

## **IAG COVER SHEET**

FILE NAME: RobinsAFB.pdf

Title: Robins Air Force Base Georgia

Subject: Region 4, IV

Author: Air Force, DoD, Georgia, GA

Keywords: 02/14/89, 1989, FY89

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IV

AND THE

UNITED STATES DEPARTMENT OF THE AIR FORCE

AND THE

GEORGIA ENVIRONMENTAL PROTECTION DIVISION

IN THE MATTER OF:	)	
	)	
The U.S. Department	)	FEDERAL FACILITY AGREEMENT
of Defense's	)	UNDER CERCLA SECTION 120
	)	
Robins Air Force Base	)	Administrative Docket
<u>Georgia</u>	)	Number:

Based on the information available to the Parties on the effective date of this FEDERAL FACILITY AGREEMENT (Agreement), and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

I. JURISDICTION

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

1. The U.S. Environmental Protection Agency (U.S. EPA), Region IV, enters into those portions of this Agreement that relate to the remedial investigation/feasibility study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law 99-499 (hereinafter jointly referred to as CERCLA/SARA or CERCLA), and Sections 6001, 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sections 6961, 6924(u) and (v), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA/HSWA or RCRA) and Executive Order (E.O.) 12580;

2. U.S. EPA, Region IV, enters into those portions of this Agreement that relate to remedial actions for operable units and final remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, 42 U.S.C. Section 9620(e)(2), Sections 6001, and 3004(u) and (v) of RCRA, 42 U.S.C. Section 6961 and 42 U.S.C. Section 6924(u) and (v) and E.O. 12580;

3. Robins Air Force Base (RAFB) enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, 42 U.S.C. Section 9620(e)(1), Sections 6001, and 3004(u) and (v) of RCRA, 42 U.S.C. Section

6961 and 42 U.S.C. Section 6924(u) and (v) E.O. 12580, the National Environmental Policy Act, 42 U.S.C. Section 4321, the Defense Environmental Restoration Program (DERP), 10 U.S.C. Section 2701, et seq., and the Georgia Hazardous Waste Management Act, O.C.G.A. Sections 12-8-60, et seq., and the rules and regulations promulgated thereunder, Chapter 391-3-11 (GHWA), which have been authorized by the U.S. EPA Administrator pursuant to Section 3006 of RCRA, 42 U.S.C. Section 6926, and to which RAFB is subject pursuant to Section 6001 of RCRA 42 U.S.C. Section 6961;

4. Robins Air Force Base (RAFB) enters into those portions of this Agreement that relate to remedial actions for operable units pursuant to Section 120(e)(2) of CERCLA/SARA, 42 U.S.C. 9620(e)(2), Sections 6001, 3004(u) and 3004(v) of RCRA, 42 U.S.C. Sections 6961 and 6924(u) and (v), GHWA, E.O. 12580 and the DERP;

5. The Georgia Environmental Protection Division (GEPD) enters into this Agreement pursuant to CERCLA/SARA, RCRA, and GHWA.

## II. DETERMINATIONS

A. On the basis of the results of testing and analyses described in the Findings of Fact, *infra*, and U.S. EPA and GEPD files and records, the U.S. EPA and GEPD have made the following determinations which shall not be considered admissions by, nor shall they be legally binding on RAFB or the U.S. Air Force:

1. Robins Air Force Base (RAFB) located in Warner Robins, Georgia constitutes a facility within the meaning of 42 U.S.C. Section 9601(9) and GHWA;

2. Hazardous substances, and pollutants or contaminants within the meaning of 42 U.S.C. Sections 9601(14) and (33) and 9604(a)(2) and GHWA have been disposed of at RAFB;

3. There have been releases and there continue to be releases and threatened releases of hazardous substances and pollutants or contaminants into the environment within the meaning of 42 U.S.C. Sections 9601(22), 9604, 9606 and 9602, and GHWA, at and from RAFB;

4. With respect to those releases and threatened releases, RAFB is a responsible party within the meaning of 42 U.S.C. Section 9607 and is the permittee subject to the terms and conditions of Hazardous Waste Facility Permit No. HW-064(S) issued September 29, 1988, by GEPA (hereinafter, HW-064(S) permit);

5. The actions to be taken pursuant to this Agreement are reasonable and necessary to protect public health or welfare or the environment; and

6. A reasonable time for completing the actions required by this Agreement will be provided.

B. The U.S. Air Force has made the following determinations which shall not be considered legally binding on U.S. EPA or GEPA:

1. RAFB in general, and the Site specifically, are facilities under the jurisdiction, custody, or control of the Department of Defense within the meaning of E.O. 12580, 52 Fed. Reg. 2923, 29 January 87. The Department of the Air Force is authorized to act on behalf of the Secretary of Defense for all

functions which are relevant to this Agreement delegated by the President through E.O. 12580.

2. RAFB in general, and the Site specifically, are facilities under the jurisdiction of the Secretary of Defense within the meaning of the Superfund Amendments and Reauthorization Act (SARA) Section 211, 10 U.S.C. Section 2701, et seq., and subject to the Defense Environmental Restoration Program (DERP) therein.

### III. PARTIES

The Parties to this Agreement are U.S. EPA, GEFD, and the U.S. Air Force through RAFB. The GEFD is entering into this Agreement pursuant to O.C.G.A. Section 12-8-65(a)(5) and (9) and with approval of the Governor. The terms of this Agreement shall apply to and be binding upon the U.S. EPA, the State of Georgia, the U.S. Air Force and their successors and assigns. RAFB will notify U.S. EPA and GEFD of the identity and assigned tasks of each of its contractors performing work under this Agreement upon their selection. This paragraph shall not be construed as an agreement to indemnify any person. All Parties shall notify their agents, employees, and applicable contractors for the Site, and RAFB will notify all subsequent owners, operators, and lessees of RAFB of the existence of this Agreement. Each undersigned representative of a Party certifies that he/she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

#### IV. DEFINITIONS

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

In Addition:

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

B. Days means business days unless otherwise specified in this Agreement.

C. Feasibility Study (FS) means the study which fully evaluates and develops remedial action alternatives to prevent or mitigate the migration or the release of hazardous substances, and pollutants, or contaminants at and from the Site.

D. GEPD means the Georgia Environmental Protection Division.

E. Hazardous Substances shall have the meaning set forth by Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14) and include hazardous constituents as defined by the Hazardous Waste Facility Permit No. HW-064(S).

F. The National Contingency Plan (NCP) means the plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. Section 9605, and codified at 40 C.F.R. Part 300, as amended.

G. Project Manager means the individuals designated by the U.S. EPA, GEPD and RAFB who oversee and provide technical assistance on the activities at the Site.

H. Release shall be used as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22) and the HW-064(S) permit.

I. Remedial Action (RA) means the implementation of the Remedial Design consistent with the NCP and the Superfund Remedial Design and Remedial Action Guidance dated June 1986, and corrective action as defined by the HW-064(S) permit including on-site construction treatment processes, removal, and any other tasks necessary.

J. Remedial Actions for Operable Units shall mean all discrete remedial actions that comprise incremental steps towards the final RA. All remedial actions for operable units shall be taken in accordance with 40 C.F.R. Part 300.68 and with the requirements of CERCLA. This term shall also mean interim measures as defined in the HW-064(S) permit.

K. Remedial Action Plan (RAP) means the report describing the remedy selected for cleanup of the Site. The RAP will be attached as Appendix B and incorporated as an enforceable part of this Agreement.

L. Remedial Design (RD) means all work undertaken to design the technical aspects of the remedial activities to be implemented at the Site.

M. Remedial Investigation (RI) means the investigation conducted to fully determine the nature and extent of the release or threat of release of hazardous substances, and pollutants, or contaminants and to gather necessary data to support the feasibility study.



N. Significant New Site Conditions means those conditions of geology, hydrogeology and/or contamination that were not reasonably foreseeable or known at the time the RI was initiated.

O. Solid Waste Management Unit (SWMU) means those units as defined in the HW-064(S) permit.

## V. SITE DESCRIPTION

Robins Air Force Base is located east of the City of Warner Robins, in Houston County, Georgia as seen in Figure 1, Attachment 1. The NPL Site subject to this Agreement consists of an area on RAFB known as Zone 1, which is Landfill Number 4, and the Sludge Lagoon and any contamination emanating therefrom.

### Zone-1: Landfill Number 4 and Sludge Lagoon (the Site)

The lagoon consisted of an unlined, diked pit about 1.5 acres in size. The landfill comprised about 45 acres at the time of closure. The approximate boundaries for Landfill No. 4 and the Sludge Lagoon are shown in Figure 3. The area of investigation is bordered to the north by a drainage ditch, on the east by Hannah Road, and on the west and south by an unimproved service road, as shown in Figure 3. Surface drainage is primarily into the wetlands area to the east and towards Horse Creek.

## VI. PURPOSE

A. The general purposes of this Agreement are to:

1. Ensure that the environmental impacts associated with past and present activities at the Site are thoroughly inves-

tigated and appropriate remedial action is taken as necessary to protect the public health, welfare and the environment;

2. Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with CERCLA/SARA, the NCP, Superfund guidance and policy, GHMA, GHMA guidance and policy; and

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

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

1. Identify Remedial Actions for Operable Units which are appropriate at the Site prior to the implementation of final RA(s) for the Site. Remedial Action Alternatives for Operable Units shall be identified and proposed to the Parties as early as possible prior to formal proposal of Remedial Actions for Operable Units to U.S. EPA and GEPD pursuant to CERCLA/SARA. This process is designed to promote cooperation among the Parties in identifying Remedial Action Alternatives for Operable Units prior to selection of final remedial action alternatives for operable units.

2. Establish requirements for the performance of an RI to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of an FS for the Site to identify, evaluate, and select alternative for the appropriate RA(s) to prevent,

mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA/SARA and GHMA.

3. Identify the nature, objective and schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA/SARA and GHMA.

4. Implement the selected interim and final Remedial Action(s) for Operable Units in accordance with CERCLA and GHMA and meet the requirements of Section 120(e)(2) of CERCLA 42 U.S.C. 9620(e)(2), for an interagency agreement between U.S. EPA, RAFB, and GEFD.

5. Assure compliance through this Agreement with RCRA and other federal and state hazardous waste laws and regulations for matters covered by this Agreement.

6. Coordinate response actions at the Site with the mission and support activities at RAFB.

7. Expedite the cleanup process to the extent necessary to protect human health and the environment.

#### VII. FINDINGS OF FACT

For purposes of this Agreement, the following constitutes a summary of the facts upon which this Agreement is based. None of the facts related herein shall be considered admissions by any party. This paragraph contains findings of fact, and shall not be used by any person related or unrelated to this Agreement for purposes other than determining the basis of the Agreement.

1. Robins Air Force Base (RAFB) is located east of the City of Warner Robins, in Houston County, Georgia. Operations at RAFB date back to 1941. RAFB was officially activated in March 1942. The original intent was to establish RAFB as a maintenance and supply depot, but the installation also was used as a training center. After World War II, RAFB ceased its training function while continuing its supply and maintenance role. A second growth in 1949 when the Fourteenth Air Force Headquarters moved to RAFB, where it remained until deactivated in 1960. The largest construction program started in 1958 to prepare for the Nineteenth Bombardment Wing as a tenant organization. In 1974, the Technology Repair Center (TRC) was created as a function of the Warner Robins Air Logistics Center (WR-ALC).

2. Hazardous wastes are generated at Robins primarily from processes such as parts cleaning, painting and electroplating.

3. Zone 1 NPL Site includes Landfill No. 4 (LF4) and the adjacent Sludge Lagoon (SL).

4. LF4 was utilized from 1965 through 1978 for disposal of general refuse and industrial wastes. Wastes were deposited in a swampy area and covered daily with sandy soil.

5. The SL was used from approximately 1963 through 1978 for disposal of wastes from two industrial waste treatment plants plus other waste chemicals. Approximately 130,000 gallons per month of industrial liquid wastes and 104,000 gallons per month

of grease and solvents were discharged to the SL. The SL consisted of an unlined, diked pit about 1.5 acres in size that had been excavated in the same swampy area that was being filled by the operation of LF4.

6. RAFB closed both the LF4 and the SL in 1979 by covering them with a clay-like material, typically 2 to 2.5 feet thick.

7. An Installation Restoration Program, initiated by the Department of Defense (DOD), has been underway at RAFB for several years. Numerous hazardous waste disposal sites and hazardous constituent spills have been identified and partially investigated during this program.

8. The following milestone events or draft documents have been submitted to the U.S. Environmental Protection Agency (EPA) and to the State of Georgia Environmental Protection Division (GEPD) disclosing information gathered concerning these sites:

Final Report, Groundwater Monitoring Program performed by the Law Engineering Testing Company, October 1980. Both concluded that:

a. The landfill (later to be known as Landfill No. 4) under study is located in a swamp area with a high normal water level and is subject to flooding. The landfill is underlain by swamp deposits and alluvium of relatively low permeabilities.

b. A groundwater mound has developed at the site. High landfill groundwater levels cause an excessive rate of annual percolation and leachate which seeps at the toe of the

landfill slope. The development of a groundwater mound is a problem occurring at landfills which lack sufficient cover to prevent infiltration.

c. Shallow groundwater degradation has occurred within and along the margins of the landfill and at monitoring wells which are slightly out of the projected path of groundwater flow.

9. In the Phase I Record Search, April 30, 1982, conducted by Engineering Science, Inc., the following was concluded:

a. Landfill No. 4 - LF4 was the last on-base disposal site for solid waste. Little or no boiler bottom was used as cover due to the conversion of the boiler system to natural gas in 1966. There was occasional dumping of industrial waste in LF4 throughout its life. LF4 is approximately 2200 feet from a drinking water well and adjacent to drainage ditches which flow to Horse Creek. From 1976 to 1979, approximately 1500 drums of waste material were stored at the west end of LF4. Groundwater monitoring indicates the presence of contaminants in the shallow aquifer downgradient of LF4.

b. Sludge Lagoon - The SL was used for disposal of industrial wastewater treatment plant sludges from approximately 1962 until its closure. The SL is about 1.5 acres located on the north end of LF4. The SL was an unlined, diked pit with the bottom excavated below the water table level. Sludges from Industrial Waste Treatment Plant No. 1 contained phenols and oils. Industrial Waste Treatment Plant No. 2 treated waste water from metal plating operations and the sludges contained cyanide,

chrome and other heavy metals. Other industrial waste such as paint removers, solvents, hydraulic fluids and oils were occasionally disposed of in the SL. Groundwater monitoring indicated the presence of contaminants in the shallow aquifer downgradient of the SL.

10. Phase II - Confirmation/Quantification Stage 1 dated March 30, 1985, was prepared by Water and Air Research, Inc.

11. RAFB applied for a Hazardous Waste Facility Permit from GEFD in accordance with the Georgia Hazardous Waste Management Act and Rules for storage of hazardous waste on November 8, 1985.

12. RAFB established a Technical Review Committee (TRC) on December 16, 1985.

13. The U.S. Air Force Hazardous Material Technical Center finalized the Statement of Work for continued environmental investigation on January 20, 1986.

14. RAFB prime contractor, Oakridge Research National Laboratory amended the final Statement of Work on April 23, 1986.

15. Task Orders were issued to CH2M Hill on April 25, 1986.

16. The Kickoff Meeting between RAFB and CH2M Hill occurred on May 7, 1986.

17. The first TRC Meeting was held on May 8, 1986.

18. The first round RI Work Plan was issued by CH2M Hill on July 3, 1986.

19. Air Force Logistics Command approved Round 1 RI Work Plan on August 1, 1986.

20. The Site was cleared by CH2M Hill for investigation on August 8, 1986.

21. Electromagnetic survey was conducted on August 8, 1986.

22. Soil cap borings were conducted on September 15, 1986.

23. The first round monitoring wells were installed on September 30, 1986.

24. The second round of RI Statement of Work was prepared on September 30, 1986.

25. Phase II Stage 2 Quantification Studies were initiated on September 30, 1986.

26. The second round RI Task Order was issued on December 8, 1986.

27. The first round of RI sampling was started on December 10, 1986.

28. CH2M Hill Southeast, Inc., began the Task Report 1, Task Order Schedule on March 4, 1987.

29. CH2M Hill Southeast, Inc., submitted the Task Report 2A, Site Characterization, Volumes 1 and 2 on March 25, 1987. The Task 2A investigations were designed to evaluate the characteristics of the (SL) and Landfill No. 4 (LF4) as a source of contaminants. It focused on the sites and shallow groundwater. The Task Report 2A concluded the following:



a. The existing Base Map provides a sufficiently detailed description of the LF4 boundary for development of the Air Force Remedial Action Plan.

b. The description of the SL in the 1968 and 1971 engineering drawings located by Base personnel is consistent with field conditions.

c. Run-on from surface water onto the LF4 will require control during remediation.

d. The peat/clay bed underlying the LF4 and SL appears laterally with a 5 to 14 foot thickness.

e. Groundwater mounding was evident in the LF4.

f. Groundwater flow generally parallels surface water flow radially away from the LF4 and toward the channelized ditch to the north of the site, east to Hannah Road, or south toward the swampy area.

g. The limited hydrogeologic measurements conducted during this data collection program (i.e., two slug tests; pumping during well development) indicate a fairly high natural groundwater velocity, between 100 and 800 ft/year. This estimate will be replaced by results obtained during the Phase II site investigations on regional hydrogeology.

h. No consistent groundwater gradient was measured across the peat/clay bed, which is reasonable considering the mounding at the Site. Groundwater level measurements did indicate an upward gradient in the aquifer zones underlying the peat/clay bed.

i. Groundwater elevations and the observed gradients indicate that the peat/clay bed acts to create semi-confining aquifer conditions in the zone underlying the bed.

j. The peat/clay stratum permeability measured in the laboratory on individual samples in this study ranged from  $2 \times 10^{-8}$  to  $7 \times 10^{-7}$  cm/sec, but the overall permeability is expected to be closer to the previously reported value of  $10^{-4}$  cm/sec determined by field testing. Differences between laboratory and field test results are due to larger scale discontinuities in the layer (seams, joints, root holes) which cannot be measured by laboratory methods.

k. The peat/clay stratum samples were compressible. This could result in significant settlement after installation of caps or fill.

l. The underlying sand stratum has a high hydraulic conductivity, measured in the laboratory at greater than  $5 \times 10^{-2}$  cm/sec. Such a high hydraulic conductivity would result in a relatively small draw down during groundwater pumping at the Site.

m. Existing cover materials exhibited an average laboratory permeability of  $2 \times 10^{-5}$  cm/sec and an average field permeability of  $3 \times 10^{-4}$  cm/sec. These do not approach the RCRA goal of  $1 \times 10^{-7}$  cm/sec.

n. Cracking and gas migration were observed in the existing cover material.

o. Volatile organic compounds (VOCs) were the major category of contaminants found throughout the Site. Much

higher levels of VOCs were observed in the SL sediments in the peat layer than in the LF4 sediments (in the peat layer).

p. VOCs were found at the LF4 and SL perimeter in the groundwater zone just underlying the peat/clay bed. The highest levels were found near the SL, indicating the SL as the major source of VOCs.

q. Metals were found throughout both the LF4 and the SL, they were found at much higher levels in the SL.

r. EP toxicity test results did not demonstrate leachable metals in soil and sediment samples.

s. Metal levels in groundwater samples above the peat/clay bed exceeded Maximum Contaminant Levels (MCLs) around both the LF4 and SL. This was not the case below the peat/clay bed.

t. Non-VOC organics were found mainly in the SL area, but were also common in LF4. PCBs and pesticides were found at both sites, but pentachlorophenol was found only in LF4.

u. Cyanide was not widespread at LF4 or the SL, but they were found only in and just outside the SL.

v. Asbestos was detected only at location (SLB-1) in the SL and was not found at a high in level.

w. A groundwater plume is leaving LF4 and SL areas. Conclusive data has yet to demonstrate that the plume has reached Hannah Road. However, some contamination was found at Hannah Road well (LF4-18) near the drainage channel.

x. Based on contaminants found in deeper zone wells, there is a groundwater plume extending vertically beneath the SL area.

y. Contaminants were detected at the wells considered upgradient to LF4 and SL. These could indicate a separate contaminant source, and

z. The collected data are adequate for completing the source control Air Force Remedial Action Plan; however, the data are not adequate for evaluating the extent and magnitude of a groundwater plume.

30. Task Report 2B, Screening of Control Measures and Identification of Remedial Action Alternatives March 26, 1987, was conducted by CH2M Hill Southeast, Inc.

31. The second round of RI monitoring wells was installed April 3, 1987.

32. The second round of RI sampling began on April 3, 1987.

33. Development of Remedial Action Alternatives began on June 22, 1987.

34. The Task Report 8, Air Force Peer Review Draft Remedial Action Plan, dated July 28, 1987, was performed by CH2M Hill Southeast, Inc. Results of Task Report 8 Site Characterization and Additional Site Investigations indicated that there are organic contaminants (mainly VOCs) in leachate and groundwater underlying Zone 1. It also disclosed the following:

a. Inorganic contaminants (metals, cyanide) were also found in leachate at the LF4 and SL, but were not at high

levels in the underlying groundwater. The contaminant levels are much higher at the SL than at the LF4.

b. The natural groundwater flow was in an eastward direction. There is some migration of a plume and it is extending an unknown distance into the swamp to the east of the site. The plume does not appear to have reached monitor wells that were installed approximately 1,000 feet downgradient of LF4 perimeter,

c. LF4 and the SL are contiguous areas located adjacent to a swampy area on the east side of RAFB as shown in Figure 3,

d. An IRP Phase I Records Search for the base reported that the LF4 was operated from 1965 until 1978. RAFB used Landfill 4 for disposal of general refuse and occasional disposal of industrial wastes,

e. The LF4 occupies approximately 45 acres. The SL, located adjacent to the north side of LF4, was used for disposal of industrial wastewater treatment plant sludges and occasional disposal of other liquid industrial wastes from 1968 until 1978, and

f. The SL was unlined and bordered by an elevated earthen dike. The SL surface area was approximately 1.5 acres, and its depth was approximately 6 feet.

35. Zone 1 Site, RAFB is finalized on the National Priorities List, August 12, 1987.

36. CH2M Hill Southeast, Inc., conducted the Task Report 2C, Additional Site Investigation, Phase IVA - Remedial

Action Plan for Landfill No. 4 and Sludge Lagoon, September 4, 1987.

a. The Task Report 2C (TR2C) describes the data collected under additional Site investigations at RAFB Zone 1. Zone 1 includes two sites: Landfill No. 4 which is a soil-covered (closed) 40 acre landfill used from 1965 to 1978 for trash and refuse disposal; and the SL, which is a soil-covered (closed) 1.5 acre impoundment used from 1968 to 1978 for industrial wastewater treatment sludge and spent chemical disposal.

b. The TR2C documented and evaluated the results of field investigations performed from February to April 1987.

c. These investigations were designed to establish the extent of groundwater contamination in the vicinity of Zone 1. Previous investigations were performed from August to December 1986, as Task 2A of this study.

d. The activities performed under Task 2C included the installation, sampling, and analysis of 14 additional monitor wells at the perimeter of the SL, LF4, and downgradient from the Site along Hannah Road. These wells complemented the 31 previously installed wells in this zone by providing data for the deeper groundwater zones.

e. The findings of this study are consistent with the findings of Task 2A with regard to Site characteristics, groundwater flow directions, vertical groundwater gradients, and chemical contamination at or near the SL and LF4.

f. Organic compounds were not detected in the deeper (about 50 and 100-foot deep) wells installed as part of these field investigations.

g. Organic compounds were detected in two 50-foot wells at the Site perimeter during Task 2A studies.

h. Organic contaminants were not detected in the deeper wells at Hannah Road installed during Task 2C, however, there were low levels detected in one shallow well during Task 2A.

i. Based on these results, there is currently no evidence of an organic contaminant plume extending eastward into deeper zones (50 to 100 feet) at the Site perimeter. A shallow groundwater plume with organic contaminants probably extends into the swamp.

j. Low concentrations of inorganic compounds (metals and cyanide) were found in isolated wells at the Site perimeter and along Hannah Road. The data for these inorganic compounds did not follow a consistent pattern and did not constitute evidence that an inorganic contaminant plume has reached either Hannah Road or the deeper groundwater regimes beneath the Site.

37. The monitoring well data from the Task Report 2C indicated the following:

a. All Site specific compounds detected in the new monitor wells had been detected in wells installed under Task 2A, with the exception of 2-methylnaphthalene.

b. The compounds selected for presentation were those previously selected for similar presentation in Task Report 2A.

c. The original selection was based upon the frequency of occurrence and concentrations present in the samples. A review of the new data indicated that this selection of compounds was still appropriate.

d. Two wells (LF4-44) and LF4-45) were analyzed for pesticides and PCBs, with no detectable concentrations found. The same two groundwater samples were analyzed for base/neutral extractable organic compounds. The only detectable concentrations were found in the well LF4-44 at the lagoon perimeter were 1,4-dichlorobenzene reported at 9.9 ppb and naphthalene reported at 5.6 ppb.

e. All 14 of the new monitor wells were analyzed for acid extractable organic compounds. There were no detectable concentrations found in the new wells.

f. All 14 of these monitoring wells were analyzed for VOCs. VOCs were detected in monitoring well LF4-44 in the dike of the SL. Chlorobenzene was reported at 425 ppb and total VOCs were reported at 495 ppb in LF4-44. VOCs were not detected in any of the deep monitor wells.

g. All 14 of the new monitoring wells were analyzed for inorganic compounds. The presence of chromium was



detected in of the monitoring wells and lead was detected in five of the monitoring wells.

h. Chromium was detected in monitoring wells along Hannah Road (LF4-32 and LF4-33) at concentrations of 6 and 65 ppb and at LF4 (LF4-44) at a concentration of 13 ppb,

i. Lead was found in monitoring wells along Hannah Road (LF4-32, LF4-34, and LF4-35) at concentrations ranging from 5 to 14 ppb and at the LF4 perimeter (LF4-40 and LF4-44) at concentrations of 16 and 89 ppb, and

j. Cyanide was found in 6 of the 14 new wells. At the SL perimeter, cyanide was detected in one well (LF4-44) at a concentration of 12 ppb. Along Hannah Road, cyanide was detected in five wells (LF4-32, LF4-33, LF4-36, LF4-37, LF4-38) at concentrations ranging from 6 to 120 ppb.

k. The second TRC meeting was held September 10, 1987.

38. GEPD responded to EPA's request to submit first round of ARARs for the Zone 1 NPL Site on October 15, 1987.

39. CH2M Hill Southeast, Inc., compiled the IRP Master Plan on October 22, 1987.

40. IRP Phase II - Confirmation/Quantification Stage 2, Volumes 1 through 5 of January 2, 1988, was assembled by Engineering - Science.

41. Robins Air Force Base, GA is listed on the Federal Facilities Compliance Docket, February 12, 1988.

42. Landfill No. 4 and Sludge Lagoon Data Package of February 19, 1988, was completed by CH2M Hill Southeast, Inc.

43. RAFB submitted its proposed RI/FS schedule for the Zone 1 NPL Site on August 3, 1988.

44. EPA Region IV concurred with the proposed Zone 1 NPL RI/FS schedule, August 10, 1988.

45. GEPD found the proposed Zone 1 NPL RI/FS schedule acceptable on September 1, 1988.

#### VIII. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

A. The Parties intend to integrate RAFB's CERCLA response obligations and GHWA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will be deemed to achieve compliance with CERCLA, 42 U.S.C. Section 9601 et seq.; to satisfy the corrective action requirements of Sections 3004(u) and (v) of RCRA, 42 U.S.C. Section 6924(u) and (v) for a RCRA permit; O.C.G.A. 12-8-66(e) of GHWA; Section V of HW-064(S); and to meet or exceed all applicable or relevant and appropriate federal and state laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. Section 9621.

B. Based upon the foregoing, the Parties intend that any RA selected, implemented and completed under this Agreement shall be deemed by the Parties to be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA and GHWA, (i.e., no further corrective action

shall be required). The Parties agree that with respect to releases of hazardous waste covered by this Agreement, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to Section 121 of CERCLA, 42 U.S.C. Section 9621.

C. The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at RAFB may require issuance of permits under federal and state laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, since a permit has been issued by GEPD to the RAFB for ongoing hazardous waste management activities at RAFB, GEPD shall reference and incorporate this Agreement (including appropriate schedules and provision for extension of such schedules) into such permit. U.S. EPA and RAFB intend that the judicial review of any EPA-issued permit conditions which reference this Agreement shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA. GEPD intends that its permit conditions shall be enforced consistent with Paragraph XXXV A(5) and (6) (Enforceability) of this Agreement.

#### IX. SCOPE OF AGREEMENT

Under this Agreement the RAFB agrees it shall:

1. Conduct Remedial Actions for Operable Units;
2. Conduct a Remedial Investigation (RI) on LF4 and SL;

3. Conduct a Feasibility Study (FS) of the Site incorporating, at a minimum, the results of the RI;

4. Develop Remedial Action alternative(s) for the Site in accordance with this Agreement.

#### X. REMEDIAL ACTION

Pursuant to the schedule set forth in Paragraph XXVII (Deadlines) the RAFB shall, after consultation with U.S. EPA and GEPD, publish its proposed plan for public review and comment. Upon completion of the public comment period, all Parties will consult with each other about the need for modification of the proposed plan and additional public comment based on public response. When public comment has been properly considered, RAFB shall submit its draft Record of Decision in accordance with applicable guidance. A review in accordance with Paragraph XI (Consultation) shall be conducted on the draft Record of Decision. Any dispute as to final selection of RA(s) shall be resolved in accordance with applicable law.

#### XI. CONSULTATION WITH EPA AND GEPD

##### Review and Comment Process

##### for Draft and Final Documents for the NPL Site

##### A. Applicability:

The provisions of this paragraph establish the procedures that shall be used by RAFB, GEPD, and U.S. EPA to provide the Parties with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified

herein as either primary or secondary documents. In accordance with Section 120 of CERCLA, 42 U.S.C. Section 9620, and 10 U.S.C. Section 2705, RAFB will normally be responsible for issuing primary and secondary documents to U.S. EPA and GEPA. As of the effective date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute resolution in accordance with Subparagraphs B through J below.

The designation of a document as "draft" or "final" is solely for purposes of consultation with U.S. EPA and GEPA in accordance with this Paragraph. 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.

B. General Process for RI/FS and RD/RA documents

1. Primary documents include those reports that are major, discrete portions of RI/FS or RD/RA activities. Primary documents are initially issued by the RAFB in draft subject to review and comment by U.S. EPA and GEPA. Following receipt of comments on a particular draft primary document, RAFB will respond to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary document will become the final primary document either 30 days after the issuance of a draft final document if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

2. Secondary documents include those reports that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by RAFB in draft subject to review and comment by U.S. EPA and GEFD. Although RAFB will respond to comments received, the draft secondary documents may be finalized in the context of the corresponding primary documents. A secondary document may be disputed at the time the corresponding draft final primary document is issued.

C. Primary Reports:

1. RAFB shall complete and transmit draft reports for the following primary documents to U.S. EPA and GEFD for review and comment in accordance with the provisions of this paragraph:

- a. RI Work Plan, including Sampling and Analysis Plan and QAPP
- b. FS Work Plan
- c. Risk Assessment
- d. RI Report
- e. Initial Screening of Alternatives
- f. FS Report
- g. Proposed Plan
- h. Record of Decision
- i. Remedial Design
- j. Remedial Action Work Plan
- k. Community Relations Plan

2. Only the draft final reports for the primary documents identified above shall be subject to dispute resolution.

RAFB shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Paragraph XXVII (Deadlines) of this Agreement.

D. Secondary Documents:

1. RAFB shall complete and transmit draft reports for the secondary documents as described in the RI and FS Work Plan to GEPD and U.S. EPA for review and comment in accordance with this Paragraph.

2. Although U.S. EPA and GEPD may comment on the draft reports for the secondary documents described above, such documents shall not be subject to dispute resolution except as provided by Subparagraph B hereof. Target dates shall be established for the completion and transmission of draft secondary reports pursuant to Paragraph XXVII (Deadlines) of this Agreement.

E. Meetings of the Project Managers on Development of Reports: The project managers shall meet approximately every thirty (30) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site on the primary and secondary documents. Prior to preparing any draft report specified in Subparagraphs C and D above, the project managers shall meet to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft report.

F. Identification and Determination of Potential ARARs:

1. For those primary reports or secondary documents

that consist of or include ARAR determinations, prior to the issuance of a draft report, the project managers shall 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 RAFB in accordance with Section 121(d)(2) of CERCLA, 42 U.S.C. Section 9621(d)(2), the NCP and pertinent guidance issued by U.S. EPA, which is not inconsistent with CERCLA and the NCP.

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

G. Review and Comment on Draft Reports:

1. The RAFB shall complete and transmit each draft primary report to U.S. EPA and GEPA on or before the corresponding deadline established for the issuance of the report. RAFB shall complete and transmit the draft secondary document in accordance with the target dates established for the issuance of



such reports established pursuant to Paragraph XXVII (Deadlines) of this Agreement.

2. Unless the Parties mutually agree to another time period, all draft reports shall be subject to a 30-day period for review and comment. Review of any document by the U.S. EPA and GEPA may concern all aspects of the report (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, GHMA and any pertinent guidance or policy promulgated by U.S. EPA or GEPA. Comments by U.S. EPA and GEPA shall be provided with adequate specificity so that RAFA may respond to the comment and, if appropriate, make changes to the draft report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of RAFA, U.S. EPA and GEPA shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, U.S. EPA and GEPA may extend the 30-day comment period for an additional twenty (20) days by written notice to the RAFA prior to the end of the 30-day period. On or before the close of the comment period, U.S. EPA and GEPA shall transmit by next day mail their written comments to RAFA in accordance with Paragraph XVI (Notification).

3. Representatives of RAFA shall make themselves readily available to U.S. EPA and GEPA during the comment period for purposes of informally responding to questions and comments on draft reports. Oral comments made during such discussions

need not be the subject of a written response by RAFB at the close of the comment period.

4. In commenting on a draft report which contains a proposed ARAR determination, U.S. EPA and GEPA shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that U.S. EPA and/or GEPA does object, they shall explain the basis for their objection in detail and shall identify any ARARs which they believe were not properly addressed in the proposed ARAR determination.

5. Following the close of the comment period for a draft report, RAFB shall give full consideration to all written comments on the draft report submitted during the comment period. Within thirty (30) days of the close of the comment period on a draft secondary report, RAFB shall transmit to U.S. EPA and GEPA its written response to comments received within the comment period. Within thirty (30) days of the close of the comment period on a draft primary report, RAFB shall transmit to U.S. EPA and GEPA the draft final primary report, which shall include RAFB's response to all written comments, received within the comment period. While the resulting draft final report shall be the responsibility of RAFB, it shall be the product of consensus to the maximum extent possible.

6. RAFB may extend the 30-day period for either responding to comments on a draft report or for issuing the draft final primary report for an additional twenty (20) days by providing notice to U.S. EPA and GEPA. In appropriate

circumstances, this time period may be further extended in accordance with Paragraph XXVIII (Extensions) hereof.

H. Availability of Dispute Resolution for Draft Final

Primary Documents:

1. Dispute resolution shall be available to the Parties for draft final primary reports as set forth in Paragraph XXX.

2. When dispute resolution is invoked on a draft primary report, work may be stopped in accordance with the procedures set forth in Paragraph XXX (Resolution of Disputes) regarding dispute resolution.

I. Finalization of Reports

The draft final primary report shall serve as the final primary report if no party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process should RAFB's position be sustained. If RAFB's determination is not sustained in the dispute resolution process, RAFB shall prepare, within not more than thirty-five (35) days, of resolution of a dispute, a revision of the draft final report which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Paragraph XXVIII (Extensions) hereof.

J. Subsequent Modifications of Final Reports:

Following finalization of any primary report pursuant to Subparagraph I above, U.S. EPA, GEPA, or RAFB may seek to modify the report, including seeking additional field work, pilot

studies, computer modeling or other supporting technical work, only as provided in Subparts 2 and 3 below.

1. U.S. EPA, GEPD, or RAFB may seek to modify a report after finalization if it determines, based on new information (i.e., information that became available, or conditions that became known, after the report was finalized) that the requested modification is necessary. U.S. EPA, GEPD, or RAFB may seek such a modification by submitting a concise written request to the project managers of the other Parties. The request shall specify the nature of the requested modification and how the request is based on new information.

2. In the event that a consensus is not reached by the project managers on the need for a modification, either U.S. EPA, GEPD, or RAFB may invoke dispute resolution to determine if such modification shall be conducted. Modification of a report shall be required only upon a showing that: (1) the requested modification is based on significant new information, and (2) the requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment.

3. Nothing in this paragraph shall alter U.S. EPA's or GEPD's ability to request the performance of additional work which was not contemplated by this Agreement. RAFB's obligation to perform such work must be accomplished by either a modification of a report or document or by amendment to this Agreement.

XII. PERMITS

A. The Parties agree that RAFB is the permittee subject to the terms and conditions of Hazardous Waste Permit No. HW-064(S), issued September 27, 1988, by GEPD. Within seven (7) days of the acceptance of this Agreement by all Parties, RAFB shall submit to the GEPD Director a request, in accordance with Section 391-3-11-.11 of GHWA, to modify the permit to incorporate this Agreement, and the permit will be modified as provided by State law. The public comment period for the proposed permit modification shall be concurrent with the comment period discussed in Paragraph XXXIV (Public Comment) below. The permit shall be similarly modified after selection of the final remedial action for the Site and any public comment period shall run concurrently with the comment period in accordance with Paragraph XXXIII (Public Participation) and CERCLA Sections 117 and 113(k).

All applications and reports submitted to GEPD pursuant to this Agreement shall be signed and certified according to the requirements of Condition I.C.8. of the HW-064(S) permit and 40 C.F.R. Section 270.11.

B. The Parties recognize that under Sections 121(d) and 121(e)(1) of CERCLA/SARA, 42 U.S.C. Sections 9621(d) and 9621(e)(1), and the NCP, portions of the response actions called for by this Agreement and conducted entirely on-site are exempted from the procedural requirement to obtain a federal, state, or local permit but must satisfy all the applicable or

relevant and appropriate federal and state standards, requirements, criteria, or limitations which would have been included in any such permit.

When RAFB proposes a response action (including a Work Plan pursuant to this Agreement) to be conducted entirely on-site, which in the absence of Section 121(e) of CERCLA/SARA and the NCP would require a federal or state permit, RAFB shall include in the submittal:

1. Identification of each permit which would otherwise be required;
2. Identification of the standards, requirements, criteria, or limitations which would have had to have been met to obtain each such permit;
3. Explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified in Subparagraph 2 immediately above, but only to the extent that this information is not covered by the statutory obligations of the Parties to identify ARARs.

Upon request of RAFB, U.S. EPA and GEFD will provide their position with respect to 2 and 3 above in a timely manner.

C. Subpart A above is not intended to relieve RAFB of the requirement(s) of obtaining a federal, state, or local permit whenever it proposes response action involving the shipment or movement off RAFB of a hazardous substance.

D. RAFB shall notify the GEFD Director and U.S. EPA in writing of any permits required for off-RAFB activities as soon as it becomes aware of the requirement. Upon request, RAFB

shall provide the GEPD Director and U.S. EPA copies of all such permit applications, notice of dispositions and other documents related to the permit process.

E. If a permit which is necessary for implementation of this Agreement is not issued, or is issued or renewed in a manner which is materially inconsistent with the requirements of this Agreement, RAFB agrees it shall notify the GEPD Director and U.S. EPA of its intention to propose modifications to this Agreement to obtain conformance with the permit (or lack thereof). Notification by RAFB of its intention to propose modifications shall be submitted within seven (7) calendar days of receipt by RAFB of notification that: (1) a permit will not be issued; (2) a permit has been issued or reissued; or (3) a final determination with respect to any appeal related to the issuance of a permit has been entered. Within thirty (30) days from the date it submits its notice of intention to propose modifications, RAFB shall submit to the GEPD Director and U.S. EPA its proposed modifications to this Agreement with an explanation of its reasons in support thereof.

F. During any appeal of any permit required to implement this Agreement or during review of any of RAFB's proposed modifications as provided in Subpart E above, RAFB shall continue to implement those portions of this Agreement which can be implemented pending final resolution of the permit issue(s).

G. RAFB shall comply with applicable state and federal hazardous waste management requirements.

H. To the extent that this information has been provided or would be provided in another document or report required under this Agreement, it is not the intent of the Parties that this paragraph would require resubmission of this information.

#### XIII. RESERVATION OF GEORGIA'S RIGHTS

By entering into this Agreement, GEPD does not waive any right or authority it may have under Georgia law, but expressly reserves all of the rights and authority it may have thereunder, except that GEPD expressly agrees to exhaust any applicable remedies provided in Paragraph XI (Consultation) and Paragraph XXX (Dispute Resolution) as provided in Paragraph XXXV (Enforceability) prior to exercising any such rights. Specifically, GEPD reserves any right and authority it may have to require corrective action for LF4 and the SL in accordance with O.C.G.A. Section 12-8-66(C) and its right to challenge the selection of a RA under CERCLA Section 121(f)(3)(a). Unless expressly waived by law, Georgia does not waive its Sovereign Immunity entering into this Agreement.

#### XIV. CREATION OF DANGER

A. The project managers may collectively agree on a cessation of work due to an imminent and substantial endangerment to human health or the environment.

B. In the absence of the RAFB project manager, the EPA or GEPD project manager can order a temporary cessation of work in



order to immediately consult the RAFB project manager to determine whether a formal cessation of work is warranted.

C. In the event the RAFB project manager does not concur with the U.S. EPA or GEPCD project manager on the need for an immediate cessation of work, the Parties agree to discontinue work for an interim period of time to determine whether continued cessation of work is warranted. During this period of time, the matter will be immediately referred to the RAFB installation commander for resolution. RAFB will also immediately provide the U.S. EPA project manager and the GEPCD project manager with communication capability to the U.S. EPA Regional Hazardous Waste Division Director or his/her superior and the GEPCD branch chief or his/her superior (as authorized by Georgia law), respectively, either of whom may verbally direct the continued cessation of work followed immediately by a formal written request in accordance with Paragraph XXX, (Resolution of Disputes), Subparagraph H. Absent the provisions of Subparagraph B above, only an authorized Air Force contracting official may order an emergency cessation of work.

Notwithstanding any other provision of this Agreement, RAFB retains the right, consistent with E.O. 12580, to conduct such emergency actions as may be necessary to alleviate immediate threats to human health or the environment from the release or threat of release of hazardous substances, pollutants or contaminants at or from RAFB. Such actions may be conducted at any time, either before or after the issuance of the ROD and shall be conducted in accordance with all applicable law and the

HW-064(S) permit. However, consistent with 10 U.S.C. Section 2705, RAFB shall require that an adequate opportunity for timely review and comment be afforded to U.S. EPA, GEPD, and local officials after making a proposal to carry out response actions with respect to any discovery of releases or threatened releases of hazardous substances and before undertaking such response actions. The preceding sentence does not apply if the action or emergency removal is taken because of imminent and substantial endangerment to human health or the environment and consultation would be impractical.

RAFB shall provide the other Parties with oral notice as soon as possible after RAFB determines that an emergency action is necessary due to an imminent and substantial endangerment to human health or the environment. In addition, within seven (7) days of initiating such action, in the event consultation was impractical, RAFB shall provide written notice to the other Parties explaining why such action is or was necessary to abate an imminent and substantial endangerment. Promptly thereafter, RAFB shall provide the other Parties with the written bases (factual, technical, scientific) for such action and any available documents supporting such action. Upon completion of such an emergency action, RAFB shall notify the other Parties in writing that the emergency action has been implemented. Such notice shall state whether, and to what extent, the emergency action varied from the description of the action provided in the written notice provided pursuant to the second sentence of this paragraph.

XV. LETTER REPORTING

RAFB agrees it shall submit to the GEPD Director and U.S. EPA, quarterly written progress reports which describe the actions which RAFB has taken during the previous quarter to implement the requirements of this Agreement. Progress reports shall also describe the activities scheduled to be taken during the upcoming quarter. Progress reports shall be submitted by the tenth (10th) day of each quarter following the effective date of this Agreement. The progress reports shall include a detailed statement of the manner and extent to which the requirements and time schedules set out in the attachments to this Agreement are being met. In addition, the progress reports shall identify any anticipated delays in meeting time schedules, the reason(s) for the delay and actions taken to prevent or mitigate the delay.

XVI. NOTIFICATION

Unless otherwise specified in this Agreement, any report or submittal provided pursuant to a schedule, deadline, or Paragraph XI (Consultation) identified in or developed under this Agreement shall be sent by certified mail, return receipt requested and addressed or hand delivered to:

Georgia Project Manager  
Georgia Environmental Protection Division  
Land Protection Branch  
Floyd Towers East, Suite 1154  
205 Butler Street  
Atlanta, Georgia 30334

and

U.S. Environmental Protection Agency, Region IV  
RAFB Remedial Project Manager  
Site Investigation and Support Branch  
345 Courtland Street, N.E.  
Atlanta, Georgia 30365

Documents sent to the Air Force shall be addressed as follows  
unless the Air Force specifies otherwise by written notice:

RAFB IRP Project Manager  
WR-ALC/EM  
Robins Air Force Base, Georgia 31098-5990

Unless otherwise requested or specified in this Agreement,  
all routine correspondences including monthly progress reports  
may be sent via regular mail to the above-named persons. Any  
time limitations shall commence upon receipt.

#### XVII. PROJECT MANAGERS

U.S. EPA, GEPA and RAFB shall each designate a project  
manager for the purpose of overseeing the implementation of this  
Agreement. Within ten (10) days of the effective date of this  
Agreement, each Party shall notify the other parties of the name  
and address of its project manager. Any Party may change its  
designated project manager by notifying the other Parties, in  
writing, within five (5) days of the change. To the maximum  
extent possible, communications between the Parties concerning  
the terms and conditions of this Agreement shall be directed  
through the project managers as set forth in Paragraph XVI  
(Notification) of this Agreement. Each project manager shall be

responsible for assuring that all communications from the other project managers are appropriately disseminated and processed by the entities which the project managers represent.

Subject to any limitations in this Agreement or applicable law, all project managers shall have the authority to: (1) take samples, request split samples of any Party's samples and ensure that work is performed properly and pursuant to U.S. EPA and GEED protocols as well as pursuant to the attachments and plans incorporated into this Agreement; (2) observe all activities performed pursuant to this Agreement, take photographs and make such other reports on the progress of the work as the project manager deems appropriate; (3) review records, files and documents relevant to this Agreement; and (4) recommend and request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or design utilized in carrying out this Agreement, which are necessary to the completion of the project.

The RAFB project manager may also recommend and request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or design used in carrying out this Agreement, which are necessary to the completion of the project.

Any minor field modifications proposed under this paragraph by any Party must be approved orally by all three (3) project managers to be effective. The RAFB Project Manager shall memorialize the agreed-upon modification in a memorandum for the record (MFR) which shall be included in the administrative

record required for the Site under CERCLA Section 113 and Paragraph XXXIII (Public Participation). If unanimous agreement cannot be reached on the proposed minor field modification, the Parties shall use the formal procedures of Paragraph XI (Consultation), Subparagraph J to modify the document which established the requirement for work being questioned.

The project manager for RAFB or his alternate shall be physically present on RAFB or reasonably available to supervise work performed at RAFB during implementation of the work performed pursuant to this Agreement and shall make himself or his alternate available to the U.S. EPA and GEFD project managers for the pendency of this Agreement. The absence of the U.S. EPA or GEFD project managers from the Site shall not be cause for work stoppage.

#### XVIII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

The Parties shall make available to each other quality assured results of sampling, tests or other data generated by any Party, or on their behalf, with respect to the implementation of this Agreement within forty-five (45) days of their collection or performance. RAFB shall use the quality

assurance, quality control procedures in accordance with the EPA Region IV Environmental Services Division, Engineering Support Branch, Standard Operating Procedures and Quality Assurance Manual dated April 1, 1986, (ESD SOP and QA) and the Operations and Quality Control Manual dated June 1, 1985, throughout all sample collection and analysis activities. If quality assurance is not completed within forty-five (45) days, raw data or results shall be submitted within the forty-five (45) day period and quality assured data or results shall be submitted as soon as they become available.

At the request of any project manager, any other project managers shall allow split or duplicate samples to be taken during sample collection conducted during the implementation of this Agreement. RAFB's project manager shall notify the U.S. EPA and GEPD project managers not less than ten (10) business days in advance of any sample collection. If it is not possible to provide ten (10) business days prior notification, RAFB shall notify the GEPD and U.S. EPA project managers as soon as possible after becoming aware that samples will be collected.

#### XIX. RETENTION OF RECORDS

Each Party to this Agreement shall preserve for a minimum of ten (10) years after termination of this Agreement all of its records and documents in its possession or in the possession of its divisions, employees, agents, accountants, contractors or attorneys which relate in any way to the presence of hazardous substances, pollutants and contaminants at the Site or to the

implementation of this Agreement, despite any document retention policy to the contrary. After this ten (10) year period, each party shall notify the other party at least forty-five (45) days prior to destruction or disposal of any such documents or records. Upon request by any party, the other parties shall make available such records or documents.

#### XX. SITE ACCESS

A. Without limitation on any authority conferred on U.S. EPA or GEPD by statute or regulation, U.S. EPA, GEPD, and/or their authorized representatives, shall have authority to enter the Site at all reasonable times for the purposes consistent with the provisions of this Agreement, subject to any statutory and regulatory requirements as may be necessary to protect national security. Such authority shall include, but not be limited to: (1) inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement; (2) reviewing the progress of RAFB, its response action contractors or lessees in implementing this Agreement; (3) conducting such tests as the GEPD and the U.S. EPA project managers deem necessary; and (4) verifying the data submitted to the U.S. EPA and GEPD by RAFB. Before using any camera, sound or other electronic recording device on RAFB, U.S. EPA and GEPD shall request permission of the RAFB Project Manager. RAFB shall not unreasonably withhold such permission.

B. Upon arrival at the RAFB entrance, RAFB shall provide an escort whenever U.S. EPA and GEPD require access to restricted



areas of RAFB for purposes consistent with the provisions of this Agreement.

C. Consistent with federal statutes and regulations, should RAFB determine it will be necessary to deny access, RAFB shall provide an explanation within forty-eight (48) hours of the reason for the denial and, to the extent possible, provide a recommendation for accommodating the requested access in an alternate manner. The Parties agree that this Agreement is subject to CERCLA Section 120(j), 42 U.S.C. Section 9620(j).

D. All Parties with access to RAFB pursuant to this paragraph shall comply with all applicable health and safety plans.

E. To the extent that access is required to areas of the Site presently owned by or leased to parties other than RAFB, RAFB agrees to exercise its authorities to obtain access pursuant to Section 104(e) of CERCLA/SARA from the present owners and/or lessees within thirty (30) calendar days after the effective date of this Agreement. RAFB shall use its best efforts to obtain access agreements which shall provide reasonable access to U.S. EPA and GEPA and/or its authorized representative.

F. To the extent that activities pursuant to this Agreement must be carried out on other than RAFB property, RAFB shall use its best efforts to obtain access agreements from the property owners. Following the signing of this Agreement by all Parties, RAFB shall initiate efforts to obtain access agreements as may be necessary. These agreements shall provide reasonable access for RAFB, U.S. EPA, GEPA and their representatives. In the event that RAFB is unable to obtain such access agreements, RAFB

shall promptly notify U.S. EPA and GEPD.

G. RAFB may request the assistance of U.S. EPA and GEPD where access problems arise.

#### XXI. FIVE YEAR REVIEW

If a RA is selected that results in any hazardous substances, pollutants, or contaminants remaining at the Site, the Parties shall review such remedial action no less often than each five (5) years after the initiation of such RA to assure that human health and the environment are being protected by the RA then being implemented. The EPA project manager and the GEPD project manager shall advise the RAFB project manager of their findings in this regard. If RAFB determines that additional action is required, the Agreement may be amended pursuant to Paragraph XI (Consultation) or Paragraph XXX (Resolution of Disputes). The RAFB determination under this paragraph shall be subject to dispute resolution by the other Parties.

#### XXII. OTHER CLAIMS

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

taken from RAFB.

U.S. EPA and GEPD shall not be held as a party to any contract entered into by the RAFB to implement the requirements of this Agreement.

This Agreement shall not restrict U.S. EPA or GEPD from taking any legal or response action for any matter not specifically part of the work covered by this Agreement.

#### XXIII. CONFIDENTIAL INFORMATION

RAFB may assert a confidentiality claim covering all or part of the information requested by this Agreement. Analytical data shall not be claimed as confidential by RAFB. Information determined to be confidential by U.S. EPA pursuant to 40 C.F.R. Part 2 shall be afforded the protection specified therein. Such information shall not be publicly disclosed by the Director of GEPD pursuant to O.C.G.A. Section 50-18-72(a)(1) and GHWA. If no claim of confidentiality accompanies the information when it is submitted to the U.S. EPA or the GEPD Director, the information may be made available to the public without further notice to RAFB.

#### XXIV. RESERVATION OF RIGHTS

##### RECOVERY OF OTHER EXPENSES

The Parties agree to amend this Agreement at a later date in accordance with any subsequent national resolution of the issues of cost reimbursement.

XXV. RECOVERY OF EXPENSES

Georgia

A. For those services which have been provided throughout fiscal year 1989, RAFB agrees to reimburse GEFD, subject to the conditions and limitations set forth in this Paragraph and subject to Paragraph XXXVIII (Funding), for services provided to RAFB's environmental restoration program at the Site funded under the Environmental Restoration, Defense (ER,D) appropriation pursuant to subparagraph B of this Paragraph.

B. Services requested and provided under this Paragraph include the following types of assistance:

1. Timely technical review and specific comment on needed improvements and on reports or studies which RAFB prepares in support of its response/remedial actions and submits to GEFD.
2. Identification and explanation of State ARARs applicable to military installations in performing response/remedial actions.
3. Field visits to review investigative and remedial activities for consistency with agreed upon conditions between GEFD and RAFB as established in the framework of this Agreement.
4. Support and assistance to RAFB in the conduct of public education and public participation activities in accordance with Federal and State requirements for public involvement.

5. Participation in the RAFB Technical Review Committee for review of and comment on documents, including related services requested by RAFB.

6. Other services specified in this Agreement.

C. These services have been and will be provided to RAFB in compliance with all Federal procurement and auditing requirements. These requirements are described in OMB Circulars A-87, "Cost Principles for State and Local Governments;" A-128, "Audits for State and Local Cooperative Agreements with State and Local Governments;" and standard forms 424 and 270.

D. RAFB will at key points in the investigation and remediation process review the total estimated project costs through investigation and construction of the response/remedial actions and revise these estimates as appropriate. In accordance with subparagraphs F and G, below, the total dollar amount of GEPD expenses reimbursable pursuant to the 1% cap on reimbursable expenses shall be adjusted in line with these revisions, but in no event shall the total reimbursable dollar amount be less than one percent of the total project costs as currently estimated and set forth in subparagraph I, below. Within thirty (30) calendar days after the execution of this Agreement by all Parties, RAFB agrees to notify GEPD of its current best estimate of total project costs. RAFB further agrees to provide GEPD with updates of its best estimate of total project costs at least semiannually thereafter. Upon request by GEPD, RAFB agrees to provide GEPD verification of

amounts actually expended for project costs during the most recent semiannual accounting period.

E. Within thirty (30) calendar days of the execution of this Agreement by all parties, GEPD shall supply a budget estimate of what it has done during Fiscal Year 1989 and what it plans to do for the remainder of Fiscal Year 1989; RAFB shall, within thirty (30) calendar days of receipt of such submission, advance an equivalent amount of funds to GEPD, but in no event shall such advance exceed one-quarter of 1% of the total project costs as currently estimated and set forth in subparagraph I, below, (i.e., \$66,125.00). Thereafter, at least thirty (30) calendar days prior to the beginning of each fiscal year (i.e. 30 calendar days prior to October 1), GEPD shall supply a budget estimate of what it plans to do during the upcoming fiscal year; RAFB shall advance GEPD an equivalent amount, but in no event shall such advance exceed one-quarter of 1% of the total project costs as currently estimated and set forth in subparagraph I, below, (i.e., \$66,125.00). All budget estimates supplied by GEPD shall contain the same level of detail as the accounting documents described in subparagraph F, below.

It is the expectation of GEPD and the Air Force, based on information currently available, that funds advanced by the Air Force pursuant to this subparagraph will be sufficient to reimburse GEPD for its expenses during any fiscal year; however, GEPD and the Air Force also acknowledge that unexpected expenses may arise, such as, but not limited to, those attendant to dispute resolution. Should the accounting provided pursuant to

subparagraph F document an excess expenditure by GEPD, such accounting shall be considered a request by GEPD for additional reimbursement pursuant to subparagraph G.

F. GEPD shall submit to RAFB a semiannual accounting of all GEPD costs actually incurred during the six-month accounting period in providing the services referred to in subparagraph B, above. Such accounting shall be submitted within sixty (60) calendar days after the end of each six-month period and shall be accompanied by cost summaries and supported by documentation that meets Federal auditing requirements and the standards set forth in subparagraph C, above. The summaries will specify man-hours and other expenses by major type of support service. All costs submitted must be for work directly related to the implementation of this Agreement and not inconsistent with the NCP. RAFB shall have the right, consistent with State law, to audit cost reports used by GEPD to develop the cost summaries.

G. Except as allowed pursuant to subparagraphs H or I, below, within sixty (60) calendar days of receipt of the accounting provided pursuant to subparagraph F, above, RAFB shall reimburse GEPD for any amount set forth in the accountings in excess of the amount advanced to GEPD at the beginning of the fiscal year, or GEPD shall reimburse RAFB for any amount advanced to GEPD at the beginning of the fiscal year and not actually expended by GEPD during the fiscal year. In no event shall the total of all advances and reimbursements to GEPD exceed 1% of the total project costs as currently estimated and set forth in subparagraph I, below, or as increased by an

adjustment made in accordance with subparagraph D, above.

H. In the event RAFB contends that any of the costs set forth in the accounting period provided pursuant to subparagraph F, above, are not properly payable, the matter shall be resolved through the following bilateral dispute resolution process between RAFB and GEPD:

1. If the GEPD and RAFB Project Managers are unable to agree upon a properly payable amount within ten (10) business days of receipt of notice that any of the costs are not properly payable, the matter shall be referred immediately to the RAFB installation commander, or his designated representative, and the GEPD Chief, Land Protection Branch, or his designated representative.

2. Should the RAFB installation commander and the GEPD Chief, Land Protection Branch, be unable to agree within ten (10) business days, the matter shall be elevated immediately to the GEPD Assistant Director and the Chief of Staff, Air Force Logistics Command, Wright-Patterson AFB, Ohio.

3. Should the GEPD Director and the Chief of Staff, Air Force Logistics Command, fail to resolve the dispute within twenty (20) business days, the matter shall be referred to the GEPD Director and the Secretary of the Air Force, or their designees.

4. It is the intention of the Parties that all disputes related to cost reimbursement by RAFB to GEPD shall be resolved in this manner. In the event the GEPD Director and the Secretary of the Air Force, or their designees, are unable to



resolve a dispute related to cost reimbursement, GEPD shall have the right to withdraw from this Agreement.

I. Total RAFB costs for the life of the project are currently estimated to total \$26,450,000. In no event shall the total of all advances and reimbursements to GEPD exceed 1% of the total project costs as currently estimated and set forth herein or as increased by an adjustment made in accordance with subparagraph D, above.

J. So long as GEPD remains a party to this Agreement, GEPD agrees to seek payment for its expenses solely through the mechanisms established in this Agreement.

K. At such time as all advances and reimbursements to GEPD equal 1% of the total project costs as currently estimated and set forth in subparagraph I, above, or as increased by an adjustment made in accordance with subparagraph D, above, GEPD and RAFB agree to renegotiate the issue of cost-reimbursement. In the event that GEPD and RAFB cannot reach an agreement on such issue within sixty (60) calendar days thereafter, GEPD shall have the right to withdraw from this Agreement.

L. RAFB and GEPD agree that the terms and conditions of this Paragraph, XXV (Recovery of Georgia's Expenses), shall become null and void at such time as GEPD enters into a Defense/State Memorandum of Agreement (DSMOA) with the Department of Defense (DOD), which addresses this issue.

#### XXVI. STIPULATED PENALTIES

A. In the event that RAFB fails to submit a primary document (i.e., RI/FS Work Plan, Risk Assessment, RI Report,

Initial Screening of Alternatives, FS Report, Proposed Plan, Final Plan, Remedial Design, Remedial Action Work Plan) to U.S. 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 RAs for operable units or final RAs, U.S. EPA may assess a stipulated penalty against RAFB. A stipulated penalty may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this paragraph occurs.

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

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

1. The facility responsible for the failure;
2. A statement of the facts and circumstances giving

rise to the failure;

3. A statement of any administrative or other corrective action taken at the relevant facility, or a statement of why such measures were determined to be inappropriate;

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

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

D. Stipulated penalties assessed pursuant to this Paragraph shall be payable to the Hazardous Substances Response Trust Fund and the appropriate state fund in accordance with subparagraph H of Paragraph XXV (Stipulated Penalties), only in the manner and to the extent expressly provided for in Acts authorizing funds for and appropriations to DOD.

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

F. This paragraph shall not affect RAFB's ability to obtain an extension of a timetable, deadline or schedule pursuant to Paragraph XXVIII (Extensions) of this Agreement.

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

H. U.S. EPA and GEPD agree, to the extent allowed by law, to share equally any stipulated penalties paid by RAFB between

the Hazardous Substances Superfund and an appropriate State fund.

XXVII. DEADLINES

A. The following deadlines have been established, in conjunction with the State, for the submittal of draft primary documents pursuant to this Agreement:

<u>Deadline</u>	<u>Action</u>
31 Aug 89	Risk Assessment
30 Nov 89	RI Report
30 Nov 89	Community Relations Plan
30 Apr 90	FS Report
01 Aug 90	Proposed Plan

B. Within twenty-one (21) days of the effective date of this Agreement, RAFB shall propose deadlines for the completion of the following draft primary documents:

1. RI Work Plan including Sampling and Analysis Plan and QAPP
2. FS Work Plan
3. Record of Decision
4. Initial Screening of Alternatives

Within fifteen (15) days of receipt, U.S.EPA, in conjunction with the State, shall review and provide comments to RAFB regarding the proposed deadlines. Within fifteen (15) days following receipt of the comments, RAFB shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. If

the Parties agree on proposed deadlines, the finalized deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree within thirty (30) days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Paragraph XXX of this Agreement. The final deadlines established pursuant to this paragraph shall be published by U.S. EPA, in conjunction with the State.

C. Within twenty-one (21) days of the issuance of the Record of Decision, RAFB shall propose deadlines for completion of the following draft primary documents:

1. Remedial Design
2. Remedial Action Work Plan

These deadlines shall be proposed, finalized and published utilizing the procedures in Subparagraph B above.

D. These deadlines shall be proposed, finalized, and published utilizing the same procedures set forth in Paragraph B above. The deadlines set forth in this paragraph or to be established as set forth in this paragraph may be extended pursuant to Paragraph XXVIII (Extensions) of this Agreement. The Parties recognize that one possible basis for extension of the deadlines for completion of the Remedial Investigation and Feasibility Study Reports is the identification of significant new Site conditions during the performance of the Remedial Investigation.

E. Within twenty-one (21) days of receipt by U.S. EPA and GEPRD of the final RI and FS Work Plans, RAFB shall furnish target completion dates for secondary documents listed in the RI and FS Work Plans.

XXVIII. EXTENSIONS

A. 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 RAFB 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. Why and how any related timetable and deadline or schedule would be affected if the extension were granted.

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

1. An event of Force Majeure;
2. A delay caused by another party's failure to meet any requirement of this Agreement;
3. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
4. A delay caused, or 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 to by the Parties as constituting good cause.

C. Absent agreement of the Parties with respect to the existence of good cause, RAFB may seek and obtain a determina-

tion through the dispute resolution process that good cause exists.

D. Within seven (7) days of receipt of a request for an extension of a timetable and deadline or a schedule, U.S. EPA and GEPD shall advise RAFB in writing of its respective position on the request. Any failure by U.S. EPA and GEPD to respond within the 7-day period shall be deemed to constitute concurrence in the request for extension. If U.S. EPA or GEPD do not concur in the requested extension, they shall include in their statements of nonconcurrence an explanation of the basis for their position.

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

F. Within seven (7) days of receipt of a statement of nonconcurrence with the requested extension, RAFB may invoke dispute resolution.

G. A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected 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.

XXIX. FORCE MAJEURE

A Force Majeure shall mean any event arising from causes beyond the control of a Party and causing a delay in or prevents the performance of any obligation under this Agreement, including, but not limited to, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than RAFB; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriated funds, if RAFB shall have made timely request for such funds as part of the budgetary process as set forth in Paragraph XXXVIII (Funding) of this Agreement. A Force Majeure



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

XXX. RESOLUTION OF DISPUTES

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

All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the project manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this paragraph shall be implemented to resolve a dispute.

A. Within thirty (30) days after: (1) the issuance of the draft final primary document pursuant to Paragraph XI (Consultation), of this Agreement, or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal, or factual information the disputing Party is relying upon to support its position.

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

C. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (SES or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The U.S. EPA representative on the DRC is the Waste Management Division Director of U.S. EPA's Region IV. The Air Force's designated member is the Vice Commander, WR-ALC, Robins AFB, GA. GEPD's designated member is the Chief, Land Protection Branch. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Paragraph XVI (Notification).

D. Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day

period, the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution, within seven (7) days after the close of the twenty-one (21) day resolution period.

E. The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The U.S. EPA representative on the SEC is the Regional Administrator of U.S. EPA's Region IV. RAFB's representative on the SEC is the Chief of Staff, Air Force Logistics Command, HQ-AFLC, Wright-Patterson AFB, Ohio. GEPD's representative on the SEC is the Assistant Director of GEPD. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, U.S. EPA's Regional Administrator shall issue a written position on the dispute. RAFB or GEPD, may, within fourteen (14) days of the Regional Administrator's issuance of U.S. EPA's position, issue a written notice elevating the dispute to the Administrator of U.S. EPA for resolution in accordance with all applicable laws and procedures. In the event that RAFB or GEPD elects not to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, RAFB and GEPD shall be deemed to have agreed with Regional Administrator's written position with respect to the dispute.

F. Upon escalation of a dispute to the Administrator of U.S. EPA pursuant to Subparagraph G above, the Administrator will review and resolve the dispute within twenty-one (21)

days. Upon request, and prior to resolving the dispute, the U.S. EPA Administrator shall meet and confer with the Air Force's Secretariat Representative and the Director of GEFD to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the Air Force and the Director of GEFD with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this paragraph shall not be delegated. In the event the U.S. EPA Administrator and the Director of GEFD disagree, the Director of GEFD may exercise his authority pursuant to Paragraph XIII (Reservation of Georgia's Rights).

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

H. When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Waste Division Director for U.S. EPA's Region IV or the Chief, Land Protection Branch requests, in writing, that work related to the dispute be stopped because, in U.S. EPA's or GEFD's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health and

environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. To the extent possible, U.S. EPA and GEPD shall consult with RAFB prior to initiating a work stoppage request. After stoppage of work, if the RAFB believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the RAFB may meet with the Division Director and the Chief, Land Protection Branch to discuss the work stoppage. Following this meeting, and further consideration of the issues, the Division Director or the Chief, Land Protection Branch will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the Division Director or the Chief, Land Protection Branch may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of RAFB.

I. Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this paragraph, RAFB shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

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

XXXI. REMOVAL ACTIONS

A. Any removal action conducted on the Site shall be conducted in a manner consistent with this Agreement, CERCLA, the NCP, GHMA, and 10 U.S.C. Section 2705.

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

XXXII. TRANSFER OF PROPERTY

No conveyance of title, easement, or other interest in RAFB property on which any containment system, treatment system, monitoring system or other response action(s) is installed or implemented pursuant to this Agreement shall be consummated by RAFB without provision for continued maintenance of any such system or other response action(s). At least thirty (30) days prior to any conveyance, RAFB shall notify U.S. EPA and the GEPD Director of the transfer of real property subject to this Agreement and the provisions made for any additional RA measures, if required. RAFB shall not transfer any real property from the NPL site except in compliance with Section 120(h) of CERCLA, 42 U.S.C. Section 9620(h).

XXXIII. PUBLIC PARTICIPATION

A. The Parties agree that this Agreement and any subsequent proposed RA alternative(s) and subsequent plan(s) for RA at the Site arising out of this Agreement shall comply with the administrative record and public participation requirements of GHMA

and CERCLA/SARA, including Section 117 of SARA, the NCP, and U.S. EPA guidances on Public participation and administrative records.

B. RAFB shall develop and implement a Community Relations Plan (CRP) as required by Paragraph XI (Consultation) with EPA and GEPD in accordance with GHWA, Section 117 of CERCLA, the NCP and U.S. EPA guidelines.

C. The public participation requirements of this Agreement shall be implemented so as to meet the public participation requirements applicable for modification of the HW-064(S) permit.

D. Any Party issuing a formal press release to the media regarding any of the work required by this Agreement shall advise the other Parties of such press release and the contents thereof, at least forty-eight (48) hours before the issuance of such press release and of any subsequent changes prior to release.

E. RAFB agrees it shall establish and maintain an administrative record at or near RAFB in accordance with Section 113(k) of CERCLA/SARA. The administrative record shall be established and maintained in accordance with current and future U.S. EPA policy and guidelines. A copy of each document placed in the administrative record will be provided to U.S. EPA and GEPD. The administrative record developed by RAFB shall be updated and supplied to U.S. EPA and GEPD on at least a quarterly basis. An index of documents in the administrative record will accompany each update of the administrative record.

F. RAFB agrees it shall follow the public participation requirements of CERCLA/SARA Section 113(k), comply with any regulations, and consider any guidance promulgated by U.S. EPA with respect to such Section.

#### XXXIV. PUBLIC COMMENT

A. Within fifteen (15) days of the date of the acceptance of this Agreement, U.S. EPA shall announce the availability of this Agreement to the public for review and comment. U.S. EPA shall accept comments from the public for a period of forty-five (45) days after such announcement. Promptly upon the completion of the comment period, U.S. EPA shall transmit to the other Parties, copies of all comments received within the comment period. The Parties shall review all such comments and shall either:

1. Determine that the Agreement should be made effective in its present form, in which case RAFB and GEFD shall be so notified promptly in writing by U.S. EPA, and the Agreement shall become effective on the date said notice is issued; or

2. Determine that modification of the Agreement is necessary, in which case the Parties will either amend the Agreement by mutual consent, or, if the Parties do not mutually agree on needed changes within thirty (30) days from the close of the public comment period, the Parties shall submit their written notices of position directly to the Dispute Resolution Committee, and the dispute resolution procedure of Paragraph XXX shall apply.



3. If there is written notice of opposition to this Agreement within the time period for public comment, U.S. EPA shall hold a public hearing after thirty (30) days prior notice. A written transcript or tape recording of the hearing shall be prepared by U.S. EPA and provided to RAFB, which shall make it a part of the administrative record required under this Agreement.

B. In the event that the Agreement is modified following the exhaustion of the dispute resolution procedures of Paragraph XXX, RAFB and GEFD reserve the right to withdraw from the Agreement within twenty (20) days of U.S. EPA's submission of the modified Agreement to the Parties via overnight mail. If neither RAFB nor GEFD provide U.S. EPA with written notice of withdrawal from the Agreement within such twenty (20) day period, the Agreement, as modified shall automatically become effective on the twenty-first day, and U.S. EPA shall issue a notice to the Parties within three (3) working days of the effective date.

C. When a final decision by the Parties is reached on whether to finalize the Agreement in its original form, modify, or withdraw from the Agreement, EPA shall issue an article of decision for the Agreement in accordance with 40 CFR Section 124.15(d). In addition, the U.S. EPA shall issue a response to comments in accordance with 40 CFR Section 124.17.

#### XXXV. ENFORCEABILITY

A. The Parties agree that:

1. Upon 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 310(c) and 109 of CERCLA;

2. All timetables or 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;

3. All terms and conditions of this Agreement which relate to RAS for operable units, or final RAS, including corresponding timetables, deadlines or schedules, and all work associated with the RAS for operable units, or final RAS, 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;

4. Any final resolution of a dispute pursuant to Paragraph XXX of this Agreement which establishes a term, condition, timetable, deadline or schedule shall be enforceable by any person pursuant to Section 310(c) of CERCLA, and any violation of such term, condition, timetable, deadline or schedule will be subject to civil penalties under Sections 310(c) and 109 of CERCLA.

5. Upon modification of the Hazardous Waste Permit Number HW-064(S) to incorporate this Agreement, all terms and conditions of this Agreement become enforceable by GEPD as terms and conditions of that permit, except as otherwise provided in this Agreement; and

6. Consistent with this Agreement, GEPD agrees to exhaust fully the remedies provided in Paragraph XI (Consultation) and Paragraph XXX (Dispute Resolution) of this Agreement prior to taking any other enforcement action it may have the authority to exercise relative to the NPL Site.

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

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

#### XXXVI. TERMINATION

The provisions of this Agreement shall be deemed satisfied and terminated upon receipt by RAFB of written notice from U.S. EPA and the GEPD Director that RAFB has demonstrated, to the satisfaction of the U.S. EPA and GEPD Director, that all the terms of this Agreement have been completed. Written notice from U.S. EPA and GEPD may not be unreasonably withheld. Any unreasonable failure or refusal to provide written notice shall be subject to dispute resolution in accordance with Paragraph XXX.

XXXVII. EFFECTIVE DATE

This Agreement is effective as provided for in Paragraph XXXIV (Public Comment), Subparagraphs A through C, of this Agreement.

XXXVIII. FUNDING

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

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

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

If appropriated funds are not available to fulfill RAFB's obligations under this Agreement, U.S. EPA and GEPA reserve the

right to initiate an action against any other person or to take any response action which would be appropriate absent this Agreement. Funds authorized and appropriated annually by Congress under the "Environmental Restoration, Defense" appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense (Environment) [DASD(E)] to RAFB will be the source of funds for activities required by this Agreement consistent with Section 211 of SARA, 10 U.S.C. Chapter 160. However, should the Environmental Restoration, Defense appropriation be inadequate in any year to meet the total RAFB CERCLA implementation requirements, the DOD shall employ and RAFB shall follow a standardized DOD prioritization process which allocates that year's appropriations in a manner which maximizes the protection of human health and the environment. A standardized DOD prioritization model shall be developed and utilized with the assistance of U.S. EPA and the states.

IT IS SO AGREED:

June 14, 1989  
DATE

26 MAY 1989  
DATE

JUN 7 1989  
DATE

JUN 13 1989  
DATE

J. Leonard Ledbetter  
J. Leonard Ledbetter, Director  
Georgia Environmental Protection  
Division

Richard F. Gillis  
Richard F. Gillis  
Major General, USAF  
Commander, WR-ALC

Jonathan Z. Cannon  
Jonathan Z. Cannon  
Acting Assistant Administrator  
United States Environmental  
Protection Agency

Greer C. Tidwell  
Greer C. Tidwell  
Regional Administrator  
United States Environmental  
Protection Agency