truck Road Motor Pool/South Truck Road Fuel Spill	SI
14	CS-4	West Truck Road Motor Pool	# RI/FS
15	CS-5	Former Refueler Maintenance Shop B/3437	SI
16	CS-6/FS-22	Current ANG Maintenance Shop B/754/ANG Motor Pool	SI
17	CS-7	OMS-6, B/2806	DD
18	CS-8/FS-21	OMS-22, S-2/Current Product Tank 90	DD
19	CS-9	Former Main USAF Motor Pool- 4100 Block	SI
20	CS-10/FS-24	UTES/BOMARC Site-4600 Block/BOMARC Site	# RI
21	CS-11	ARNG/ANG Pest Control Shop, B/1131	SI
22	CS-12	VA Cemetery and Grounds Shop	DD
23	CS-13	Former Contractor's Yard near Well J	PA
24	CS-14	Building 156 Leach Pit	SI
25	CS-15	Former Engine Run-up Area	SI

26	CS-16/CS-17	Sewage Treatment Plant/Former Sewage Sludge Disposal Area	#	RI/FS
27	CS-18	Propellant Burning Area		PA
28	FS-1	Aviation Gasoline (AVGAS) Fuel Valve Test Dump Site	#	RI/FS
29	FS-2	Railroad Fuel Pumping Station	#	RI/FS
30	FS-3	Johns Pond Road Fuel Dump Site		SI
31	FS-4	Current Product Tanks 100/101		SI
32	FS-7	Current Product Tank 115		SI
33	FS-9	Current Product Tank 108		SI
34	FS-12	Underground Fuel Line Range		SI
35	FS-13	Underground Fuel Line Cantonment		PA
36	FS-14	Range E-3		SI
37	FS-15	Runway #5		DD
38	FS-16	Army Helicopter Maintenance B/2816		DD
39	FS-17	Former WW II Motor Pool/Fuel Transfer Point		SI
40	FS-18	Fuel Transfer Point		SI
41	FS-19	Former Motor Gasoline (MOGAS)/Fuel Storage/Fuel Transfer Point		SI
42	FS-20	Current Product Tank 88		DD
43	FTA-1	Current Fire Training Area (CFTA)	#	RI/FS
44	FTA-2/LF-2	Former Fire Training Area (1948-1958)/Original Base Landfill	#	RI/FS
45	FTA-3/SD-3	Former Fire Training Area (1956-1958)/Storm Drainage Disposal Site	#	RI/FS
46	CY-1	Former Army Coal Storage Yard		PA
47	CY-2	Former USAF/ANG Coal Storage Yard		DD
48	CY-3	Former Hospital/VA Coal Storage Yard		PA
49	CY-4	Current Coal Storage Yard		PA

50	CS-1(USCG)	USCG Transmitter Site	#	RI
51	CS-2(USCG)	Hangar 3170 Areas (USCG)		SI
52	CS-3(USCG)	BX Service Station (USCG)		SI
53	CS-4/FS-1(USCG)	Hangar 128 Area (USCG)/Hangar 128 Fuel Spill		SI
54	CS-5(USCG)	Carpentry Shop		DD
55	CS-6(USCG)	Other USCG Maintenance Shops		DD
56	CS-7(USCG)	Dry Cleaning Facility		DD
57	FS-2(USCG)	Hot-Mix Asphalt Plant (USCG)		SI
58	LF-1(USCG)	Rubble Landfill		SI
59	LF-2(USCG)	Rubble Landfill		DD
60	LF-3(USCG)	Rubble Landfill		DD
61	FS-25*	Building 167 Area Fuel Spill	#	RI/FS
62	FS-26*	USCG Building 3444 Fuel Tank Area		SI
63	FS-27*	Connery Ave. Telephone Line Soil Excavation		SI
64	CS-19*	Impact Range Chemical Dump Site		SI

NOTE: \* denotes the Study Area identified since the completion of the Preliminary Assessment.

NOTE: # denotes an Area of Contamination identified as of the Effective Date of the Agreement. A Study Area at the SI stage may either be eliminated from the Remedial Action at the Site through a Decision Document or become identified as an Area of Contamination by the SI.

NOTE: A map identifying the Study Areas and Areas of Contamination as of the Effective Date of the Agreement is included as Attachment (2).

## VI. WORK TO BE PERFORMED

6.1 The Parties agree to perform the applicable tasks, obligations and responsibilities described in this Agreement

and the Comprehensive Plan in accordance with CERCLA, CERCLA guidance and policy, the NCP, Executive Order 12580, applicable State laws and all terms and conditions of this Agreement including documents prepared and incorporated in accordance with Section VII, (Consultation with EPA). For the purposes of this Agreement only, the NGB shall be considered the lead agency as described in Executive Order 12580. The NGB shall be primarily responsible for investigation, design, construction, and Operation and Maintenance of all Response Actions at the Site.

- 6.2 With respect to integration of past or ongoing Work into Work required by this Agreement, it is the intent of the Parties that documents completed and data generated prior to the Effective Date of this Agreement be utilized as elements of the SI and RI/FS documents required under this Agreement to the maximum extent practicable without violating CERCLA, CERCLA guidance and policy, the NCP, Federal and State ARARS; and without jeopardizing the technical integrity of any SI or RI/FS based upon such data. The NGB need not halt currently ongoing Work but may be obligated to modify or supplement Work previously done to produce a final product which meets the requirements of this Agreement.
- 6.3 In order to facilitate and expedite the Parties' intent as described in Paragraph 6.2, the EPA has reviewed the documents and data generated by the NGB prior to the Effective Date of the Agreement. Identified in Appendix I is a list of the documents reviewed and the action(s) required to complete or modify such documents in order to satisfy the requirements of Paragraph 6.2, and the general requirements of this Agreement. Identified in Appendix II are documents completed prior to the Effective Date of this Agreement that EPA will review in accordance with the procedures outlined in Section VII below, within 120 days of the Effective Date of this Agreement.
- 6.4 The NGB and the USCG agree to undertake, seek adequate funding for, fully implement and report on the following tasks, with participation of the Parties as set forth in this Agreement and the Comprehensive Plan:
- (a) Site Inspections of all Study Areas consistent with this Agreement and the Comprehensive Plan;
  - (b) Remedial Investigations of all Areas of Contamination;
  - (c) Feasibility Studies for all Areas of Contamination;
  - (d) Proposed Plans and RODs for all Areas of Contamination;

- (e) Remedial Actions and Remedial Designs for all Areas of Contamination consistent with the Record of Decision;
- (f) Operation and Maintenance of Remedial Actions at the Areas of Contamination consistent with the Record of Decision;

6.5 The Parties agree to:

- (a) Make their best efforts to expedite the performance of their respective responsibilities under this Agreement;
- (b) Conduct all activities under this Agreement so as to protect the public health, welfare and the environment.

6.6 Any location on the Site which is identified by a Party pursuant to this Agreement and the Comprehensive Plan as a Study Area or AOC after the Effective Date of this Agreement shall be added to the list of Study Areas and AOC in Paragraph 5.24 as an additional Study Area or Area of Contamination to be investigated and remediated pursuant to the requirements pertaining to Study Areas or AOC under this Agreement and the Comprehensive Plan. Notice to the public of all AOC identified by the Parties after the Effective Date of this Agreement shall be provided pursuant to Paragraph 28.3 of this Agreement.

6.7 With respect to the Work to be completed at the Site, the NGB and USCG agree that all Work conducted pursuant to this Agreement, and the Comprehensive Plan, shall be funded jointly by the NGB and USCG. The NGB and USCG agree the NGB shall conduct, and be responsible for, completion of all Work activities required at the Site pursuant to this Agreement and the Comprehensive Plan. Any Agreement between the NGB and USCG that the NGB shall perform the Work does not relieve the USCG of joint and several liability under this Agreement.

## VII. CONSULTATION WITH EPA

### Review and Comment Process for Draft and Final Documents

#### 7.1 Applicability:

The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate notice, technical support, review, comment, and

response to comments regarding documents, specified herein and in the Comprehensive Plan as either Primary or Secondary Documents. In accordance with CERCLA § 120, 42 U.S.C. § 9620, and 10 U.S.C. § 2705, the NGB shall be responsible for issuing Primary and Secondary Documents to EPA, unless otherwise agreed to by all Parties in writing. As of the Effective Date of this Agreement, all draft and final reports for any deliverable document(s) identified herein, including any SI, RI/FS and RD/RA documents relating to this Site prepared prior to the Effective Date of this Agreement, shall be prepared, distributed and subject to dispute in accordance with Paragraphs 7.2 through 7.9 below. The designation of a document as "draft" or "final" is solely for purposes of consultation with EPA in accordance with this Section. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final", to the public for review and comment as appropriate and as required by law.

## 7.2 Process for Primary Document Review:

### Primary Documents:

- (a) Primary Documents include those reports specified in Paragraph 7.2(b) through 7.2(e). Primary Documents shall be initially issued by the NGB in draft form subject to review and comment by EPA. Following receipt of comments on a particular draft Primary Document, the NGB shall respond to the comments received, the EPA shall then respond to the NGB comments, the NGB shall then issue a draft final Primary Document subject to Dispute Resolution. During EPA and NGB review and comment on documents pursuant to Paragraphs 7.6(e) and 7.6(f) of this Agreement, the NGB will continue Work on succeeding documents pertaining to the same Study Area, Area of Contamination, or Operable Unit. Where Dispute Resolution has been invoked on a document, work on such succeeding documents that are directly dependent upon the document in dispute may be stopped until the dispute resolution process has reached a final decision. The draft final Primary Document will become the final Primary Document either 30 days after issuance if Dispute Resolution is not invoked, or as modified by decision of the Dispute Resolution process;
- (b) Prior to the Effective Date of this Agreement, the NGB has forwarded the Primary Documents found in Appendix II to EPA. Within 120 days of the Effective Date of the Agreement EPA will review and comment on all documents listed in Appendix

II;

(c) The NGB shall complete and transmit within 120 days of the signing of this Agreement, or no later than thirty (30) days after any revision or amendment, the applicable draft document for the following Primary Document to EPA for review and comment in accordance with the provisions of this Section:

(i) Comprehensive Plan

(d) The NGB shall, no later than thirty (30) days after any revision or amendment of the Community Relations Plan, complete and transmit the applicable draft document for the following Primary Document to EPA for review and comment in accordance with the provisions of this Section:

(i) Amendment(s) to Community Relations Plan

(e) The NGB for each AOC or Study Area shall complete and transmit the applicable draft document for the following Primary Documents to EPA for review and comment in accordance with the provisions of this Section:

(i) Decision Documents

(ii) RI/FS Work Plans (including QAPP, Health and Safety Plan, and any supplemental Scope of Work)

(iii) Remedial Investigations (including Risk Assessment)

(iv) Feasibility Studies

(v) Proposed Plan

(vi) Record of Decision(s) (ROD)

(vii) Final Design (including Remedial Action Work Plan, Construction Quality Assurance Project Plan and Construction Quality Control Plan)

(viii) Project Closeout Report

(f) Only the draft final document for the Primary Documents identified above shall be subject to Dispute Resolution. The NGB shall complete and transmit draft

Primary Documents in accordance with the Timetable and Deadlines established in Section XIV, (Deadlines and Schedules) of this Agreement.

7.3

Secondary Documents:

- (a) Secondary Documents include those documents that are discrete portions of the Primary Documents and are typically input or feeder documents. Secondary Documents shall be issued by the NGB in draft subject to review and comment by EPA. Although the NGB shall respond to comments received from the EPA, the draft Secondary Documents may be finalized in the context of the corresponding Primary Documents;
- (b) The NGB shall complete and transmit draft documents for the following Secondary Documents to EPA for review and comment in accordance with the provisions of this Section:
  - (i) Site Inspection Work Plans
  - (ii) Site Inspection Reports
  - (iii) Initial Screening of Alternatives Letters
  - (iv) Remedial Design Scope of Work
  - (v) 60% Design Presentation
  - (vi) 95% Design Reports
  - (vii) Technology and ARAR Handbook
  - (viii) Treatability and Pilot Study Work Plans
  - (ix) Interim Data Submittals as Requested by the Project Managers
  - (x) Post-Screening Field Investigation Work Plans
  - (xi) Quarterly Progress Reports
- (c) Although the EPA may comment on the draft reports for the Secondary Documents listed above, such documents shall be subject to Dispute Resolution only at the time the corresponding draft final Primary Document is issued as set forth in 7.2(f) hereof. Dates shall be established for the completion and transmission of draft Secondary Documents.

#### 7.4 Meetings of the Project Managers on Development of Reports:

The Project Managers shall meet in person every sixty (60) days, except as otherwise agreed by the Parties, to review and discuss the progress of Work being performed at the Site, including progress on the Primary and Secondary Documents. Regularly scheduled Project Manager meetings held in conjunction with TEAC meetings may satisfy this requirement if the Project Managers agree. Project Manager meetings may be held more frequently than sixty (60) days or TEAC meetings, but not less than thirty (30) days apart, unless otherwise agreed upon by the Project Managers. Prior to preparing any draft report specified in Paragraphs 7.2 and 7.3 above, the Project Managers shall meet in an effort to reach a common understanding with respect to the contents of the draft document.

#### 7.5 Identification and Determination of Potential ARARs:

- (a) For those Primary Documents or Secondary Documents that consist of, or include ARAR determinations, the Parties' Project Managers shall, prior to the issuance of a draft document, meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the report being addressed. Draft ARAR determinations shall be prepared by the NGB in accordance with CERCLA § 121(d)(2), 42 U.S.C. § 9621(d)(2), the NCP and pertinent guidance issued by EPA.
- (b) The NGB has compiled Federal and State legally applicable or relevant and appropriate requirements (ARARs) and produced a "Remedial Technology Evaluation And Applicable Or Relevant And Appropriate Requirements Handbook" (ARARs Handbook). The ARARs Handbook lists chemical-specific, location-specific, and action-specific potential ARARs for the Site. Subject to CERCLA, the NCP, EPA guidance and subparagraph (a) above the ARARs handbook may serve as an initial resource for all Primary and Secondary Documents but shall not be solely relied upon to determine all appropriate ARARs. In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a Site-specific basis and that actual ARARs depend on the specific Hazardous Substances, pollutants and contaminants at the Site and AOC, the particular actions proposed as a remedy and characteristics of the Site and AOC. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be reexamined throughout the RI/FS process until a ROD is issued.





- (8) NGB delivery of final document to Congressional delegation-----14 days after 7.6(f)(7)
- (9) NGB issuance of final report---7 days. after 7.6(f)(7)
- (g) During review of a document or report pursuant to this Section, the NGB will continue currently ongoing Work pertaining to such document or report except as otherwise provided in CERCLA, the NCP and this Agreement. To the maximum extent practicable, it is the intent of the Parties that review of such documents or reports pursuant to this Section will not delay the progress of Work at the Site.
- (h) The review and comment periods established in this Section are based on the intent of the NGB to identify and discuss with the EPA the following as soon as it is available to the NGB: (1) analytical data, including field study results and draft documents and reports; and (2) all significant issues relating to the Work that may require, or impact upon, EPA approval or concurrence of a document or report. Review and comment periods established by this Section of the Agreement shall be amended if it is determined by a Party that such amendment is necessary to ensure the purposes of this Agreement.
- (i) Any Party may extend any review or comment period set out in Paragraph 7.6(e) hereof for either responding to comments on a draft document or for issuing the draft final Primary Document for thirty (30) days, by providing a timely and good faith written notice to the other Parties. In appropriate circumstances, this time period may be further extended in accordance with Section XV (Extensions).

7.7 Availability of Dispute Resolution for Draft Final Primary Documents:

- (a) Dispute Resolution shall be available to the Parties for draft final Primary Document as set forth in Section XIII, (Dispute Resolution);
- (b) When Dispute Resolution is invoked on a draft final Primary Document, Work may be stopped in accordance with the procedures set forth in Section XIII, (Dispute Resolution).





within the scope of the Work Plan may be approved by verbal agreement between all Project Managers. Field modifications to a Work Plan or Sampling and Analysis Plan may be requested by any Project Manager and shall be in writing on a Field Change Request form (FCR), signed and submitted to the other Project Managers for concurrence. The approved FCR shall be included as a part of the next progress report. No Project Manager may direct a government contractor without approval of the appropriate Government Contracting Officer.

- 8.5 If the Parties agree to a field modification pursuant to Paragraph 8.4 above, within five (5) business days following such modification, the Party requesting the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the other Parties for signature and return. Modifications of Work not provided for in Paragraph 8.4 of this Section must be approved in accordance with Paragraph 7.9 of this Agreement.
- 8.6 If agreement cannot be reached on the proposed field modification to Work discussed in paragraph 8.4 above, the Dispute Resolution provisions of Section XIII of this Agreement may be invoked by the Party requesting the modification by submitting a written statement to the other Parties in accordance with Section XIII.
- 8.7 The Project Manager for the NGB shall be responsible for day-to-day field activities at the Site. The NGB Project Manager or other designated employee of the NGB shall be physically present at the Site or reasonably available to supervise Work during implementation of the Work performed at the Site pursuant to this Agreement. For all times that such Work is being performed, the NGB Project Manager shall inform the command post at MMR and the other Project Managers of the name and telephone number of the designated employee responsible for supervising the Work. The absence of the EPA Project Manager from the Site shall not be cause for Work stoppage or delay, unless the Project Managers agree otherwise in writing.
- 8.8 Each Parties' Project Manager shall be responsible for ensuring that all communications received from the other Project Managers are appropriately disseminated to and processed by the Party which each represents.
- 8.9 The Parties shall transmit Primary and Secondary Documents and all notices required herein by next day mail, hand delivery, facsimile or certified letter to the Project Managers specified in Paragraph 30.1. Time limitations shall commence upon receipt. The NGB shall provide EPA with ten (10) copies of each Primary and Secondary document.

8.10 The authority of the Project Managers shall include, but is not limited to:

- (a) Taking samples and ensuring that sampling and other field work is performed in accordance with the terms of any final work plan and QAPP;
- (b) Observing, and taking photographs and making such other reports on the progress of the work as the Project Managers deem appropriate, subject to the limitations set forth in Section IX (Access) hereof;
- (c) Reviewing records, files and documents relevant to the work performed;
- (d) Determining the form and specific content of the Project Manager meetings and of progress reports based on such meetings;

#### IX. ACCESS

9.1 Without limiting any authority conferred on EPA by law or regulation, EPA shall have access at all reasonable times to the Site and any property to which access is required to the extent the access to such property is controlled by or available to the NGB or the USCG, for the purposes of conducting activity consistent with this Agreement, including but not limited to:

- (a) inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement;
- (b) monitoring field activities of the NGB and its contractors, lessees, assigns, and employees to assure that such activities are carried out in compliance with the terms of this Agreement;
- (c) verifying data or information submitted by the NGB to the EPA;
- (d) conducting such tests that the EPA Project Manager deems necessary;
- (e) assessing the need for planning additional Remedial Actions at the Site; and
- (f) Response Actions pursuant to paragraph 12.3 hereof.

The NGB shall honor all requests for access by the EPA conditioned upon the presentation of credentials showing the bearer's identity and that he is an employee or agent of EPA authorized to work on the Response Action. The NGB Project Manager or designee will provide briefing information, coordinate access and escort to restricted or controlled-access areas, arrange for base passes, ensure the requests for security clearance are promptly processed and coordinate any other access requests which arise. All access shall be obtained in a manner minimizing interference with military operations at the Site. NGB shall use best efforts to ensure that conformance with the requirements of this paragraph do not delay access.

- 9.2 NGB shall not require an escort to any area of the site unless it is a restricted or controlled-access area. Upon request of EPA, the NGB shall promptly provide a written list of current restricted or controlled-access areas. Nothing in this Agreement shall preclude the NGB Project Manager or his delegate from accompanying EPA employees, or its agents, whenever they are present on MMR.
- 9.3 The access by EPA, granted in Subsection 9.1 of this Section, shall be subject to those regulations necessary to protect national security, the health and safety of individuals on MMR or mission essential activities. Such regulations shall not be applied so as to unreasonably hinder EPA from carrying out its responsibilities and authority pursuant to this Agreement. In the event that access requested by EPA is denied by the NGB, the NGB shall provide an explanation within 48 hours of the reason of the denial, including reference to the applicable regulations, and, upon request, a copy of such regulations. The NGB shall expeditiously make alternative arrangements for accommodating the requested access. The Parties agree that this Agreement is subject to CERCLA section 120(j), 42 U.S.C. 9620(j), regarding the issuance of Site Specific Presidential Orders as may be necessary to protect national security.
- 9.4 If EPA requests access in order to observe a sampling event or other Work being conducted pursuant to this Agreement, and access is denied or limited, the NGB agrees to reschedule or postpone such sampling if the EPA so requests, until such mutually agreeable time when the requested access is allowed. The NGB shall not restrict the access rights of the EPA to any greater extent than the NGB restricts the access rights of its contractors performing Work pursuant to this Agreement.
- 9.5 To the extent that access is required to areas controlled by persons or entitles other than the NGB including other branches of DOD, the NGB shall make best efforts to obtain

access from the controlling Parties within thirty (30) calendar days after identification of the need for such access. "Best efforts" for the purposes of this Paragraph shall include, but not be limited to, identifying and locating the controlling parties, consistent with the funding provisions of this Agreement in Section XXV, arranging for the payment of money to obtain access agreements from the controlling party, exercising its authority under Section 104(e) of CERCLA 42 U.S.C. § 9604 (e), and seeking judicial assistance.

9.6 In the event that Site access is not obtained within the thirty (30) day time period set forth above, within fifteen (15) days after the expiration of the thirty (30) day period the NGB shall notify the EPA regarding the lack of the necessary access agreements and describe the efforts to obtain such access agreements. EPA may thereafter, consistent with their authority, assist the NGB in obtaining access. The NGB shall reimburse the EPA for all costs incurred by it in obtaining access, including, but not limited to costs incurred in acquiring all proper interests necessary for performance of Work or Additional Work. The NGB shall submit to EPA appropriate modifications to any Response Action affected by an inability to obtain proper access.

9.7 With respect to property referred to in Paragraph 9.5, upon which monitoring wells, pumping wells, or treatment facilities are to be located, or other Response Actions are to be taken pursuant to this Agreement, any access obtained shall provide (i) that no conveyance of title, easement, or other interest in the property shall be consummated without provisions for the continued operation of such wells, treatment facilities, or other Response Actions on the property, (ii) that the owners or lessees of any such property shall notify the NGB and EPA by certified mail, at least sixty (60) days prior to any conveyance of an interest in the property, of the property owner's or lessee's intent to convey and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other response actions pursuant to this Agreement; (iii) EPA shall have identical access as NGB.

9.8 The NGB shall take appropriate actions to ensure that all activities and Response or Remedial Actions to be undertaken pursuant to this Agreement will not be impeded or impaired by any transaction involving an interest or right in real property relating to MMR, including any fixtures located thereon owned by the United States. Such steps shall include but not be limited to providing the following in any deed, lease or other instrument evidencing such transaction:

(i) notification of the existence of this Agreement;

- (ii) that the Parties shall have the rights of access to and over such property which are set forth in Section 9.1 above;
- (iii) provisions for compliance with applicable health and safety plans, and for the operation of any Response or Remedial Actions on such property (including, but not limited to, monitoring wells, pumping wells and treatment facilities);
- (iv) that no subsequent transaction relating to such property shall be made without provisions in the documents evidencing such transaction for such rights of access, for compliance with applicable health and safety plans, and for the operation of any Response or Remedial Actions on such property (including, but not limited to, monitoring wells, pumping wells and treatment facilities); and,
- (v) that those involved in subsequent transactions relating to such property shall provide copies of the instrument evidencing such transaction to each of the Parties by certified mail within fourteen (14) days after the effective date of such transaction.

The NGB or USCG shall provide to EPA a copy of the generic form of any deed, lease or other instrument that it will use in any transaction involving an interest or right in real property relating to MMR at least thirty (30) days prior to the first use of such generic deed, lease or other instrument. In addition, in cases where the NGB or USCG is a party to such transaction, it shall provide to EPA copies of the executed deed, lease or other instrument evidencing such transaction within fourteen (14) days after the effective date of such transaction. Such generic form and such executed deed, lease, or other instrument shall include provisions which meet the requirements of Section 9.8 (i) through (v) above.

In the event of a dispute as to whether the provisions included in such generic form of deed, lease or other instrument meet the requirements of this Section 9.8, prior to the effective date of the first transaction relating to such generic form, the dispute may be referred directly to the SEC for dispute resolution pursuant to Section XIII of this Agreement. If dispute resolution is invoked in connection with such generic form of deed, lease or other instrument, the NGB or USCG will not execute the transaction instrument to which such generic form of deed, lease or other instrument relates until the completion of the dispute resolution process.

Any rights of access granted or other obligations imposed pursuant to this Paragraph shall expire with the termination of this Agreement pursuant to Section XXIV hereof.

- 9.9 A Party with access to the Site under this Section shall comply with all applicable health and safety plans.

#### **X. DATA AND DOCUMENT AVAILABILITY**

- 10.1 Each party shall make all sampling results, test results or other data generated through the implementation of this Agreement available to the other Party. If data validation is not completed within sixty (60) days after the last sample of a discrete sampling event is taken in the field, the EPA may request from the NGB and the NGB shall request from the appropriate source within 5 days of the EPA request, unvalidated data or results and the NGB shall forward such data or results to EPA within ten (10) working days after receipt by the NGB Project Manager. The NGB shall in accordance with Paragraph 6.5 use its Best Efforts including, but not limited to, whatever contract or legal rights it may have, to obtain raw and analyzed data from its contractors when such data is requested by the EPA pursuant to this Paragraph.
- 10.2 At the request of EPA the NGB shall allow, to the extent practicable, split or duplicate samples to be taken by EPA, or their authorized representatives, of any samples collected by the NGB pursuant to the implementation of this Agreement. Both Parties shall notify the other Party not less than twenty (20) days in advance of any scheduled sampled collection activity, unless otherwise agreed upon by the Parties.
- 10.3 If preliminary analysis indicates a threat or potential threat to the public health, welfare or the environment both Project Managers shall be immediately notified.

#### **XI. PERMITS**

- 11.1 The NGB shall be responsible for obtaining all Federal, Commonwealth and local permits which are necessary for the performance of Work under this Agreement and the Comprehensive Plan. Where the permitting authority is the EPA, permits will be issued as expeditiously as is practicable.
- 11.2 The Parties recognize that pursuant to CERCLA § 121(e)(1), 42 U.S.C. § 9621(e)(1), and the NCP, portions of the Remedial Actions called for by this Agreement and conducted

entirely on the Site are exempt from the procedural requirement to obtain Federal, State, or local permits. All activities must, however, comply with all Federal and State standards, requirements, criteria or limitations which would have been included in any such permit as required by CERCLA § 121 and as described in the Comprehensive Plan.

## **XII. REMOVAL AND EMERGENCY ACTIONS**

### **12.1 Discovery and Notification**

If either Party discovers or becomes aware of an emergency or other situation that may present a threat to public health, welfare or the environment at or near the Site which is related to or may affect the Work performed under this Agreement, that Party shall immediately orally notify the other Party and provide written notice within forty-eight (48) hours of discovery of such emergency. If the emergency arises from activities conducted pursuant to this Agreement, the NGB shall then take immediate action to notify the appropriate federal, Commonwealth and local agencies and all affected members of the public. The NGB shall provide such notice to the EPA and the public in accordance with SARA Section 211(a)(1)(B), 10 U.S.C. §2705(a). The NGB shall give the EPA adequate opportunity for timely review and comment after the NGB makes any proposal to carry out such Response Action and before the NGB initiates any such Response Action. This opportunity for review and comment shall not apply if the action is in the nature of an emergency removal taken because of a threat to human health, welfare or the environment and it is the determination of the NGB that consultation would be impractical. However the NGB shall notify the EPA in writing within forty-eight (48) hours of taking any such emergency Removal Action.

### **12.2 Work Stoppage**

In the event a Party determines that activities conducted pursuant to this Agreement will cause or otherwise be threatened by a situation described in Paragraph 12.1, the Party may propose the termination of such activities. If the Parties mutually agree, the activities shall be stopped for such period of time as required to abate the danger. In the absence of mutual agreement, the activities shall be stopped in accordance with the proposal, and the matter shall be immediately referred to the EPA Region I Hazardous Waste Management Division Director for a Work Stoppage determination in accordance with Paragraph 13.9.

### **12.3 Removal Actions**

(a) The provisions of this Section shall apply to all

Removal Actions as defined in CERCLA § 101(23), 42 U.S.C. § 9601(23), including all modifications to, or extensions of, any ongoing Removal Actions, and all new Removal Actions proposed or commenced following the Effective Date of this Agreement;

- (b) Any Removal Actions conducted at the Site shall be conducted in a manner consistent with this Agreement, CERCLA, the NCP, and Executive Order 12580;
- (c) If the EPA determines that there may be a threat to the public health, welfare or the environment because of an actual or threatened release of a Hazardous Substance, the EPA may request the NGB perform a Removal Site Evaluation as required by §300.405(f)(1) and §300.410 of the NCP. This evaluation shall investigate the source and nature of the release, the magnitude of the threat, and shall include an evaluation of factors necessary to make a determination of whether a Removal is necessary;
- (d) If the NGB makes a determination based on the Removal Site Evaluation that there is a threat, the NGB shall take any appropriate Removal Action to abate, prevent, minimize, stabilize, mitigate, or eliminate the release or the threat of release. Factors to be considered in determining whether a Removal Action is necessary include, but are not limited to:
  - (i) actual or potential exposure to nearby human populations, drinking water supplies, or sensitive ecosystems;
  - (ii) high levels of Hazardous Substances, pollutants or contaminants in soils largely at or near the surface, that may migrate; and
  - (iii) weather conditions that may cause Hazardous Substances, pollutants or contaminants to migrate or be released;
- (e) If the NGB determines that a Removal Action is appropriate, such Removal Action shall begin as soon as is practicable. Whenever a planning period of at least six months exists before on-Site activities must be initiated, an Engineering Evaluation/Cost Analysis (EE/CA) shall be conducted. The EE/CA is an analysis of Removal alternatives for a Site. In addition, if sampling is to be performed, sampling and analysis plans shall be prepared and submitted to EPA for review and comment;
- (f) If the NGB and EPA Project Managers determine that the Removal Action will not fully address the threat posed

to public health, welfare or the environment such threat may require Remedial Action, the NGB shall ensure an orderly transition from Removal to Remedial Response activities;

- (g) In the event a Removal Action of explosives, munitions, or ordnance is required to protect public health, welfare or the environment, it shall be performed by the NGB as an emergency Removal Action. Any Removal Action of explosives, munitions, or ordnance shall be performed in accordance with applicable regulations, directives and guidance of the Departments of Defense and Transportation or their component agencies;
- (h) In the event that NGB fails to take a Removal Action necessary to protect public health, welfare, or the environment, the EPA may request that the NGB take such Removal Actions;
- (i) Nothing in this Agreement waives whatever right EPA has under CERCLA to conduct Removal Actions at the Site, or under any other law to otherwise act to protect public health, welfare and the environment.

#### 12.4 Notice and Opportunity to Comment

- (a) In the case of all Removal Actions, the Party conducting the Removal Action shall designate a spokesperson, who shall inform the community of actions taken, respond to inquiries, and provide information concerning the release. The spokesperson shall notify, at a minimum, immediately affected citizens, and State and local officials;
- (b) For actions where a Party determines that a Removal is appropriate and less than six (6) months exist before on-Site Removal will commence, the Party shall:
  - (i) Publish a notice of availability of the Administrative Record file in a major local newspaper within sixty (60) days of initiation of an on-Site Removal;
  - (ii) Provide a public comment period of not less than thirty (30) days from the time the Administrative Record is made available; and
  - (iii) Prepare a written response to significant comments;
- (c) If a Removal Action will extend beyond one hundred and twenty (120) days from the initiation of on-Site Removal activities, the NGB shall by the end of the one

hundred and twenty (120) day period:

- (i) Conduct interviews with local officials, community residents, and other interested or affected parties to solicit their concerns;
  - (ii) Prepare a formal Community Relations Plan (CRP) which specifies the activities the NGB expects to undertake during the Removal activity; and
  - (iii) Establish at least one local information repository at or near the location of the Response Action, which should contain items made available for public information as well as the administrative record;
- (d) If a planning period of at least six (6) months exists prior to initiation of on-Site Removal activities, the NGB shall at a minimum:
- (i) Comply with the requirements of Paragraph 12.4(c)(i), (ii), and (iii) prior to the completion of an EE/CA. In addition, the information repository and Administrative Record file shall be established no later than when the EE/CA approval memorandum is signed;
  - (ii) Publish a notice of availability and brief description of the EE/CA in two (2) major local newspapers;
  - (iii) Provide a reasonable opportunity, not less than thirty (30) calendar days, for submission of written and oral comments; and
  - (iv) Prepare a written response to significant comments;
- (e) All activities related to ongoing Removal Actions shall be reported by the NGB in the progress reports as described in Section VIII, (Project Managers).

12.5 Any dispute among the Parties as to whether a non-emergency Response Action proposed under Section XII, (Removal and Emergency Actions), is properly considered a Removal Action, as defined by 42 U.S.C. § 9601(23), or as to the consistency of such a Removal Action with the final Remedial Action, shall be resolved pursuant to Section XIII, (Dispute Resolution). Such dispute may be brought directly to the Dispute Resolution Committee (DRC) or the Senior Executive Committee (SEC) at either Party's request.





















































































































































