UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 9

AND THE

STATE OF HAWAII

AND THE

UNITED STATES DEPARTMENT OF THE NAVY

IN THE MATTER OF:

U.S. Department of the Navy
Naval Computer and
Telecommunications Area
Master Station Pacific
Oahu, Hawaii

FEDERAL FACILITY AGREEMENT
Under CERCLA Section 120
Administrative
Docket Number: 2009-06

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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

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

A. The U.S. Environmental Protection Agency (EPA) Region 9 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), Pub. L. No. 99-499 (hereinafter jointly referred to as CERCLA/SARA or CERCLA), and Sections 6001, 3008(h) and 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v) as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA/HSWA or RCRA), and Executive Order 12580;

B. EPA Region 9 enters into those portions of this Agreement that relate to interim remedial actions (IRAs) and final remedial actions (FRAs) pursuant to CERCLA Section 120(e)(2), 42 U.S.C. Section 9620(e)(2), RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), and Executive Order 12580;

C. The Navy enters into those portions of this Agreement that relate to the RI/FS pursuant to CERCLA Section 120(e)(1), 42 U.S.C. Section 9620(e)(1), RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. Section 4321, and the Defense Environmental Restoration Program (DERP), 10 U.S.C. Section 2701 et seq.;

D. The Navy enters into those portions of this Agreement that relate to IRAs and FRAs pursuant to CERCLA Section 120(e)(2), 42 U.S.C. Section 9620(e)(2), RCRA Sections 6001, 3008(h), 3004(u) and (v), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), Executive Order 12580, and the DERP.

E. The State of Hawaii through the Hawaii Department of Health (HDOH) enters into this Agreement pursuant to CERCLA Sections 120(f) and 121(f), 42 U.S.C. Sections 9620(f) and 9621(f), Section 3006 of RCRA, 42 U.S.C. Sections 6926, its inherent governmental authority, and Hawaii Revised Statutes Sections 342B-35(2), 342D-59(2) and 342J-40.

II. DEFINITIONS

2.1 Except as noted below or otherwise explicitly stated, the definitions provided in CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) shall control the meaning of terms used in this Agreement.

A. "Accelerated Operable Unit" or "AOU" shall mean a remedial action (RA) that prevents, controls, or responds to a release or threatened release of hazardous substances, pollutants, and contaminants where prompt action is necessary but a response under removal authorities is not appropriate or desirable. The purpose of an AOU is to allow the Parties to proceed with an RA for that Operable Unit (OU) prior to completion of the final Record of Decision (ROD) for the total RA. AOUs are particularly appropriate where the size and complexity of the total RA would seriously delay implementation of independent parts of the action. AOUs will only proceed after complying with applicable procedures in the NCP, and the Parties shall make every effort to expedite these procedures. It is not intended that AOUs diminish the requirements for or delay the conduct of a total RA.

B. "Agreement" shall refer to this document and shall include all Attachments and Appendices to this document. All such Attachments and Appendices are integral parts of this Agreement and shall be enforceable to the extent provided herein.

C. "Applicable State law" shall mean all State of Hawaii laws administered by the HDOH determined to be applicable under this Agreement. The term shall also include all State laws determined to be Applicable or Relevant and Appropriate Requirements (ARARs).

D. "ARARs" shall mean "legally applicable" or "relevant and appropriate" requirements, standards, criteria, or limitations, as those terms are used in Section 121 of CERCLA, 42 U.S.C. Section 9621, and as defined in the NCP.

E. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., as amended by SARA, Public Law No. 99-499, and any amendments thereto.

F. "Community Involvement Program" shall mean the program to inform and involve the public in the installation restoration (IR), Superfund, and RCRA process and to respond to community concerns.

G. "Days" shall mean calendar days, unless business days are specified. Any submittal, written statement of position, or written statement of dispute which, under the terms of this Agreement, would be due on a Saturday, Sunday, or federal or State holiday shall be due on the following business day.

H. "Deadlines" shall mean the Near Term Milestones specifically established for the current fiscal year under the Site Management Plan (SMP). Deadlines are subject to stipulated penalties in accordance with Section XXI - STIPULATED PENALTIES.

I. "Deliverable Document" shall mean those required documents listed as Primary and Secondary Documents under this Agreement.

J. "Documents" or "records" shall mean any documents, writings, correspondence, and all other tangible things on which information has been stored that relate to this Agreement or to any activities to be undertaken relating to this Agreement.

K. "EPA" or "Agency" shall mean the United States Environmental Protection Agency, its employees, agents, authorized representatives, successors, and assigns.

L. "Facility" shall mean that property owned or operated by the United States Department of the Navy at NCTAMSPAC located in the City and County of Honolulu in the State of Hawaii including all areas identified in Appendix A and Appendix B. This definition is for the purpose of describing a geographical area and not a governmental entity.

M. "Feasibility Study" shall have the same meaning as set forth in 40 C.F.R. 300.5.

N. "Fiscal year" or "FY" shall mean the time period used by the United States Government for budget management and commences on October 1 and ends September 30 of the following calendar year.

O. "Focused Feasibility Study" or "FFS" shall mean a comparison of alternatives that concentrates on a particular contaminated medium or a discrete portion of a Site that does not need added investigation in order to progress forward in the remedial process.

P. "Guidance" shall mean any requirements or policy directives issued by the EPA or that may be issued by the HDOH, which are of general application to the Navy's work under this Agreement.

Q. "HDOH" shall mean the State of Hawaii Department of Health and its authorized employees and authorized representatives.

R. "Interim Remedial Action (IRAs)" shall mean all discrete Remedial Actions (RAs), including, but not limited to, AOUs, implemented prior to a Final Remedial Action (FRA) that are taken to prevent or minimize the release of hazardous substances, pollutants, or contaminants.

S. "Land use control" or "LUC" shall mean any restriction or administrative action, including engineering and institutional controls, arising from the need to reduce risk to human health and the environment.

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

U. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and any amendment thereto.

V. "Navy" shall mean the U. S. Department of the Navy, including the Naval Facility Engineering Command, Hawaii, NCTAMSPAC, their employees, members, successors and authorized representatives, and assigns. The Navy shall also include the United States Department of Defense (DoD) to the extent necessary to effectuate the terms of the Agreement, including, but not limited to, appropriations and Congressional reporting requirements.

W. "Near Term Milestones" shall mean the Milestones within the current fiscal year (FY), the next FY or "budget year" (FY+1), and the year for which the budget is being developed or "planning year" (FY+2). Deliverable dates for Near Term Milestones are summarized in Appendix B.

X. "Onsite" shall have the meaning as defined in the 40 C.F.R. 300.5.

Y. "Operable Unit" or "OU" shall mean a discrete action that comprises an incremental step toward comprehensively remediating the Site. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of release, or

pathway of exposure related to the Site. OUs may address geographical portions of the Site, specific Site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of the Site. The cleanup of the Site can be divided into a number of OUs, depending on the complexity of the problems associated with the Site. The term "Operable Unit" is not intended to refer to the term "operating unit" as used in RCRA. All OUs shall be addressed in accordance with the NCP, applicable EPA Guidance, and the requirements of CERCLA.

Z. "Out Year Milestones" shall mean the Milestones within those years occurring after the planning year until the completion of the cleanup or phase of the cleanup (FY+3 through Project End Date).

AA. "Parties" shall mean the Navy, the EPA, and the HDOH.

BB. "Primary Actions" as used in these definitions shall mean those specified major, discrete actions that the Parties identify as such in the SMP. The Parties should identify all major, discrete actions for which there are sufficient information to be confident that the date for taking such action is implementable.

CC. "Program Objectives Memorandum Process" or "POM Process" is the planning, programming, budgeting process used to review total requirements for Department of Defense programs and make appropriate adjustments within the future years defense plan for each program.

DD. "Project End Dates" shall mean the dates established by the Parties in the Site Management Plan (SMP) for the completion of major portions of the cleanup or completion of the cleanup of the Facility. The Parties recognize that, in many cases, a higher degree of flexibility is appropriate with Project End Dates due to uncertainties associated with establishing such dates.

EE. "Project Manager" shall mean each person designated by the Parties to represent that Parties' interests and manage all response actions undertaken at the Site.

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

GG. "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended by HSWA, Public Law No. 98-616, and any amendments thereto.

HH. "Record(s) of Decision" or "ROD(s)" shall be the public document(s) that select(s) and explain(s) which cleanup alternative(s) will be implemented at the Site, and include(s) the basis for the selection of such remedy(ies). The bases include, but are not limited

to, information and technical analyses generated during the RI/FS and consideration of public comments and community concerns.

II. "Remedial Action" shall have the same meaning as set forth in 40 C.F.R. 300.5.

JJ. "Remedial Investigation" shall have the same meaning as set forth in 40 C.F.R. 300.5.

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

LL. "Site" shall include the Facility and any other areas where a hazardous substance, hazardous waste, hazardous constituent, pollutant, or contaminant from the Facility has been deposited, stored, disposed of, or placed, or has migrated or otherwise come to be located. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9). This definition is not intended to include hazardous substances or wastes intentionally transported from the Facility by motor vehicle.

MM. "Site Management Plan" or "SMP" shall mean a planning document, prepared specifically under Section XI—DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN, that contains a timetable, plan, or Schedule that indicates the time and sequence of events. The SMP will be used as a management tool in planning, reviewing, and setting priorities for all response activities at the Facility. Deadlines developed under the terms of this Agreement are listed in the SMP (Appendices A and B to this Agreement). Milestones developed under the terms of this Agreement are listed in the SMP (Appendices A and B to this Agreement). Near Term Milestones specifically established for the current fiscal year (Deadlines) listed in the SMP (Appendices A and B to this agreement) are subject to stipulated penalties.

NN. "State" or "Hawaii" shall mean the State of Hawaii, including all departments, offices and agencies thereof, as represented by the Department of Health (HDOH).

OO. "Target Dates" shall mean dates established for the completion and transmission of Secondary Documents. Target Dates are not subject to dispute resolution and they are not Milestones.

PP. "Transmit" shall mean the following: any document or notice to be transmitted by a certain date will be considered as transmitted on time if: (1) it is provided to the carrier on a next-day mail basis no later than the day before it is due to be delivered according to the requirements of this Agreement; (2) it is hand-delivered by the due date; or (3) it is sent by certified mail return receipt requested no later than 2 Days before it is due to be delivered according to the requirements of this Agreement. Any other means of transmission, including by electronic means (email or FAX) must arrive on the due date to be considered as timely delivered.

QQ. "Work" shall mean all activities the Navy is required to perform under this Agreement, except those required by Section XXXI—RECORD PRESERVATION.

III. PARTIES BOUND

3.1 This Agreement shall apply to and be binding upon the State, EPA, and the Navy. Under this Agreement, the State of Hawaii is acting pursuant to its power and duties under Sections 120(f) and 121(f) of CERCLA, 42 U.S.C. Sections 9620(f) and 9621(f).

3.2 The Navy shall notify the EPA and the State of the identity and assigned tasks of each of its contractors performing Work under this Agreement upon their selection. The Navy shall provide copies of this Agreement to all contractors performing any Work called for by this Agreement. Each Party shall be responsible for ensuring that its contractors comply with the terms and conditions of this Agreement.

3.3 This Section shall not be construed as an agreement to indemnify any person.

IV. PURPOSE

4.1 The general purposes of this Agreement are to:

A. Ensure that the environmental impacts associated with past activities at the Site are thoroughly investigated and appropriate Remedial Action (RA) taken as necessary to protect the public health, welfare, and the environment;

B. Establish a procedural framework and Schedule for developing, implementing, and monitoring appropriate response actions at the Site in accordance with CERCLA, as amended by SARA, RCRA, the NCP, and applicable Superfund and RCRA Guidance and policy; and

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

4.2 Specifically, the purposes of this Agreement are to:

A. Identify Interim Remedial Action (IRA) alternatives which are appropriate at the Site prior to the implementation of Final Remedial Action(s) (FRA) for the Site. The IRA alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of IRA(s) to the EPA and the HDOH pursuant to CERCLA and applicable State of Hawaii law. This process is designed to promote cooperation among the Parties in identifying IRA alternatives prior to selection of FRAs.

B. Establish requirements for the performance of Remedial Investigations (RIs) 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 a Feasibility Study (FS) for the Site to identify, evaluate, and select alternatives for the appropriate remedial action(s) (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, the NCP, and applicable State of Hawaii law.

C. 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 that is protective of human health and the environment from hazardous substances, pollutants, or contaminants in accordance with CERCLA, the NCP, and applicable State of Hawaii law.

D. Implement the selected Interim Remedial Actions (IRAs) and Final Remedial Actions (FRAs) at the Site in accordance with CERCLA, the NCP, and applicable State of Hawaii law and meet the requirements of CERCLA Section 120(e)(2) for an interagency agreement among the Parties.

E. Ensure compliance, through this Agreement, with RCRA and other federal and State of Hawaii hazardous waste laws and regulations for matters covered herein.

F. Coordinate response actions at the Site with the mission and support activities at NCTAMSPAC.

G. Expedite the cleanup process to the extent consistent with protection of human health and the environment.

H. Provide for State of Hawaii involvement in the initiation, development, selection, and enforcement of RAs to be undertaken at the Site, including the review of all applicable data as it becomes available, and the development of studies, documents, and action plans; and to identify and integrate State ARARs into the RA process.

I. Provide for operation and maintenance of any RA selected and implemented pursuant to this Agreement.

V. SCOPE OF AGREEMENT

5.1 This Agreement is entered into by the Parties to enable the Navy to meet the provisions of CERCLA, 42 U.S.C. Section 9601 et seq., and Sections 3004(u) and (v) and 3008(h) of the RCRA as amended, 42 U.S.C. Sections 6924(u) and (v) and 6928(h).

5.2 This Agreement is intended to cover the investigation, development, selection, and implementation of response actions for releases or threatened releases of hazardous substances, contaminants, hazardous wastes, hazardous constituents, or pollutants at or from the Site. This Agreement covers all phases of remediation for these releases, bringing together into one

agreement the requirements for remediation as well as the system the Parties will use to determine and accomplish remediation, ensuring the necessary and proper level of participation by each Party. Although all such releases at the Site are not currently known, the Agreement establishes the system for dealing with those undiscovered releases. To accomplish remediation of those undiscovered releases, the Parties will establish Schedules and Deadlines as necessary and as information becomes available and, if required, amend this Agreement as needed.

5.3 The scope of this Agreement extends to the entire Site. The Site cannot be removed from the National Priorities List (NPL) unless it is determined, in accordance with CERCLA/SARA, the NCP, and this Agreement, that the Navy has implemented all appropriate response actions and the Site no longer poses a threat to human health or the environment. All response actions at the Site shall occur in discrete locations termed OUs identified at the Site pursuant to this Agreement.

5.4 Any Response Action in progress on the Effective Date of this Agreement shall be subject to the obligations and procedures of this Agreement.

5.5 The Parties agree to expedite the initiation of response actions at the Site, including AOUs and Interim Response Actions, and to carry out all activities under this Agreement so as to protect the public health, welfare, and the environment. Upon request, the Parties agree to provide applicable Guidance or reasonable assistance in obtaining such Guidance relevant to the implementation of this Agreement.

VI. FINDINGS OF FACT

6.1 For purposes of this Agreement, the following constitutes a summary of the findings upon which this Agreement is based. Nothing contained in this Agreement shall constitute an admission of any liability by the Navy for any matters contained herein, nor shall anything in this Agreement constitute an admission by the Navy with respect to any finding of fact or any legal determination noted herein.

Overview

A. NCTAMSPAC is a military command located in Wahiawa and Waianae of Oahu, Hawaii, and the United States is the property owner. NCTAMSPAC includes NCTAMSPAC Wahiawa located in central Oahu and NRTF Lualualei located on the Waianae Coast of Oahu. NCTAMSPAC Wahiawa is located on approximately 700 acres of land in central Oahu and NRTF Lualualei is located on approximately 1,700 acres of Lualualei Valley adjacent to Navy Munitions Command, East Asia Division, Detachment, Pearl Harbor, Lualualei Branch.

B. The mission of NCTAMSPAC is to function as the Master Station for the Pacific area of the naval telecommunications system. The NCTAMSPAC operates and maintains communication facilities and equipment for Navy shore installations, fleet units in the Pacific Basin, and the Defense Communications System. It also serves as a nodal station in the military satellite communications system.

Activity History

C. Naval communication facilities were first installed on the Hawaiian Islands in 1916 at Hospital Point, Pearl Harbor, Oahu. In 1931, the federal government purchased 1,700 acres of land in Lualualei Valley on the Waianae Coast of Oahu for construction of a naval radio facility (i.e. NRTF Lualualei). This facility was activated in 1936.

D. Continued growth of Navy communications requirements led to the 1940 construction of a temporary naval radio receiver and direction finder station in Wahiawa (now known as NCTAMSPAC Wahiawa). After the 1941 attack on Pearl Harbor, the Navy faced an urgent need to expand island radio facilities and to separate their transmitting and receiving facilities. To meet this need, island receiver functions were consolidated at NCTAMSPAC Wahiawa, and the station's capabilities and facilities were expanded.

E. In 1970, Army, Coast Guard, and Air Force communications facilities were consolidated and moved to NCTAMSPAC Wahiawa. In 1977, a satellite communications facility was constructed at the station. It consists of three large dish antennas, a communications building, and an auxiliary power plant.

Regulatory and Investigation History

F. Investigations at NCTAMSPAC are conducted under the Department of Defense Installation Restoration (IR) Program. This program was originally implemented through the NACIP Program in 1981. In 1986, the IR program was given a statutory basis through the Defense Environmental Restoration Program (DERP), codified at 10 U.S.C. §§ 2701 et seq. The NACIP program was succeeded by the DERP. The Navy implements the DERP subject to and consistent with CERCLA as amended and the NCP. Funding to pay for such investigations is allocated for DoD sites under the Defense Environmental Restoration Account (DERA). In 1997, these funds were devolved into specific appropriations for each service. Thus, the appropriation for the Navy/Marine Corps IR program is now the annual Environmental Restoration, Navy (ER,N) appropriation.

G. The Initial Assessment Study (IAS) was performed at NCTAMSPAC in 1986. The IAS identified 4 sites for confirmation study. The results of the confirmation study will be used to evaluate the necessity of conducting Remedial Measures or cleanup operations.

H. Site Inspection (SI) and Remedial Investigation (RI) activities were performed at several of the sites during 1990s to determine via sampling and analysis activities whether specific constituents identified in the IAS, and possibly other contaminants, exist in concentrations considered to be hazardous. SI activities constitute a limited data collection task to determine if contamination exists, whereas RI activities constitute somewhat larger tasks to determine the nature and extent of contamination.

I. NCTAMSPAC was scored and ranked by the USEPA for inclusion on the National Priorities List (NPL) as a CERCLA Superfund site. NCTAMSPAC's HR Score was 50 and was formally included as a National Priorities List site on May 31, 1994; 59 Federal Register 27989, 27995.

VII. EPA DETERMINATIONS

7.1 The following constitutes a summary of the determinations relied upon by the EPA to establish its jurisdiction and authority to enter into this Agreement. None of these determinations shall be considered admissions to any person, related or unrelated to this Agreement, for purposes other than determining the basis of this Agreement or establishing the jurisdiction and authority of the Parties to enter into this Agreement.

A. The United States Department of the Navy is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

B. The NCTAMSPAC is a Naval Network Warfare Command (NETWARCOM) that is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9), and 10 U.S.C. Section 2701 et seq., and is subject to the DERP.

C. The United States is the owner and operator of NCTAMSPAC as defined in Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. Sections 9601(20) and 9607(a)(1). The Navy is the DoD component charged with fulfilling the obligations of the owner/operator under CERCLA at NCTAMSPAC.

D. There has been a release or a substantial threat of a release of hazardous substances, pollutants, contaminants, hazardous wastes, or constituents at or from the Facility.

E. The actions provided for in this Agreement are not inconsistent with the NCP.

F. The actions provided for in this Agreement are necessary to protect the public health or welfare or the environment.

G. This Agreement provides for the expeditious completion of all necessary response actions.

VIII. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

8.1 The Parties intend to integrate the Navy's CERCLA response obligations and RCRA 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 RCRA Sections 3004(u) and (v), 42 U.S.C. Sections 6924(u) and (v), for a RCRA Permit, and RCRA Section 3008(h), 42 U.S.C. Section 6928(h), for interim status facilities; and to meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations, to the extent required by CERCLA Section 121, 42 U.S.C. Section 9621.

8.2 Based upon the foregoing, the Parties intend that any remedial action 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 (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 CERCLA Section 121, 42 U.S.C. Section 9621.

8.3 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 NCTAMSPAC may require the issuance of permits under Federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to the Navy for on-going hazardous waste management activities at the Site, EPA and/or the HDOH shall reference and incorporate any appropriate provisions, including appropriate Schedules (and the provisions for extension of such Schedules), of this Agreement into such permit. The Parties intend that the judicial review of any permit conditions which reference this Agreement will, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

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

IX. WORK TO BE PERFORMED

9.1 A. The Parties recognize that background information exists and must be reviewed prior to developing the Work Plans required by this Agreement. The Navy need not halt currently ongoing Work but may be obligated to modify or supplement Work previously done to meet the requirements of this Agreement. It is the intent of the Parties to this Agreement that Work done and data generated prior to the Effective Date of this Agreement be retained and utilized as elements of any applicable RI/FS to the maximum extent feasible.

B. Any Party may propose that a portion of the Site be designated as a distinct Operable Unit. This proposal must be in writing to the other Parties, and must stipulate the reasons for such a proposal. The proposal shall be discussed by all Project Managers within forty-five (45) Days after receipt of the written notice. Dispute Resolution may be invoked if the Parties are not in agreement on the proposal of a specific Operable Unit. If Dispute Resolution is not invoked by the Parties within thirty (30) Days after the Project Managers' discussion or if the need for an Operable Unit is established through Dispute Resolution, the portion of the Site

proposed shall be an Operable Unit as that term is defined in Section II - DEFINITIONS, of this Agreement.

C. Any Party may propose that an established Operable Unit be modified. The proposal must be in writing to the other Parties, and must state the reasons for the modification. Dispute Resolution may be invoked if the Parties are not in agreement on the proposal of modifying a specific Operable Unit. If Dispute Resolution is not invoked within thirty (30) Days after the receipt of such a proposal by the Parties or if the need for modifying an Operable Unit is established through Dispute Resolution, the Operable Unit, as defined in Section II - DEFINITIONS, shall be modified.

Remedial Investigations and Feasibility Studies for Previously Identified Sites

9.2 A. Twenty-four (24) CERCLA sites have been identified at this facility. The sites are listed below:

NCTAMSPAC Wahiawa:
Site 1 (Old Wahiawa Landfill)
Site 2 (Old Incinerator Site)
Site 3 (East Gulch Disposal Site)
Site 4 (West Gulch Disposal Site)
Site 5 (Building 6 Disposal Site)
Site 6 (Service Station Gulch)
Site 15 (Transformer Site, Building 236)
Site 16 (Transformer Site, Building 262)
Site 17 (Transformer Sites, B-106 and 261)
Site 18A (Transformer Sites, 3, 109, S-118, S-119, S-120, S-127, S-130, S-230, 234W, 420W(F352))
Site 20 (Transformer Sites, S-17, 242 and 343)
Site 21 (Abandoned Firing Range)
Site 22 (Dump Site Near Building 293)

NRTF Lualualei:
Site 7 (Old Coral Pit)
Site 8 (Antenna 403 Disposal Area)
Site 9 (Antenna 441 Disposal Area)
Site 10 (Building 65 Disposal Area)
Site 11 (Antenna 354 Disposal Area)
Site 12 (Two Wells Near Building 1)
Site 13 (Old NRTF Landfill)
Site 18B (Transformer Sites, 2, 26, 67, 81, 82)
Site 19 (Transformer Site, B68)
Site 23 (Building 4 Sump)
Site 24 (Sewage Ponds)

B. The Navy shall include in the Site Management Plan a Deadline for submittal of the RI Work Plan for those sites listed in Section 9.2.A, unless the parties otherwise agree that an RI is not necessary. The RI Work Plan shall contain a proposed Deadline for the submittal of the RI Report and the FS Report(s). The Schedule and Deadlines included in the Final RI Report shall be incorporated into the Site Management Plan in accordance with Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement. The development of the FS(s) will proceed in accordance with Subsection 9.4 of this Agreement.

C. For those sites determined by the Parties not to be included in a Phase 2 RI, the Navy shall include a Deadline in the Site Management Plan for submittal of the FS Report for each of these Operable Units. These Deadlines will be finalized in accordance with Sections XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN and XII – BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN of this Agreement.

D. For those sites, which the Parties determine, represent a negligible or minimal impact and are strong candidates for no action (with or without periodic monitoring), the Navy shall include a Schedule in the Site Management Plan for submittal of a supplemental Site Inspection report and any limited sampling that may be recommended to support it. If the Parties determine that no further action is required, a no-action Proposed Plan will then be prepared. This Schedule will be finalized in accordance with Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN of this Agreement.

Remedial Investigation and Feasibility Study

9.3 RIs shall be conducted in accordance with the requirements and Schedules set forth in the approved RI/FS Work Plan and SMP. RIs shall meet the purposes set forth in Section IV - PURPOSE, of this Agreement. A baseline risk assessment (BRA) shall be a component of the RIs. Final Site clean-up level criteria will only be determined following completion of the BRA.

9.4 The Navy agrees it shall prepare a FS or FFS for areas subject to an RI, unless it first demonstrates, to EPA's and HDOH's satisfaction, that the area in question does not present an unacceptable risk for unrestricted use. The FS shall be conducted in accordance with the requirements and Schedules set forth in the approved RI/FS Work Plan and SMP. The FS shall meet the purposes set forth in Section IV - PURPOSE, of this Agreement.

Procedures for Interim Remedial Actions

9.5 A. The Navy shall implement those IRAs necessary to prevent, minimize, or eliminate risks to human health and the environment caused by the release of hazardous substances, pollutants, or contaminants. An IRA is identified, proposed, and implemented prior to a FRA. An IRA shall attain ARARs to the extent required by CERCLA or the NCP and be consistent with and contribute to the efficient performance of a FRA(s) taken at an area or OU. An IRA must be protective of human health and the environment, and comply with CERCLA,

the NCP, and State laws to the extent that they are legally ARARs in accordance with Section 121 of CERCLA, and this Agreement.

B. When a Party to this Agreement determines that an IRA is necessary for an area(s) within the Facility, such Party shall notify, in writing, the other Parties, of the proposal. The proposal notification to the other Parties under this Subsection shall at a minimum include the location of such area(s) on the Facility and the reason(s) the Party believes an IRA is required. Any Party may propose an IRA for those OUs most suitable for an IRA.

C. Within 30 Days after notification, any Party may request a meeting of the Parties to assist in expediting the decision to proceed with an IRA. If a dispute(s) arises over whether to address such an area(s) under this Agreement that cannot be settled between the Parties within 30 Days after receipt of notification, the dispute(s) shall be immediately brought to the Dispute Resolution Committee (DRC) pursuant to Section XX - DISPUTE RESOLUTION of this Agreement.

D. After the determination that an IRA is required under this Agreement, the Navy shall, in the next draft Amended SMP, submit to the EPA and the HDOH proposed Deadlines for the submission of an FFS for the identified area(s). The Deadlines will be finalized in accordance with Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN. The Schedule and Deadlines will immediately be incorporated in the SMP. The FFS shall include a limited number of proposed IRA alternatives. To the extent possible, the FFS shall provide an assessment of the degree to which these alternatives were analyzed during their development and screening.

Records of Decision and Plans for Remedial Action

9.6 A. This Subsection shall apply to selection of RAs.

B. Within 60 Days after finalization of an RI and FS or FFS, the Navy shall submit a Draft Proposed Plan to the EPA and the HDOH for review and comment as described in Section X - CONSULTATION of this Agreement. Within 30 Days after receiving the EPA's acceptance and the HDOH's comments on the Proposed Plan, the Navy shall publish its Proposed Plan for at least 30 Days of public review and comment. During the public comment period, the Navy shall make the Administrative Record File and the Proposed Plan available to the public.

C. The Navy shall hold a public information meeting during the public comment period to discuss the preferred alternative for each RA. Copies of all written and oral public comments received will be provided to the Parties. Public review and comment shall be conducted in accordance with Section 117(a) of CERCLA, 42 U.S.C. Section 9617(a), and applicable EPA and HDOH Guidance.

D. Following public comment, the Navy, in consultation with the EPA and the HDOH, will determine if the Draft Proposed Plan should be modified based on the comments received. These modifications will be made by the Navy and the modified documents will be

reviewed by the EPA and the HDOH. The Parties may recommend that additional public comment be solicited if modifications to the Draft Proposed Plan substantially change the remedy originally proposed to the public. The determination concerning whether a Draft Proposed Plan should be modified or whether additional public comment is necessary is subject to the dispute resolution provisions of this Agreement, Section XX - DISPUTE RESOLUTION.

E. The Navy shall submit its draft ROD to the EPA and the HDOH within 60 Days following the close of the public comment period, including any extensions, on the Proposed Plan. The draft ROD will include a Responsiveness Summary, in accordance with applicable EPA Guidance. Pursuant to CERCLA Section 120(e)(4)(A), 42 U.S.C. Section 9620(e)(4)(A), the EPA and the Navy in consultation with the HDOH, shall make the final selection of the RA(s).

F. The Draft ROD shall be subject to the review and comment procedures described in Section X – CONSULTATION and is subject to the dispute resolution process in Section XX – DISPUTE RESOLUTION.

G. The selection of a remedy that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation is one basis on which the HDOH may determine not to concur with a FRA plan.

H. In accordance with CERCLA Section 121(f)(3)(A), 42 U.S.C. Section 9621(f)(3)(A), at least 30 Days prior to the publication of the Navy's FRA plan, if the Navy proposes to select a remedy that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation, the Navy shall provide an opportunity for the HDOH to concur or not concur in the selection of such plan. If the HDOH concurs or does not act within 30 Days after receipt of notification by the Navy of pending publication of the FRA plan, the RA may proceed. If the HDOH does not concur, it may act pursuant to Section 121(f)(3)(B) of CERCLA, 42 U.S.C. Section 9621(f)(3)(B).

I. Notice of the final ROD shall be published by the Navy and shall be made available to the public prior to commencement of the RA, in accordance with Section 117(b) of CERCLA, 42 U.S.C. Section 9617(b). The final ROD shall include a statement that the HDOH has concurred or not concurred with the selection of the remedy.

Remedial Design and Remedial Action

9.7 A. The SMP shall include a Deadline for submission of the Remedial Design/ Remedial Action Work Plan (RD/RAWP) in draft and draft-final format, consistent with all other primary documents, which shall be prepared in accordance with this Agreement and applicable Guidance issued by the EPA, including the EPA-Navy *Principles and Procedures for Specifying, Monitoring and Enforcement of Land Use Controls and Other Post-ROD Actions* (October 2003). The Parties may also agree, where appropriate, to issue a Preliminary/Conceptual RD/RAWP document (30 percent design document) and a 90 percent or Prefinal RD/RAWP. Where the parties agree to this approach, the SMP shall include target dates for the 30% and 90% documents and a Deadline for the Draft-Final RD/RAWP.

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

C. The Remedial Action Work Plan(s) shall contain a Schedule for the completion of the RA, and at a minimum consider the need for the following items: a Health and Safety Plan, a Sampling and Analysis Plan, and a Quality Assurance Project Plan, RA Specifications, Erosion Control and Sedimentation Plan, Decontamination Plan, RA Contingency Plan, and provisions for operation and maintenance, as appropriate for the chosen response action. The Schedule contained in the final RA Work Plan(s) will be immediately incorporated in the SMP.

D. After the final design document is approved, pursuant to Section X - CONSULTATION, the Navy shall begin performance of the RA in accordance with the final RD/RAWP. The RA shall be completed in accordance with the approved final RD/RAWP and Construction Work Plan and all applicable EPA and HDOH Guidance.

E. Following completion of remedial action at each OU and in accordance with the Schedule in the SMP, the Navy shall prepare and submit to EPA and HDOH a Remedial Action Completion Report (RACR) to show that remedial action objectives for an OU have been achieved. The RACR shall provide an explanation for any activities that were not conducted in accordance with the final RD/RAWP. In addition, for long-term remedies where it is anticipated that remedial action objectives will be achieved over a long period, the Navy shall submit to EPA and HDOH, according to the Schedule in the SMP, a RACR which shall document that physical construction is complete and the unit is operating as designed. The RACR(s) shall be prepared in accordance with this Agreement and the DoD and EPA Joint Guidance for Recommended Streamlined Site Closeout and NPL Deletion Process for DoD Facilities (2006).

Finalization of Remedial Actions/Site Closeout Documentation

9.8 A. The following documents for CERCLA sites are essential for formally acknowledging the achievement of the Site Closeout milestone.

1. Concurrence letters for sites designated No Further Action (NFA) from Preliminary Assessment/Site Inspection (PA/SI)

2. Record of Decision (ROD) text for sites designated NFA from Remedial Investigation/Feasibility Study (RI/FS) or PA/SI

3. Remedial Action Completion Reports (RACRs)

B. NPL Deletion

Following certification and approval that all response actions at the Site are completed, EPA shall initiate the deletion process. The final RACR should contain all the essential elements needed for EPA to prepare the Notice of Intent to Delete (NOID).

Accelerated Operable Units

9.9 A. AOUs, as defined in Section II - DEFINITIONS, will follow a streamlined remedial process as set forth below. Any Party may propose in writing that an OU be conducted as an AOU. The Party proposing an AOU shall be responsible for drafting an AOU proposal that shall clearly define the purpose, scope, and goals of the AOU. The Navy shall evaluate all proposed AOUs.

B. Within 30 Days after notification, any Party may request a meeting of the Parties to assist in expediting selection of an AOU. If dispute resolution is not invoked within 30 Days following receipt of a proposal for an AOU by the Parties, or 30 Days after the meeting, or if the need for an AOU is established through Section XX - DISPUTE RESOLUTION, the proposed AOU shall be incorporated into the SMP as an AOU. The Navy agrees to pursue additional funding within 10 Days of such incorporation to initiate the AOU(s).

C. Within 15 Days after the determination that an AOU is required under this Agreement, the Navy shall submit to the EPA and the HDOH proposed Deadlines for the submission of Work Plan(s) for the performance of an AOU FFS for the identified AOU(s). Each AOU FFS Work Plan shall contain a proposed Deadline for submittal of the AOU FFS and Proposed Plan. The Schedule and Deadlines included in the final AOU FFS Work Plan will be incorporated in the next Draft Amended SMP. The Navy shall develop, implement, and report upon each AOU FFS in accordance with the requirements set forth in the final AOU FFS Work Plan. The Navy shall follow the steps outlined in Subsections 9.6B through 9.7E.

Supplemental Response Action

9.10 The Parties recognize that subsequent to finalization of a ROD, a need may arise for one or more supplemental response actions to remedy continuing or additional releases or threats of releases of hazardous substances, pollutants, or contaminants at or from the Site. If such release or threat of release may present an immediate threat to public health or welfare or the environment, it shall be addressed pursuant to Section XVIII - REMOVALS AND EMERGENCY ACTIONS. If such release or threat of release does not present an immediate threat to public health or welfare or the environment, it shall be addressed pursuant to Subsections 9.11 through 9.16.

9.11 A supplemental response action shall be undertaken only when:

A. A determination is made that:

1. As a result of the release or threat of release of a hazardous substance, pollutant, or contaminant at or from the Site, an additional response action is necessary and appropriate to ensure the protection of human health or the environment; or,

2. There is or has been a release of hazardous waste or hazardous constituents into the environment and corrective response action is necessary to protect human health or the environment; and,

B. Either of the following conditions is met for any determination made pursuant to Subsection 9.11.A., above:

1. For supplemental response actions proposed after finalization of the ROD, but prior to EPA Certification, the determination must be based upon conditions at the Site that were unknown at the time of finalization of the ROD or based upon new information received in whole or in part by the EPA following finalization of the ROD; or

2. For supplemental response actions proposed after EPA Certification, the determination must be based upon conditions at the Site that were unknown at the time of EPA Certification or based upon new information received in whole or in part by the EPA or HDOH following EPA Certification.

9.12 If, subsequent to ROD signature, any Party concludes that a supplemental response action is necessary, based on the criteria set forth in Subsection 9.11, such Party shall promptly notify the others of its conclusion in writing. The notification shall specify the nature of the modification needed and the new information on which it is based. The Project Managers shall confer and attempt to reach consensus on the need for such an action within 30 Days after receiving such notification. If the Project Managers have failed to reach consensus, any Party may notify the other Parties in writing within 10 Days thereafter that it intends to invoke dispute resolution. If the Project Managers are still unable to reach consensus within 14 Days after the issuance of notice invoking dispute resolution, the question of the need for the supplemental response action shall be resolved through dispute resolution.

9.13 If the Project Managers agree, or if it is determined through dispute resolution, that a supplemental response action is needed based on the criteria set forth in Subsection 9.11, the Navy shall propose a Deadline for submittal of the Supplemental Work Plan(s) and a Schedule for performance of the Work there under to the EPA and HDOH in the next Draft Amended SMP.

9.14 After finalization of a Supplemental Work Plan, the Navy shall conduct a Supplemental Response Action RI/FS. Following finalization of the Supplemental Response Action RI/FS, the procedures described in Subsections 9.6 through 9.7 shall be followed.

Construction Completion and Site Completion

9.15 Construction Completion. The Navy agrees that it shall provide written notice to EPA and the HDOH when physical construction of all remedial actions for all OUs is complete and will incorporate in the notice reference to the supporting RACRs.

9.16 Site Completion. Following completion of remedial action at the last OU and in accordance with the Schedule in the SMP, the Navy shall prepare and submit to EPA and HDOH a RACR to show that remedial action objectives for all OUs have been achieved. The RACR shall provide an explanation for any activities that were not conducted in accordance with the final RD/RAWP. The information provided therein shall document compliance with statutory requirements and provide a consolidated record of all remedial activities for all OUs at the Site in accordance with the DoD and EPA Joint Guidance, Recommended Streamlined Site Closeout and NPL Deletion Process for DoD Facilities. In order for a Site to be eligible for completion, the following criteria must be met:

9.16.1 Remedial Action Objectives specified in all RODs have been met, and all cleanup actions and other measures identified in the RODs have been successfully implemented;

9.16.2 The constructed remedies are operational and performing according to engineering specifications;

9.16.3 The Site is protective of human health and the environment;

9.16.4 Land use controls are in place as appropriate; and

9.16.5 The only remaining activities, if any, at the site are long term management activities (which may include long-term monitoring).

9.17. Information provided for remedial action completion shall be signed by the Navy's signatory authority or designee, certifying that remedial activities have been completed in full satisfaction of the requirements of this Agreement, and shall include a request for EPA certification of remedial action completion at the Site. Within ninety (90) days of EPA's receipt of the Navy's request for certification of Site completion, EPA, in consultation with the HDOH, shall:

9.17.1 Certify that all response actions have been completed at the Site in accordance with CERCLA, the NCP and this Agreement, based on conditions known at the time of certification; or

9.17.2 Deny the Navy's request for certification of Site completion, stating the basis of its denial from the standards identified in 9.16 and detailing the additional Work needed for completion and certification.

9.17.3 If EPA, in consultation with the HDOH, denies the Navy's request for certification for Site completion in accordance with this Agreement, the Navy may invoke dispute resolution in accordance with Section XX – DISPUTE RESOLUTION of this Agreement within twenty (20) days of receipt of the written denial of certification or determination that additional Work is necessary. If the denial of certification is upheld through the dispute resolution process, the Navy will perform the requested additional Work.

9.17.4 If dispute resolution is not invoked, or if a denial of certification is upheld through dispute resolution, the Navy shall, in the next draft amended SMP submitted after receipt of the written denial of certification or dispute resolution finding, propose a Deadline for the submittal of a draft Supplemental Work Plan. The draft Supplemental Work Plan shall contain a Schedule for completion of the additional Work required. This Schedule, once approved, will be incorporated in the Site Management Plan. After performing the additional Work, the Navy may resubmit a request for certification to EPA as outlined in this Subsection

9.18 EPA, in consultation with the HDOH, shall then grant or deny certification pursuant to the process set forth in this Subsection 9.17.

X. CONSULTATION

Review and Comment Process for Draft and Final Documents

10.1 Applicability:

A. The provisions of this Section establish the procedures that shall be used by the Navy, EPA and HDOH 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 and 10 U.S.C. Section 2705, the Navy will normally be responsible for issuing Primary and Secondary Documents to the EPA and the HDOH. As of the Effective Date of this Agreement, all draft and final documents for any deliverable document identified herein shall be prepared, distributed, and subject to dispute in accordance with Sections 10.2 through 10.10 below.

B. The designation of a document as "Draft" or "Final" is solely for purposes of consultation with the EPA and the HDOH in accordance with this Section. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "Final", to the public for review and comment as appropriate and as required by law and the NCP.

10.2 General Process for RI/FS and RD/RA Documents:

A. Primary Documents include those documents that are major, discrete portions of RI/FS or RD/RA activities. Primary Documents are initially issued by the Navy in draft subject to review and comment by the EPA and the HDOH. Following receipt of comments on a particular Draft Primary Document, the Navy will respond to the comments received and issue a Draft Final Primary Document subject to dispute resolution. The Draft Final Primary Document will become the Final Primary Document either 30 Days after the period established for review of a Draft Final Document if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

B. Secondary Documents include those documents that are discrete portions of the Primary Documents and are typically input or feeder documents. Secondary Documents are issued by the Navy in draft subject to review and comment by the EPA and the HDOH. Although the Navy will respond to comments received, the draft Secondary Documents may be finalized in the context of the corresponding Primary Documents. A Secondary Document may be disputed at the time the corresponding Draft Final Primary Document is issued.

10.3 Primary Documents:

A. Prior to the Effective Date of this Agreement, the Navy has completed and transmitted the following Primary Documents listed below to the EPA and the HDOH for review and comment:

1. Final Community Relations Plan (CRP) for NCTAMS Wahiawa (January 1991)

2. Final RI Community Relations Plan (CRP) for Old Wahiawa Landfill and Building 6 Disposal Area, NCTAMS EASTPAC (March 1992)

3. Final RI/FS Community Relations Plan for NCTAMS Wahiawa and NRTF Lualualei (August 1995)

4. Final Community Involvement Plan for COMNAVREG Hawaii Installation Restoration Program, Oahu Installations, Hawaii (June 2005)

5. Final RI/FS Work Plan (WP)/ Field Sampling Plan (FSP)/ Quality Assurance Project Plan (QAPP)/ Health and Safety Plan (HSP) for NCTAMS Wahiawa and NRTF Lualualei (April 1995)

6. Final RI/FS Site Specific Activities Addenda WP/ QAPP/ HSP, Rev. 1 at the Old Wahiawa Landfill and Building 6 Disposal Area (November 1996)

7. Final RI/FS for Old Wahiawa Landfill, Building 6 Disposal Area, and Dump Site Near Building 293, NCTAMS EASTPAC Wahiawa (May 1997)

8. Final Addendum FSP Additional RI Sampling, Building 6 Disposal Area (September 1998)

9. Final Revised RI QAPP for the Old Wahiawa Landfill and Building 6 Disposal Area (September 1998)

10. Final RI HSP for Service Station Gulch and Sewage Ponds at NCTAMSPAC (September 2002)

11. Final RI WP and SAP for Service Station Gulch and Sewage Ponds at NCTAMSPAC (March 2003)

B. The Navy shall complete and transmit drafts of the following Primary Documents and their amendments to the EPA and the HDOH for review and comment in accordance with the provisions of this Section:

1. RI/FS (including Field Sampling Plans, Quality Assurance Project Plans, Baseline Risk Assessment for human health and the environment) and FFS Work Plans

2. Remedial Investigation Reports (including Baseline Risk Assessments for human health and the environment)

3. FS and FFS Reports

4. Proposed Plans

5. Records of Decisions (RODs)

6. Remedial Designs

7. Remedial Action Work Plans

8. Site Management Plan and annual amendments

9. Operation and Maintenance Plan

10. Community Involvement Plan (formerly known as Community Relations Plan)

11. Remedial Action Completion Reports (RACRs)

12. Supplemental Work Plan, Supplemental Response Action RI/FS

C. Only the Draft Final documents for the Primary Documents identified above (and their amendments) shall be subject to dispute resolution in accordance with Section XX - DISPUTE RESOLUTION of this Agreement. The Navy shall complete and transmit Draft Primary Documents in accordance with the Schedule and Deadlines established in Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

10.4 Secondary Documents:

A. All Secondary Documents shall be prepared in accordance with the NCP and applicable EPA Guidance. The Navy shall complete and transmit draft documents for the following Secondary Documents to the EPA and the HDOH for review and comment in accordance with the provisions of this Section:

1. Health and Safety Plans
2. Pilot/Treatability Study Work Plans
3. Pilot/Treatability Study Reports
4. Well Closure Methods and Procedures
5. Preliminary/Conceptual Designs or Equivalents
6. Pre-final Remedial Designs
7. Preliminary Assessment/Site Inspection (PA/SI) Work Plans
8. Preliminary Assessment/Site Inspection (PA/SI) Reports
9. Non-Time Critical Removal Action Plans (40 C.F.R. § 300.415(b) (4) (ii))
10. Engineering Evaluation/Cost Analysis Report
11. Removal Action Memoranda

B. Although the EPA and the HDOH may comment on the Draft document for the Secondary Documents listed above, such documents shall not be subject to dispute resolution except as provided by Subsection 10.2 hereof. Target Dates shall be established for the completion and transmission of Draft Secondary Documents pursuant to Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

10.5 Meetings of the Project Managers on Development of Documents:

The Project Managers shall meet approximately every year, and confer by telephone every 60 Days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the site and on the Primary and Secondary Documents. Prior to preparing any draft document specified in Subsections 10.3 and 10.4 above, the Project Managers shall meet to discuss the document in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft document.

10.6 Identification and Determination of Potential ARARs:

A. For those Primary documents or Secondary Documents that consist of or include ARAR determinations, the Project Managers shall meet prior to issuance of a draft report to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. The HDOH shall identify all potential HDOH ARARs as early in the remedial process as possible consistent with the requirements of CERCLA Section 121(d)(2)(A)(ii), 42 U.S.C. Section 9621(d)(2)(A)(ii), and the NCP. The Navy shall consider any written interpretations of ARARs provided by the HDOH. Draft ARAR determinations shall be prepared by the Navy in accordance with CERCLA Section 121(d)(2), 42 U.S.C. Section 9621(d)(2), the NCP, and pertinent Guidance issued by the EPA, which is not inconsistent with CERCLA and the NCP.

B. 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 re-examined throughout the RI/FS process until a ROD is issued.

10.7 Review and Comment on Draft Documents:

A. The Navy shall complete and transmit each Draft Primary Document to the EPA and the HDOH on or before the corresponding Deadline established pursuant to Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement for the issuance of the document. The Navy shall complete and transmit the draft Secondary Document in accordance with the Target Dates established for the issuance of such documents established pursuant to Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

B. Unless the Parties mutually agree to another time period, all Draft documents, except the SMP, the Prefinal RD, and the Final RD, shall be subject to a 60-Day period for review and comment. The SMP shall be reviewed and commented on in accordance with Section XII – BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN or as agreed to by the Parties. The Parties recognize that time periods for review and

comment on the Draft RD and RA Work Plans may need to be expedited in order for the Navy to satisfy the requirement of Section 120(e)(2) of CERCLA, 42 U.S.C. Section 9620(e)(2). The Prefinal RD shall be subject to a 45-Day period for review and comment. The Final RD will be subject to a 2-week period for review and comment by the Parties.

C. If the Final RD differs substantially from the Prefinal RD, the EPA or the HDOH may extend the 2-week review and comment period for an additional 2 weeks by providing written notice to the Navy prior to the end of the initial 2-week comment period. Review of any document by the EPA and the HDOH may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, and any pertinent guidance or policy promulgated by the EPA or the HDOH. Comments by the EPA and the HDOH shall be provided with adequate specificity so that the Navy may respond to the comment and, if appropriate, make changes to the Draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Navy, the EPA, or the HDOH shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy documents, the EPA or the HDOH may extend the 60-Day comment period for an additional 20 Days by written notice to the Navy prior to the end of the 60-Day period. On or before the close of the comment period, the EPA and the HDOH shall transmit written comments to the Navy in accordance with the procedures outlined in Section II, paragraph PP.

D. The review period for documents shall not begin until the submission date specified in the SMP.

E. If documents not scheduled in the current SMP are determined by mutual agreement of the Program Managers to be necessary, review periods, Deadlines, and Target Dates shall be established and shall be incorporated into the Amended SMP.

F. Representatives of the Navy shall make themselves readily available to the EPA and the HDOH during the comment period for purposes of informally responding to questions and comments on Draft documents. Oral comments made during such discussions need not be the subject of a written response by the Navy on the close of the comment period.

G. In commenting on a Draft document which contains a proposed ARAR determination, the EPA and/or the HDOH shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that the EPA or the HDOH does object, it shall explain the bases for the objection in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

H. Following the close of the comment period for a Draft Document, the Navy shall give full consideration to all written comments on the Draft Document submitted during the comment period. Within 60 Days of the close of the comment period on a Draft Secondary Document, the Navy shall transmit to the EPA and the HDOH its written response to comments received within the comment period. Within 60 Days of the close of the comment period on a

Draft Primary Document, the Navy shall transmit to the EPA and the HDOH a Draft Final Primary Document, which shall include the Navy's response to all written comments received within the comment period. While the resulting Draft Final Document shall be the responsibility of the Navy, it shall be the product of consensus to the maximum extent possible.

I. The Navy may extend the 60-Day period for either responding to comments on a Draft Document or for issuing the Draft Final Primary Document for an additional 20 Days by providing timely notice to the EPA and the HDOH. In appropriate circumstances, this time period may be further extended in accordance with Section XIII - EXTENSIONS, hereof.

10.8 Availability of Dispute Resolution on Draft Final Primary Documents:

A. Dispute resolution shall be available to the Parties for Draft Final Primary Documents as set forth in Section XX - DISPUTE RESOLUTION.

B. When dispute resolution is invoked on a Draft Final Primary Document, Work may be stopped in accordance with the procedures set forth in Section XX - DISPUTE RESOLUTION.

10.9 Finalization of Documents:

The Draft Final Primary Document shall serve as the Final Primary Document if no Party invokes dispute resolution regarding the document or, if invoked, at the completion of the dispute resolution process should the Navy's position be sustained.

If the Navy's determination is not sustained in the dispute resolution process, the Navy shall prepare, within not more than 35 Days, a revision of the Draft Final Document which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section XIII - EXTENSIONS, hereof.

10.10 Subsequent Modification of Final Documents:

Following finalization of any Primary Document pursuant to Subsection 10.9 above, any party to this Agreement may seek to modify the document, including seeking additional field work, pilot studies, computer modeling, or other supporting technical work, only as provided in Subsections A. and B. below.

A. Any party to this Agreement may seek to modify a document after finalization if it determines, based on new information (i.e., information that became available, or conditions that became known, after the document was finalized) that the requested modification is necessary. Any party to this Agreement may seek such a modification by submitting a concise written request to the Project Manager of the other Party. The request shall specify the nature of the requested modification and how the request is based on new information.

B. In the event that a consensus is not reached by the Project Managers on the need for a modification, any party to this Agreement may invoke dispute resolution to determine if such modification shall be conducted. Modification of a document 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.

C. Nothing in this Subsection shall alter the EPA's or the HDOH's ability to request the performance of additional Work which was not contemplated by this Agreement. The Navy's obligation to perform such Work must be established by either a modification of a document or by amendment to this Agreement.

XI. DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN

11.1 This Agreement establishes a process for creating the SMP. The SMP is attached to this Agreement as Appendices A and B. The SMP and each annual Amendment to the SMP shall be Primary Documents. Milestones established in an SMP or established in a Final Amendment to an SMP remain unchanged unless otherwise agreed to by the Parties or unless directed to be changed pursuant to the agreed dispute resolution process set out in Subsections 12.5 or 12.6. In addition, if an activity is fully funded in the current fiscal year, Milestones associated with the performance of Work and submittal of Primary Documents associated with such activity (even if they extend beyond the current fiscal year) shall be enforceable.

11.2 The SMP includes proposed actions for both CERCLA responses and actions which would otherwise be handled pursuant to RCRA corrective actions per Section VIII - STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION, and outlines all response activities and associated documentation to be undertaken at the Facility. The SMP incorporates all existing Milestones contained in approved Work Plans, and all Milestones approved in future Work Plans immediately become incorporated into the SMP.

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

11.4 The SMP and its annual Amendments include:

11.4.1 A description of actions necessary to mitigate any immediate threat to human health or the environment;

11.4.2 A listing of all currently identified Operable Units (including Accelerated Operable Units (AOUs)), Interim Remedial Actions, Supplemental Response Actions and Critical and Non-Time Critical Removal Actions covered or identified pursuant to this Agreement;

11.4.3 Activities and schedules for response actions covered by the SMP, including at a minimum:

1. Identification of any Primary Actions;

2. All Deadlines;

3. All Near Term Milestones;

4. All Out Year Milestones;

5. All Target dates;

6. Schedule for initiation of RDs, IRAs, Non-Time Critical Removal Actions, AOUs, and any initiation of other planned response action(s) covered by this Agreement; and,

7. All Project End Dates.

11.5 The Navy shall submit an Amendment to the SMP on an annual basis as provided in Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN. All Amendments to the SMP shall conform to all of the requirements set forth in this Section.

11.6 The Milestones established in accordance with this Section and Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN remain the same unless otherwise agreed by the Parties, or unless changed in accordance with the dispute resolution procedures set out in Subsections 12.5 and 12.6. The Parties recognize that possible bases for requests for changes or extensions of the Milestones include but are not limited to—(i) the identification of significant new Site conditions at this facility; (ii) reprioritization of activities under this Agreement caused by changing priorities or new site conditions elsewhere in the Navy; (iii) reprioritization of activities under this Agreement caused by budget adjustments (e.g., rescissions, inflation adjustments, and reduced Congressional appropriations); (iv) an event of Force Majeure; (v) a delay caused by another Party's failure to meet any requirement of this

Agreement; (vi) a delay caused by the good faith invocation of dispute resolution or the initiation of judicial action; (vii) a delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and Deadline or Schedule; and (viii) any other event or series of events mutually agreed to by the Parties as constituting good cause.

11.7 The Deadlines established in the SMP and its Amendments shall be published by the EPA and the State.

XII. BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN

12.1 The Navy, as a federal agency, is subject to fiscal controls, hereinafter referred to as the Future Years Defense Plan (FYDP). The planning, programming, and budgeting process, hereinafter referred to as the POM process, is used to review total requirements for DoD programs and make appropriate adjustments within the FYDP for each program while adhering to the overall FYDP control. The Parties recognize that the POM process is a multi-year process. The Parties also agree that all Parties should be involved in the full cycle of POM activities as specified in this Agreement. Further, the Parties agree that each Party should consider the factors listed in Subsection 11.3, including federal fiscal constraints as well as each of the other factors, in their priority-setting decisions. Initial efforts to close any gap between cleanup needs and funding availability shall be focused on the identification and implementation of cost savings.

Facility-Specific Budget Building

12.2 In order to promote effective involvement by the Parties in the POM process, the Parties will meet at the Project Manager level for the purpose of (1) reviewing the FYDP controls; (2) developing a list of requirements/Work to be performed at the Site for inclusion in the Navy POM process; and, (3) participating in development of the Navy submission to the proposed President's budget, based on POM decisions for the FY currently under consideration. Unless the Parties agree to a different time frame, the Navy agrees to notify the other Parties within 10 Days of receipt, at the Project Manager level, that budget controls have been received. Unless the Parties agree to a different time frame or agree that a meeting is not necessary, the Parties will meet, at the Project Manager level, within 5 Days of receiving such notification to discuss the budget controls. However, this consultation must occur at least 10 Days prior to the Navy's initial budget submission to Naval Facilities Engineering Command (NAVFAC). In the event that the Project Managers cannot agree on funding levels required to perform all Work outlined in the SMP, the Parties agree to make reasonable efforts to informally resolve these disagreements, either at the immediate or secondary supervisor level; this would also include discussions, as necessary, with NAVFAC. If agreement cannot be reached informally within a reasonable period of time, the Navy shall resolve the disagreement, if possible with the concurrence of all Parties, and notify each Party. If all Parties do not concur in the resolution, the Navy will forward through NAVFAC to the Navy Headquarters its budget request with the views of the Parties not in agreement and also inform Navy Headquarters of the possibility of future enforcement action should the money requested not be sufficient to perform the Work

subject to disagreement. In addition, if the Navy's budget submission to NAVFAC relating to the terms and conditions of this Agreement does not include sufficient funds to complete all Work in the existing SMP, such budget submission shall include supplemental documents that fully disclose the Work required by the existing SMP, but not included in the budget request due to fiscal controls (e.g., a projected budget shortfall). These supplemental documents shall accompany the cleanup budget that the Navy submits through its higher Headquarters levels until the budget shortfall has been satisfied. If the budget shortfall is not satisfied, the supplemental documents shall be included in the Navy's budget submission to the DoD Comptroller. The Deputy Under Secretary of Defense (DUSD) (Installations and Environment) shall receive information copies of any supplemental documents submitted to the DoD Comptroller.

Navy Budget for Clean Up Activities

12.3 The Navy shall forward to the other Parties documentation of the budget requests (and any supplemental documents) for the Site, as submitted by the Navy to NAVFAC, and by NAVFAC to the Navy Headquarters, within 14 Days after the submittal of such documentation to the Navy Headquarters by NAVFAC. If the Navy proposes a budget request relating to the terms and conditions of this Agreement that impacts other installations, discussions with other affected EPA Regions and states regarding the proposed budget request need to take place.

Amended SMP

12.4 No later than June 15 of each year after the initial adoption of the SMP, the Navy shall submit to the other Parties a Draft Amendment to the SMP. When formulating the Draft Amendment to the SMP, the Navy shall consider funding circumstances (including OMB targets/guidance) and "risk plus other factors" outlined in Subsection 11.3 to evaluate whether the previously agreed upon Milestones should change. Prior to proposing changes to Milestones in its annual Amendment to the SMP, the Navy will first offer to meet with the other Parties to discuss the proposed changes. The Parties will attempt to agree on Milestones before the Navy submits its annual Amendment by June 15, but failure to agree on such proposed changes does not modify the June 15 date, unless agreed by all the Parties. Any proposed extensions or other changes to Milestones must be explained in a cover letter to the Draft Amendment to the SMP. The Draft Amendment to the SMP should reflect any agreements made by the Parties during the POM process outlined in this Section. Resolution of any disagreement over adjustment of Milestones pursuant to this subsection shall be resolved pursuant to Subsection 12.5.

12.5 The Parties shall meet as necessary to discuss the Draft Amendment to the SMP. The Parties shall use the consultation process contained in Section X - CONSULTATION, except that none of the Parties will have the right to use the extension provisions provided therein. Accordingly, comments on the Draft Amendment will be due to the Navy no later than 30 Days after receipt by the EPA and the State of the Draft Amendment. If either the EPA or the State provide comments and are not satisfied with the Draft Amendment during this comment period, the Parties shall meet to discuss the comments within 15 Days of the Navy's receipt of comments on the Draft Amendment. The Draft Final Amendment to the SMP will be due from the Navy no later than 30 Days after the end of the EPA and State comment period. During this second

30-Day time period, the Navy will, as appropriate, make revisions and re-issue a revised draft herein referred to as the Draft Final Amendment. To the extent that Section X - CONSULTATION contains time periods differing from these 30-Day periods, this provision will control for consultation on the Amendment to the SMP.

12.5.1 If the Navy proposes, in the Draft Final Amendment to the SMP, modifications of Milestones to which either the EPA or the State have not agreed, those proposed modifications shall be treated as a request by the Navy for an extension. Milestones may be extended during the SMP review process by following Subsections 12.4 through 12.7. All other extensions will be governed by Section XIII - EXTENSIONS. The time period for the EPA to respond to the request for extension will begin on the date the EPA receives the Draft Final Amendment to the SMP, and the EPA and the State shall advise the Navy in writing of their respective positions on the request within 30 Days. If the EPA and the State approve of the Navy's Draft Final Amendment, the document shall then await finalization in accordance with Subsections 12.5.4 and 12.6. If the EPA denies the request for extension, then the Navy may amend the SMP in conformance with the EPA and the State comments or seek and obtain a determination through the dispute resolution process established in Section XX - DISPUTE RESOLUTION within 21 Days of receipt of notice of denial. Within 21 Days of the conclusion of the dispute resolution process, the Navy shall revise and reissue, as necessary, the Draft Final Amendment to the SMP. If the EPA or the State initiates a formal request for a modification to the SMP to which the Navy does not agree, the EPA or the State may initiate dispute resolution as provided in Section XX - DISPUTE RESOLUTION with respect to such proposed modification. In resolving a dispute, the persons or person resolving the dispute shall give full consideration to the bases for changes or extensions of the Milestones referred to in Subsection 11.6 asserted to be present, and the facts and arguments of each of the Parties.

12.5.2 Notwithstanding Subsection 12.5.1, if the Navy proposes, in the Draft Final Amendment to the SMP, modifications of Project End Dates which are intended to reflect the time needed for implementing the remedy selected in the Record of Decision but to which either the EPA or the State have not agreed, those proposed modifications shall not be treated as a request by the Navy for an extension, but consistent with Section XX - DISPUTE RESOLUTION, the EPA or the State may initiate dispute resolution with respect to such Project End Date.

12.5.3 In any dispute under this Section, the time periods for the standard dispute resolution process contained in Subsections 20.3, 20.4, 20.5, and 20.6 of Section XX - DISPUTE RESOLUTION, shall be reduced by half in regard to such dispute, unless the Parties agree to dispute directly to the Senior Executive Committee (SEC) level.

12.5.4 The Navy shall finalize the Draft Final Amendment as a Final Amendment to the SMP consistent with the mutual consent of the Parties, or in the absence of mutual consent, in accordance with the final decision of the dispute resolution process. The Draft Final Amendment to the SMP shall not become final until 21 Days after the Navy receives official notification of Congress' authorization and appropriation of funds if funding is sufficient to complete Work in the Draft Final SMP or, in the event of a funding shortfall, following the

procedures in Subsection 12.6. However, upon approval of the Draft Final Amendment or conclusion of the dispute resolution process, the Parties shall implement the SMP while awaiting official notification of Congress' authorization and appropriation.

Resolving Appropriations Shortfalls

12.6 After authorization and appropriation of funds by Congress and within 21 Days after the Navy has received official notification of Navy's allocation based on the current year's Environmental Restoration, Navy (ER,N) Account, the Navy shall determine if planned Work (as outlined in the Draft Final Amendment to the SMP) can be accomplished with the allocated funds. (1) If the allocated funds are sufficient to complete all planned Work for that fiscal year and there are no changes required to the Draft Final Amendment to the SMP, the Navy shall immediately forward a letter to the other Parties indicating that the Draft Final Amendment to the SMP has become the Final Amendment to the SMP. (2) If the Navy determines within the 21-Day period specified above that the allocated funds are not sufficient to accomplish the planned Work for the Site (an appropriations shortfall), the Navy shall immediately notify the Parties. The Project Managers shall meet within thirty (30) Days to determine if planned Work (as outlined in the Draft Final Amendment to the SMP) can be accomplished through: 1) rescoping or rescheduling activities in a manner that does not cause previously agreed upon Near Term Milestones and Out Year Milestones to be missed; or 2) developing and implementing new cost-saving measures. If, during this thirty (30) Day discussion period, the Parties determine that rescoping or implementing cost-saving measures are not sufficient to offset the appropriations shortfall such that Near Term Milestones, Out Year Milestones, and Project End Dates should be modified, the Parties shall discuss these changes and develop modified Milestones. Such modifications shall be based on the "Risk Plus Other Factors" prioritization process discussed in Subsection 11.3, and shall be specifically identified by the Navy. The Navy shall submit a new Draft Final Amendment to the SMP to the other Parties within 30 Days of the end of the 30-Day discussion period. In preparing the revised Draft Final Amendment to the SMP, the Navy shall give full consideration to EPA and State input during the 30-Day discussion period. If the EPA and the State concur with the modifications made to the Draft Final Amendment to the SMP, the EPA and the State shall notify the Navy and the revised Draft Final Amendment shall become the Final Amendment. In the case of modifications of Milestones due to appropriations shortfalls, those proposed modifications shall, for purposes of dispute resolution, be treated as a request by the Navy for an extension, which request is treated as having been made on the date that the EPA receives the new Draft Final SMP or Draft Final Amendment to the SMP. The EPA and the State shall advise the Navy in writing of their respective positions on the request within 21 Days. The Navy may seek and obtain a determination through the dispute resolution process established in Section XX - DISPUTE RESOLUTION. The Navy may invoke dispute resolution within 14 Days of receipt of a statement of nonconcurrence with the requested extension. In any dispute concerning modifications under this Section, the Parties will submit the dispute directly to the SEC level, unless the Parties agree to utilize the standard dispute resolution process, in which case the time periods for the dispute resolution process contained in Subsections 20.2, 20.3, 20.4, 20.5, and 20.6 of Section XX - DISPUTE RESOLUTION shall be reduced by half in regard to such dispute. Within 21 Days after the conclusion of the dispute

resolution process, the Navy shall revise and reissue, as necessary, the Final Amendment to the SMP.

12.7 It is understood by all Parties that the Navy will work with representatives of the other Parties to reach consensus on the reprioritization of work made necessary by any annual appropriations shortfalls or other circumstances as described in Section 12.6. This may also include discussions with other EPA Regions and states with facilities affected by the reprioritization; the Parties may participate in any such discussions with other states.

Public Participation

12.8 In addition to any other provision for public participation contained in this Agreement, the development of the SMP, including its annual Amendments, shall include participation by members of the public interested in this action. The Navy must ensure that the opportunity for such public participation is timely; but this Subsection 12.8 shall not be subject to Section XXI - STIPULATED PENALTIES.

12.8.1 The Parties will meet, after seeking the views of the general public, and determine the most effective means to provide for participation by members of the public interested in this action in the POM process and the development of the SMP and its annual Amendments. The "members of the public interested in this action" may be represented by inclusion of a restoration advisory board or technical review committee, if they exist for the NCTAMSPAC, or by other appropriate means.

12.8.2 The Navy shall provide timely notification under Section 12.6, regarding allocation of ER,N, to the members of the public interested in this action.

12.8.3 The Navy shall provide opportunity for discussion under Sections 12.2, 12.5, 12.6, and 12.7 to the members of the public interested in this action.

12.8.4 The Navy shall ensure that public participation provided for in this Subsection 12.8 complies with Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*.

XIII. EXTENSIONS

13.1 A timetable, Deadline, or Schedule shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension as described in Subsection 13.2, below. Any request for extension by the Navy shall be submitted in writing and shall specify:

A. The timetable and Deadline or Schedule that is sought to be extended;

B. The length of the extension sought;

C. The good cause(s) for the extension; and

D. Any related timetable and Deadline or Schedule that would be affected if the extension were granted.

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

A. An event of Force Majeure, as defined in Section XXII – FORCE MAJEURE;

B. A delay caused by another Party's failure to meet any requirement of this Agreement;

C. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;

D. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and Deadline or a Schedule; and

E. Any other event or series of events mutually agreed to by the Parties as constituting good cause.

13.3 Absent agreement of the Parties with respect to the existence of good cause, any Party may seek and obtain a determination through the dispute resolution process that good cause exists.

13.4 Within 7 Days after receipt of a request for an extension of a timetable and Deadline or a Schedule, the other Parties shall advise the requesting Party in writing of their respective positions on the request. Any failure by the other Parties to respond within the 7-Day period shall be deemed to constitute concurrence in the request for extension. If a Party does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

13.5 If there is consensus among the Parties that the requested extension is warranted, the requesting Party 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.

13.6 Within 7 Days after receipt of a statement of nonconcurrence with the requested extension, the requesting Party may invoke dispute resolution.

13.7 A written, timely, and good faith request by the Navy 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 and 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.

XIV. PROJECT MANAGERS

14.1 On or before the Effective Date of this Agreement, the EPA, the Navy, and the HDOH shall each designate a Project Manager and notify the other Parties of the name and address of their Project Manager. The Project Managers shall be responsible for ensuring proper implementation of all Work performed under the terms of the Agreement. To the maximum extent practicable, communications among the Navy, the EPA, and the HDOH on all documents, including documents, comments, and other correspondence concerning the activities performed pursuant to this Agreement shall be directed through the Project Managers. The Parties may designate an Alternate Project Manager to exercise the authority of the Project Manager in his or her absence.

14.2 The Parties may change their respective Project Managers. Such change shall be accomplished by notifying the other Parties, in writing, within 5 Days after the change and prior to the new Project Manager exercising his or her delegated authority.

14.3 The Parties' Project Managers shall meet or confer informally as necessary as provided in Section X - CONSULTATION, of this Agreement. Although the Navy has ultimate responsibility for meeting its respective Deadlines, the EPA and the HDOH Project Managers shall endeavor to assist in this effort by scheduling meetings to review the SMP, documents and reports; overseeing the performance of environmental monitoring at the Site; reviewing RI/FS or RD/RA progress; and attempting to resolve disputes informally. At least 1 week prior to each scheduled Project Manager meeting, unless otherwise agreed to between the Parties, the Navy will provide to the EPA and the HDOH Project Managers a draft agenda and summary of the status of the Work subject to this Agreement.

These status documents shall include, when applicable:

A. Identification of all data received and not previously provided by the Navy during the reporting period consistent with the limitations of Subsection 32.1;

B. All activities completed pursuant to this Agreement since the last Project Manager meeting as well as such actions and plans that are scheduled for the next 6 months; and

C. A description of any delays, the reasons for such delays, anticipated delays, concerns over possible timetable implementation, or problems that arise in the execution of a Work Plan during the quarter and any steps that were or will be taken to alleviate the delays or problems.

The minutes of each Project Manager meeting, with the meeting agenda, will be sent to all Project Managers within 14 Days after the meeting. Any documents requested during the

meeting will be provided in a timely manner, except for those documents for which express notification is required.

14.4 Necessary and appropriate adjustments to Deadlines or Schedules may be proposed by any Party. The Party which requested the modification shall prepare a written memorandum detailing the modification and the reasons therefore and shall provide a copy of the memorandum at least 7 Days prior to the Deadline to the other Parties for signature and return prior to the Deadline.

14.5 A Project Manager may also recommend and request minor field modifications to the Work performed pursuant to this Agreement, or in techniques, procedures, or designs used in carrying out this Agreement. The minor field modifications proposed under this Subsection must be approved orally by all the Parties' Project Managers to be effective. No such Work modifications can be so implemented if an increase in contract cost will result without the authorization of the Navy Contracting Officer. If unanimous agreement cannot be reached on the proposed minor field modification, the Parties shall use the procedures of Section XX - DISPUTE RESOLUTION. If all Parties agree to the modification, within 5 business Days following a modification made pursuant to this Subsection, the Project Manager who requested the modification shall prepare a written memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the Project Managers of the other Parties for signature and return.

14.6 Modifications of Work not provided for in Subsections 14.4 and 14.5 of this Section also must be approved by all the Parties' Project Managers to be effective. If agreement cannot be reached on the proposed modification to Work, dispute resolution as set forth in Section XX - DISPUTE RESOLUTION, shall be used. Within 5 business Days following a modification made pursuant to this Section, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons and shall provide or mail a copy of the memorandum to the Project Managers of the other Parties for signature and return.

14.7 Each Party's Project Manager shall be responsible for ensuring that all communications received from the other Project Managers are appropriately disseminated to and processed by the Party that each represents.

14.8 The Parties shall transmit Primary and Secondary Documents and all notices required herein by those means specified in Section II – DEFINITIONS, subsection PP, to the persons specified in Subsection 14.9 below by the Deadline established under Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN. Time limitations shall commence upon receipt. Unless otherwise agreed to between the Parties, the Navy shall provide two copies each to the EPA and the HDOH of each Primary and Secondary Document.

14.9 Notice to the individual Parties shall be provided under this Agreement to the following addresses:

A. For the Navy:

Commanding Officer,
NAVFAC Hawaii
Attn: OPHEV3, Robert Kaito
400 Marshall Road, Building X-11
Pearl Harbor, HI 96860-3139

B. For the EPA:

Remedial Project Manager – NCTAMSPAC
Mr. Mark Ripperda
Federal Facilities Cleanup Office
US EPA Region IX SFD-8-3
75 Hawthorne Street
San Francisco, CA 94105

C. For the HDOH:

Remedial Project Manager NCTAMSPAC
Mr. Steven Mow
Hazard Evaluation and Emergency Response Office
State of Hawaii, Department of Health
919 Ala Moana Blvd., Room 206
Honolulu, HI 96814

14.10 Nothing in this Section shall be construed to interfere with or alter the internal organization or procedures of a Party, including, without limitation, signature authority.

14.11 The Project Manager for the Navy shall represent the Navy with regard to the day-to-day field activities at the Site. The Navy's Project Manager or other designated employee of the Navy shall be physically present at the Site or available to supervise Work during implementation of all the Work performed at the Site pursuant to this Agreement. The absence of the EPA or HDOH Project Managers from the Site shall not be cause for Work stoppage or delay, unless the Project Managers agree otherwise in writing.

14.12 The authority of the Project Managers shall include, but not be limited to:

A. Taking samples and ensuring that sampling and other field work is performed in accordance with the terms of any final Work Plans, Sampling Plan, and Quality Assurance/Quality Control (QA/QC) Plan;

B. Observing, taking photographs, and making such other documents on the progress of the Work as the Project Managers deem appropriate, subject to the limitations set forth in Section XVI - ACCESS hereof;

C. Reviewing sampling data, records, files, and documents relevant to the Agreement, subject to the limitations set forth in Section XXXI - RECORD PRESERVATION; and

D. Determining the form and specific content of the Project Manager meetings.

14.13 If any event occurs or has occurred that may delay or prevent the performance of any obligation under this Agreement, whether or not caused by a Force Majeure event, any Party shall notify by telephone the other Parties' Project Managers within 2 business Days of when the Party first became aware that the event might cause a delay. If the Party intends to seek an extension of a Deadline or Schedule because of the event, the procedures of Section XIII - EXTENSIONS, shall apply.

XV. EXEMPTIONS

15.1 The Parties recognize that the President may issue an order, as needed to protect national security interests, regarding response actions at NCTAMSPAC, pursuant to Section 120(j) of CERCLA, 42 U.S.C. Section 9620(j). Such an order may exempt NCTAMSPAC or any portion thereof from the requirements of CERCLA for a period of time not to exceed 1 year after the issuance of that order. This order may be renewed. The Navy shall obtain access to and perform all actions required by this Agreement within all areas inside those portions of NCTAMSPAC that are not the subject of or subject to any such order issued by the President.

15.2 The HDOH reserves any statutory right it may have to challenge any order or exemption specified in Subsection 15.1 relieving the Navy of its obligations to comply with this Agreement.

XVI. ACCESS

16.1 The EPA and the HDOH and/or their representatives shall have the authority to enter the Site at all reasonable times for the purposes consistent with provisions of this Agreement. Such authority shall include, but not be limited to: inspecting records, logs, contracts, and other documents relevant to implementation of this Agreement; reviewing and monitoring the progress of the Navy, its contractors, and lessees in carrying out the activities under this Agreement; conducting, with prior notice to the Navy, tests that the EPA or the HDOH deem necessary; assessing the need for planning additional remedial response actions at the Site; and verifying data or information submitted to the EPA and the HDOH.

The Navy shall honor all reasonable requests for access to the Site made by the EPA or the HDOH, upon presentation of credentials showing the bearer's identification and that he/she is an employee or agent of the EPA or the HDOH. The Navy's Project Manager or his/her designee will provide briefing information, coordinate access and escort to restricted or controlled-access areas, arrange for base passes, and coordinate any other access requests that arise. The Navy shall use its best efforts to ensure that conformance with the requirements of this Subsection do not delay access.

16.2 The rights granted in Subsections 16.1 and 16.4 to the EPA and the HDOH regarding access shall be subject to regulations and statutes, including NCTAMSPAC security regulations, as may be necessary to protect national security information ("classified information") as defined in Executive Order 12958, and comply with NCTAMSPAC's health and safety requirements. Such requirements shall not be applied so as to unreasonably hinder the EPA or the HDOH from carrying out their responsibilities and authority pursuant to this Agreement.

16.3 The Navy shall provide an escort whenever the EPA or the HDOH requires access to restricted areas of NCTAMSPAC for purposes consistent with the provisions of this Agreement. The EPA and the HDOH shall provide reasonable notice to the Navy's Project Manager, or his or her designee, to request any necessary escorts for such restricted areas. The Navy shall not require an escort to any area of this Site unless it is a restricted or controlled-access area. Upon request of the EPA or the HDOH, the Navy, to the extent permitted by law, shall promptly provide a written list of current restricted or controlled-access areas.

16.4 The EPA and the HDOH shall have the right to enter all areas of the Site that are entered by contractors performing Work under this Agreement.

16.5 Upon a denial of any aspect of access, the Navy shall provide an immediate explanation of the reason for the denial, including reference to the applicable regulations, and upon request, a copy of such regulations. Within 48 hours, the Navy shall provide a written explanation for the denial. To the extent possible, the Navy shall expeditiously provide a recommendation for accommodating the requested access in an alternate manner.

16.6 The Navy shall ensure that all response measures, groundwater rehabilitation measures, and RAs of any kind that are undertaken pursuant to this Agreement on any areas that a) are presently owned by the United States and are occupied by the Navy or leased by the Navy to any other entity; or b) are in any manner under the control of the Navy or any lessees or agents of the Navy, shall not be impeded or impaired in any manner by any transfer of title or change in occupancy or any other change in circumstances of such areas.

16.7 Nothing herein shall be construed as limiting the EPA's or the HDOH's statutory authority for access or information gathering.

XVII. PERMITS

17.1 The Navy shall be responsible for obtaining all federal, State, and local permits necessary for the performance of all Work under this Agreement.

17.2 The Parties recognize that under Sections 121(d) and 121(e)(1) of CERCLA, 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 onsite, where such response actions are selected and carried out in accordance with CERCLA, are exempt from the requirement to obtain federal, State, or local permits. All activities must, however, comply with all the applicable or relevant and

appropriate federal and State standards, requirements, criteria, or limitations that would have been included in any such permit.

17.3 When the Navy proposes a response action, other than an emergency removal action, to be conducted entirely onsite, which in the absence of Section 121(e)(1) of CERCLA, 42 U.S.C. Section 9621(e)(1), and the NCP would require a federal, State, or local permit, the Navy shall include in its Draft ROD or removal memorandum:

A. Identification of each permit that would otherwise be required;

B. Identification of the standards, requirements, criteria, or limitations that would have had to have been met to obtain each such permit; and

C. An explanation of how the response action proposed will meet the standards, requirements, criteria, or limitations identified immediately above.

17.4 Subsection 17.2 above is not intended to relieve the Navy from the requirement(s) of obtaining a permit whenever it proposes a response action involving the shipment or movement of a hazardous substance, pollutant, or contaminant or hazardous waste offsite or in any other circumstances where the exemption provided for at Section 121(e)(1) of CERCLA, 42 U.S.C. Section 9621(e), does not apply.

17.5 The Navy shall notify the EPA and the HDOH in writing of any permits required for any offsite activities it plans to undertake as soon as it becomes aware of the requirement. The Navy shall apply for all such permits and provide the EPA and the HDOH with copies of all such permits, applications, and other documents related to the permit process and final permits.

17.6 The Navy agrees to notify the EPA and the HDOH of its intention to propose modifications to this Agreement to obtain conformance with the permit, or lack thereof if a permit or other authorization which is necessary for implementation of this Agreement is not issued, or is issued, or renewed in a manner that is materially inconsistent with the requirements of this Agreement.

Notification by the Navy of its intention to propose modifications shall be submitted within 60 Days after receipt by the Navy 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 60 Days after the date it submits its notice of intention to propose modifications to this Agreement, the Navy shall submit to the EPA and the HDOH its proposed modifications to this Agreement with an explanation of its reasons in support thereof.

17.7 The EPA and HDOH shall review the Navy's proposed modifications to this Agreement in accordance with Section XXXVIII - AMENDMENT OF AGREEMENT, of this Agreement. If the Navy submits proposed modifications prior to a final determination of any appeal taken on

a permit needed to implement this Agreement, the EPA and the HDOH may elect to delay review of the proposed modifications until after such final determination is entered.

17.8 During any appeal by any Party of any permit required to implement this Agreement or during review of any proposed modification(s) to the permit, the Navy shall continue to implement those portions of this Agreement that can be reasonably implemented independent of final resolution of the permit issue(s) under appeal. However, as to Work that cannot be so implemented, any corresponding Deadline, timetable, or Schedule shall be subject to Section XIII - EXTENSIONS, of this Agreement.

17.9 Nothing in this Agreement shall be construed to affect the Navy's obligation to comply with any RCRA permit(s) that the Facility may already have been or will be issued in the future.

XVIII. REMOVAL AND EMERGENCY ACTIONS

18.1 The Navy shall provide the EPA and the HDOH with timely notice of any proposed removal action.

18.2 Nothing in this Agreement shall alter the Navy's, the HDOH's, or the EPA's authority with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. Section 9604.

18.3 If during the course of performing the activities required under this Agreement, any Party identifies an actual or a substantial threat of a release of any hazardous substance, pollutant, or contaminant at or from the Site, that Party may propose that the Navy undertake removal actions to abate the danger and threat that may be posed by such actual or threatened release. All removal actions conducted on NCTAMSPAC shall be conducted in a manner consistent with this Agreement, CERCLA, Executive Order 12580, DERP, including provisions for timely notification and consultation with the EPA and appropriate HDOH and local officials, and the NCP and shall, to the extent practicable, contribute to the efficient performance of any Long Term Remedial Action (LTRA) with respect to the release(s) or threatened release(s) concerned. Such a proposal to undertake such actions by the Navy shall be submitted to the EPA and the HDOH and shall include:

A. Documentation of the actual or threatened release at or from the Site;

B. Documentation that the actions proposed will abate the danger and threat that may be posed by release of hazardous substances, pollutants, or contaminants at or from the Site;

C. Documentation that the action is consistent with the NCP, applicable State regulations, and, to the extent practicable, contributes to the efficient performance of any LTRA with respect to the release or threatened release concerned;

D. Prepare an EE/CA for a removal action whenever a planning period of at least six months exists before on-site activities must be initiated (Non-Time Critical Removal Action). The EE/CA shall contain an analysis of removal alternatives for a site. The screening of alternatives shall be based on criteria as provided in CERCLA and the NCP, such as cost, feasibility, and effectiveness. If the planning process can be completed in less than 180 days (Time Critical Removal Action), an abbreviated version of alternatives screening will be included in the Action Memorandum; and

E. A Time or Non-Time Critical Removal Action Plan and Target Date for the proposed action.

The EPA and the HDOH shall expedite all reviews of these proposals to the maximum extent practicable.

18.4 The opportunity for review and comment for proposed removal actions, as stated in Subsection 18.3 above, may not apply if the action is in the nature of an emergency removal taken because a release or threatened release may present an imminent and substantial endangerment to human health or the environment. The Navy may determine that review and comment, as stated in Subsection 18.3 above, is impractical. However, in the case of an emergency removal action, the Navy shall provide the EPA and the HDOH with oral notice as soon as possible and written notice within 48 hours after the Navy determines that an emergency removal is necessary. Within 7 Days after initiating an emergency removal action, the Navy shall provide the EPA and the HDOH with the written basis (factual, technical, and scientific) for such action and any available documents supporting such action. Upon completion of an emergency removal action, the Navy shall state whether, and to what extent, the emergency removal action varied from the description of the action in the written notice provided pursuant to this Section. Within 30 Days of completion of an emergency response action, the Navy will furnish the EPA and the HDOH with an Action Memorandum addressing the information provided in the oral notification, whether and to what extent the action varied from the description previously provided, and any other information required by CERCLA or the NCP, and in accordance with EPA Guidance for such actions. Such actions may be conducted at anytime, either before or after the issuance of a ROD.

18.5 If an imminent health hazard (e.g., a drinking water well containing any contaminant at concentrations greater than any federal or State drinking water action level or maximum contaminant level [MCL]) or an activity conducted pursuant to this Agreement that is creating a danger to the public health or welfare or the environment is discovered by any Party during the efforts covered by this Agreement, the discovering Party will notify the other Parties and the Navy will take immediate action to promptly notify all appropriate State and local agencies, potentially affected persons, and officials in accordance with 10 U.S.C. Section 2705(a). The Navy will expeditiously take appropriate measures to protect all persons affected.

18.6 All activities pursuant to this Agreement will be performed in accordance with the applicable Health and Safety Plan and will be conducted so as to minimize the threat to the surrounding public.

XIX. PERIODIC REVIEW

19.1 Consistent with Section 121(c) of CERCLA, 42 U.S.C. Section 9621(c), and in accordance with this Agreement, if the selected RA results in any hazardous substance, pollutants, or contaminants remaining at the Site, the Parties shall review the RA program for each OU or site at least every 5 years after the initiation of the RA to assure that human health and the environment are being protected by the RA being implemented. As part of this review, the Navy shall report the findings of the review to the EPA and the HDOH upon its completion. The Five Year Review shall be submitted to EPA and HDOH for review and comment. Target Dates shall be established for the completion and transmission of the Five Year Review pursuant to Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN, of this Agreement.

19.2 If upon such review it is the conclusion of any of the Parties that additional action or modification of RA is appropriate at the Site in accordance with Sections 104 or 106 of CERCLA, 42 U.S.C. Sections 9604 or 9606, the Navy shall implement such additional or modified action in accordance with Section IX - WORK TO BE PERFORMED, of this Agreement.

19.3 Any dispute by the Parties regarding the need for or the scope of additional action or modification to a RA shall be resolved under Section XX - DISPUTE RESOLUTION, of this Agreement and enforceable hereunder.

19.4 Any additional action or modification agreed upon pursuant to this Section shall be made a part of this Agreement.

19.5 The EPA reserves the right to exercise any available authority to seek the performance of additional Work that arises from a Five Year Review, pursuant to applicable law.

19.6 The HDOH reserves the right to exercise any authority under State law to seek the performance of additional Work when it is determined that such additional Work is necessary.

19.7 The assessment and selection of any additional response actions determined necessary as a result of a Five Year Review shall be in accordance with Subsections 9.10 to 9.14. Except for emergency response actions, which shall be governed by Section XVIII - REMOVAL AND EMERGENCY ACTIONS, such response actions shall be implemented as a supplemental response action in accordance with Subsections 9.13 and 9.14.

XX. DISPUTE RESOLUTION

20.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section 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 Section shall be implemented to resolve a dispute.

20.2 Within 30 Days after: (1) the period established for review of a Draft Final Primary Document pursuant to Section X - 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 and factual information the disputing Party is relying upon to support its position.

20.3 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 and/or confer as many times as are necessary to discuss and attempt resolution of the dispute.

20.4 The Dispute Resolution Committee (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 (Senior Executive Service [SES] or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA's representative on the DRC is the Director, Division of Superfund of EPA Region 9. The HDOH's representative on the DRC is the Deputy Director, Environmental Health Administration at HDOH. The Navy's designated member is the Commander, Naval Facilities Engineering Command, Pacific. Written notice of any delegation of authority from the Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section XIV - PROJECT MANAGERS.

20.5 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 signed by all Parties. If the DRC is unable to unanimously resolve the dispute within this 21-Day period, the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution, within seven (7) Days after the close of the twenty-one (21) Days resolution period.

20.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA's representative on the SEC is the Regional Administrator of EPA Region 9. The Navy's representative on the SEC is the Deputy Assistant Secretary of the Navy (Environment). The HDOH's representative on the SEC is the Director of Health for State of Hawaii. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a unanimous written decision signed by all Parties. If unanimous resolution of the dispute is not reached within twenty-one (21) Days of elevation to the SEC, the EPA's Regional Administrator shall issue a written position on the dispute. The Secretary of the Navy or the Director of Health for State of Hawaii may, within 21 Days of the Regional Administrator's issuance of the EPA's position, issue a written notice elevating the dispute to the Administrator of the EPA for resolution in accordance with all applicable laws and procedures. In the event that the

Navy or the State elects not to elevate the dispute to the Administrator within the designated twenty-one (21) Day escalation period, the party shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute. The duties of the Secretary of the Navy pursuant to this subsection may be delegated only to the Assistant Secretary of the Navy (Installations and Environment).

20.7 Upon escalation of a dispute to the Administrator of the EPA pursuant to Subsection 20.6 above, the Administrator will review and resolve the dispute within 21 Days of receipt of the dispute. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Secretary of the Navy and the Director of Health for State of Hawaii to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other Parties with a written final decision setting forth resolution of the dispute. The duties of the Administrator pursuant to this Subsection may be delegated only to the EPA Assistant Administrator for Enforcement and Compliance Assurance. The duties of the Secretary of the Navy pursuant to this subsection may be delegated only to the Assistant Secretary of the Navy (Installations and Environment).

20.8 The pendency of any dispute under this Section shall not affect the Navy's responsibility for timely performance of the Work required by this Agreement, except 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.

20.9 When dispute resolution is in progress, Work affected by the dispute will immediately be discontinued if the Superfund Division Director for EPA Region 9 requests, in writing, that Work related to the dispute be stopped because, in EPA's opinion, such Work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. The HDOH may request the EPA Division Director to order Work stopped for the reasons set out above. To the extent possible, EPA shall consult with the Navy prior to initiating a Work stoppage request. After stoppage of Work, if the Navy believes that the Work stoppage is inappropriate or may have potential significant adverse impacts, the Navy may meet with the EPA Division Director to discuss the Work stoppage. Following this meeting, and further consideration of the issues, the EPA Division Director will issue, in writing, a final decision with respect to the Work stoppage. The final written decision of the EPA Division Director 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 the Navy.

20.10 Within 21 Days of resolution of a dispute pursuant to the procedures specified in this Section, the Navy shall incorporate the resolution and final determination into the appropriate plan, Schedule, or procedures and proceed to implement this Agreement according to the amended plan, Schedule, or procedures.

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

20.12 If the State continues to dispute the position of the Administrator of the EPA, State reserves its rights, to the extent provided by law including Sections 113(h), 121 and 310 of CERCLA, Section 7002 of RCRA, and Section XXIII - ENFORCEABILITY of this Agreement, to bring an action in federal court to seek relief regarding such dispute and to seek injunctive relief. This Subsection, however, does not create any rights that the State does not already have under applicable laws.

20.13 The State reserves the right to maintain an action under CERCLA Section 121(f)(3)(B), 42 U.S.C. Section 9621(f)(3)(B), to challenge the selection of a RA that does not attain a State ARAR.

XXI. STIPULATED PENALTIES

21.1 In the event that the Navy fails to submit a Primary Document to the EPA and the HDOH pursuant to the appropriate timetable or Deadlines in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement that relates to an interim or final remedial action, the EPA may assess a stipulated penalty against the Navy. A stipulated penalty may be assessed in an amount not to exceed $5,000 for the first week (or part thereof), and $10,000 for each additional week (or part thereof) for which a failure set forth in this Subsection occurs.

21.2 Upon determining that the Navy has failed in a manner set forth in Subsection 21.1, the EPA or the HDOH shall so notify the Navy in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Navy shall have fifteen (15) Days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Navy shall not be liable for the stipulated penalty assessed by the 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.

21.3 The annual documents required by CERCLA Section 120(e)(5), 42 U.S.C. Section 9620(e)(5), shall include, with respect to each final assessment of a stipulated penalty against the Navy under this Agreement, each of the following:

A. The facility responsible for the failure;

B. A statement of the facts and circumstances giving rise to the failure;

C. 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;

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

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

21.4 Stipulated penalties assessed pursuant to this Section shall be payable to the Hazardous Substances Response Trust Fund only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the DOD. In the event that Navy has to pay stipulated penalties under this Agreement, the Navy will seek Congressional approval and authorization to pay such penalties to the federal Hazardous Substances Superfund. Such payment will not entail expenditures that exceed available appropriations, and nothing in this Agreement may be considered as implying that Congress will, at a later date, appropriate funds sufficient to pay such penalties.

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

21.6 This Section shall not affect the Navy's ability to obtain an extension of a timetable, Deadline, or Schedule pursuant to Section XIII – EXTENSIONS of this Agreement.

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

XXII. FORCE MAJEURE

22.1 A Force Majeure shall mean any event arising from causes beyond the control of the Party that causes a delay in or prevents the performance of any obligation under this Agreement, including but not limited to:

A. Acts of God;

B. Fire;

C. War;

D. Insurrection;

E. Civil disturbance;

F. Explosion;

G. Unanticipated breakage or accident to machinery, equipment, or lines of pipe despite reasonably diligent maintenance;

H. Adverse weather conditions that could not be reasonably anticipated;

I. Unusual delay in transportation due to circumstances beyond the control of the Navy;

J. Restraint by court order or order of public authority;

K. Inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority other than the Navy;

L. Delays caused by compliance with applicable statutes or regulations governing contracting, procurement, or acquisition procedures, despite the exercise of reasonable diligence; and

M. Insufficient availability of appropriated funds, if the Navy shall have made a timely request for such funds as a part of the budgetary process as set forth in Section XXVII - 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.

22.2 When circumstances, which may delay or prevent the completion of the Navy's obligation under this Agreement, are caused by a Force Majeure event, the Navy shall notify the EPA and the HDOH Project Managers orally of the circumstances within 48 hours after the Navy first became aware of these circumstances. Within 15 Days after the oral notification, the Navy shall supply to the EPA and the HDOH in writing an explanation of the cause(s) of any actual or expected delay and the anticipated duration of any delay. The Navy shall exercise its best efforts to avoid or minimize any such delay and any effects of such delay.

22.3 The Party seeking an extension based on Force Majeure shall describe the Force Majeure event being alleged.

XXIII. ENFORCEABILITY

23.1 The Parties agree that:

A. 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 CERCLA Section 310, and any violation of such standard, regulation, condition, requirement, or order will be subject to civil penalties under CERCLA Sections 310(c) and 109, 42 U.S.C. Sections 9659(c) and 9609; and

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

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

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

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

23.3 Nothing in this Agreement shall be construed as a restriction or waiver of any rights the EPA may have under CERCLA, including but not limited to any rights under Sections 113, 120, 121 and 310, 42 U.S.C. Sections 9613, 9620, 9621 and 9659, or any rights, or defenses, including sovereign immunity, the HDOH may have under federal or State law.

The Navy does not waive any rights it may have under CERCLA Section 120, SARA Section 211, 10 U.S.C. 2701 et seq., and Executive Order 12580.

23.4 The Parties agree to exhaust their rights under Section XX - DISPUTE RESOLUTION, prior to exercising any rights to judicial review that they may have.

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

XXIV. OTHER CLAIMS

24.1 Subject to Section VIII - STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION, nothing in this Agreement shall restrict the Parties from taking any action under CERCLA, RCRA, State law, or other environmental statutes for any matter not specifically part of the Work performed under CERCLA, which is the subject matter of this Agreement.

24.2 Nothing in this Agreement shall constitute or be construed as a bar, or a discharge, or a 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, hazardous waste, pollutants, or contaminants found at, taken to, or taken from the Site.

24.3 This Agreement does not constitute any decision or pre-authorization by the EPA of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. Section 9611(a)(2) for any person, agent, contractor, or consultant acting for the Navy.

24.4 The EPA and the HDOH shall not be held as a party to any contract entered into by the Navy to implement the requirements of this Agreement.

24.5 The Navy shall notify the appropriate federal and State natural resource trustees of potential damages to natural resources resulting from releases or threatened releases under investigation, as required by Section 104(b)(2) of CERCLA, 42 U.S.C. Section 9604(b)(2), and Section 2(e)(2) of Executive Order 12580. Except as provided herein, the Navy is not released from any liability that it may have pursuant to any provisions of State and federal law, including any claim for damages for destruction of, or loss of, natural resources.

24.6 This Agreement does not bar any claim for:

A. Natural resources damage assessments, or for damage to natural resources; or

B. Liability for disposal of any hazardous substances or waste material taken from NCTAMSPAC.

XXV. RESERVATION OF RIGHTS

25.1 Notwithstanding anything in this Agreement, the EPA and the State may initiate any administrative, legal, or equitable remedies available to them, including requiring additional response actions by the Navy in the event that: (a) conditions previously unknown or undetected by the EPA or the State arise or are discovered at the Site; or (b) the EPA or the State receive additional information not previously available concerning the premises that it employed in reaching this Agreement; or (c) the implementation of the requirements of this Agreement are no longer protective of public health and the environment; or (d) the EPA or the State discover the presence of conditions on the Site that may constitute an imminent and substantial danger to the public health, welfare, or the environment; or (e) the Navy fails to meet any of its obligations under this Agreement; or (f) the Navy fails or refuses to comply with any applicable requirement of CERCLA or RCRA or State laws or related regulations; or (g) the Navy, its officers, employees, contractors, or agents falsify information, documents, or data, or make a false representation or statement in a record, report, or document relating to the release of hazardous materials at the Site, and this information affects the determination of whether an RA is protective of human health and the environment. For purposes of this Subsection, conditions at

the Site and information known to the EPA and the State shall include only those conditions and information known as of the date of the relevant response action Decision Document.

25.2 The Parties agree to exhaust their rights under Section XX - DISPUTE RESOLUTION, prior to exercising any rights to judicial review that they may have.

25.3 The Parties, after exhausting their remedies under this Agreement, reserve any and all rights, including the right to raise or assert any defense they may have under CERCLA, or any other law, where those rights are not inconsistent with the provisions of this Agreement, CERCLA, or the NCP. This Section does not create any right that the EPA and the State do not already have under applicable law.

25.4 The State reserves any and all rights it may have to recover any past or future costs incurred as a result of CERCLA or State response activities conducted at the Site.

25.5 Notwithstanding any other Section of this Agreement, the State shall retain any statutory right it may have to obtain judicial review of any final decision of the EPA including, without limitation, any authority the State may have under CERCLA Sections 113, 121(e)(2), 121(f)(3), and 310, 42 U.S.C. Sections 9613, 9621(e)(2), 9621(f)(3), and 9659, Section 7002 of RCRA, Section XXIII - ENFORCEABILITY of this Agreement, and State law, except that the State expressly agrees to exhaust any applicable remedies provided in Section X - CONSULTATION and Section XX - DISPUTE RESOLUTION of this Agreement, prior to exercising any such rights.

25.6 Notwithstanding anything in this Agreement, the State reserves the right to initiate any administrative, legal, or equitable remedies available to it based upon: (a) the Navy's failure or refusal to comply with any requirement of State laws or regulations required under this Agreement; or (b) except as provided in a ROD, past, present, or future disposal of hazardous substances or contaminants outside the boundaries of the Site; or (c) past, present, or future violations of federal or State criminal law; or (d) violations of federal or State law other than those addressed in this Agreement that occur during or after implementation of an RA; or (e) damages for injury to, destruction of, or loss of natural resources, and the cost of any natural resource damage assessments. The State expressly agrees to exhaust any applicable remedies provided in Section X – CONSULTATION, and Section XX - DISPUTE RESOLUTION, of this Agreement, prior to exercising any such rights.

25.7 With regard to all matters not expressly addressed by this Agreement, the State specifically reserves all rights to institute equitable, administrative, civil, and criminal actions for any past, present, or future violation of any statute, regulation, permit, or order, or for any pollution or potential pollution to the air, land, or waters of the State.

25.8 In the event that the Navy's obligations under this Agreement are not fulfilled for 6 consecutive months, the State shall have the option of terminating all provisions of the Agreement affecting the State's rights and responsibilities, and the State may thereafter seek any

appropriate relief. The State, however, expressly agrees to exhaust any applicable remedies provided in Section X – CONSULTATION, and Section XX - DISPUTE RESOLUTION, of this Agreement, prior to exercising any such rights. Thereafter, the State will provide the other Parties with 10 Days notice of its intent to terminate. This Section does not create any right that State does not already have under applicable law.

XXVI. PROPERTY TRANSFER

26.1 No change or transfer of any interest in the Facility or any part thereof shall in any way alter the status or responsibility of the Parties under this Agreement. The Navy agrees to give the EPA and the HDOH 60 Days notice prior to the sale or transfer by the United States of any title, easement, or other interest in the real property affected by this Agreement. The Navy agrees to comply with Section 120(h) of CERCLA, 42 U.S.C. Section 9620(h), including the Community Environmental Response Facilitation Act (CERFA), and any additional amendments thereof, and with 40 C.F.R. Part 373, if applicable.

26.2 In accordance with Section 120(h) of CERCLA, 42 U.S.C. Section 9620(h), and 40 C.F.R. Part 373, the Navy shall include notice of this Agreement in any Host/Tenant Agreement or Memorandum of Understanding that permits any non-NCTAMSPAC activity to function as an operator on any portion of the Site.

XXVII. FUNDING

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

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

27.3 Any requirement for the payment or obligation of funds, including stipulated penalties, by the Navy established by the terms of this Agreement shall be subject to the availability of appropriated funds, 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.

27.4 If appropriated funds are not available to fulfill the Navy's obligations under this Agreement, the EPA and the State reserve the right to initiate an action against any other person, or to take any response action, which would be appropriate absent this Agreement.

27.5 Funds authorized and appropriated annually by Congress under the Environmental Restoration, Navy (ER,N) appropriation in the Department of Defense Appropriations Act will be the source of funds for activities required by this Agreement consistent with 10 U.S.C. Chapter 160. However, should the ER,N appropriation be inadequate in any year to meet the total Navy's implementation requirements under this Agreement, the Navy will, after consulting with the other Parties and discussing the inadequacy with the members of the public interested in the action in accordance with Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN, prioritize and allocate that year's appropriation.

XXVIII. REIMBURSEMENT OF STATE SERVICES

28.1 The Navy and the HDOH agree to use the Defense State Memorandum of Agreement, (DSMOA), signed in 1991, in accordance with the Cooperative Agreements between the State and the Army Corps of Engineers governing DSMOAs, for the reimbursement of services provided in direct support of Navy environmental restoration activities at the Site pursuant to this Agreement. The Navy and HDOH may also determine by mutual agreement to transfer from DSMOA to the Navy Cost Reimbursement program in the future.

XXIX. RECOVERY OF EPA EXPENSES

29.1 The Parties agree to amend this Agreement at a later date in accordance with any subsequent national resolution of the issue of EPA cost reimbursement for CERCLA response costs incurred by the EPA. Pending such resolution, the EPA reserves the rights it may have with respect to cost reimbursement.

XXX. QUALITY ASSURANCE

30.1 The Navy shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. The Navy has developed, in accordance with EPA Guidance, and the EPA and the HDOH have approved, a Quality Assurance Project Plan (QAPP) that shall be used as a component of each RI, FS, RD, and RA Work Plan(s). If additional detail is required, the Navy shall develop a site-specific QAPP. These Work Plans will be reviewed as Primary Documents pursuant to Section X - CONSULTATION, of this Agreement. QA/QC Plans shall be prepared in accordance with applicable EPA Guidance and the Uniform Federal Policy for Quality Assurance Project Plans.

30.2 In order to provide for QA and maintain QC regarding all field work and samples collected pursuant to this Agreement, the Navy shall include in each QA/QC Plan submitted to the EPA and the HDOH all protocols to be used for sampling and analysis. The Navy shall also ensure that any laboratory used for analysis is a participant in a QA/QC program that is consistent with EPA Guidance.

30.3 The Navy shall ensure that lab audits are conducted as appropriate and are made available to the EPA and the HDOH upon request. The Navy shall ensure that the EPA and/or the HDOH and/or their authorized representatives shall have access to all laboratories performing analyses on behalf of Navy pursuant to this Agreement.

XXXI. RECORD PRESERVATION

31.1 Despite any document retention policy to the contrary, the EPA and the Navy shall preserve, during the pendency of this Agreement and for a minimum of 10 years after its termination or for a minimum of 10 years after implementation of any additional action taken pursuant to Section XIX - PERIODIC REVIEW, all records and documents in their possession that relate to actions taken pursuant to this Agreement. The HDOH shall preserve all records and documents in its possession that relate to actions taken pursuant to this Agreement in accordance with State law and State policy. After the 10-year period, or for the HDOH at the expiration of its document retention period, each Party shall notify the other Parties at least 45 Days prior to the proposed destruction or disposal of any such documents or records. Upon the request by any Party, the requested Party shall make available such records or copies of any such records unless withholding is authorized and determined appropriate by law. The Party withholding such records shall identify any documents withheld and the legal basis for withholding such records. No records withheld shall be destroyed until 45 Days after the final decision by the highest court or administrative body requested to review the matter.

31.2 All such records and documents shall be preserved for a period of 10 years following the termination of any judicial action regarding the Work performed under CERCLA, which is the subject of this Agreement.

XXXII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

32.1 Each Party shall make available to the other Parties all the results of sampling, tests, or other data generated through the implementation of this Agreement in a timely manner.

32.2 At the request of any Party, a Party shall allow the other Parties or their authorized representatives to observe fieldwork and to take split or duplicate samples of any samples collected pursuant to this Agreement. Each Party shall notify the other Parties by telephone not less than 14 Days in advance of any scheduled sample collection activity unless otherwise agreed upon by the Parties. The Party shall provide written confirmation within 3 Days after the telephonic notification.

32.3 If preliminary analysis indicates that an imminent or substantial endangerment to human health or the environment may exist, all other Project Managers shall be immediately notified.

XXXIII. PROTECTED INFORMATION

33.1 The Navy shall not withhold any physical, sampling, monitoring, or analytical data.

33.2 National Security Information:

A. Any dispute concerning EPA and/or HDOH access to national security information ("classified information"), as defined in Executive Order 12958, shall be resolved in accordance with Executive Order 12958 and other applicable law, including the opportunity to demonstrate that EPA and/or HDOH representatives have proper clearances and a need to know, appeal to the Information Security Oversight Office, and final appeal to the National Security Council.

B. Upon receipt from the EPA and/or the HDOH of a request to meet with the classifying officer regarding access to classified information, the Navy shall, within 10 Days after such request, notify the requesting Party of the identity of the classifying officer and the level of classification of the information sought. If the document was classified by the Navy, the classifying officer and the representative of the requesting Party shall meet within 21 Days following receipt of the request. The purpose of the meeting shall be to seek a means to accommodate the requesting Party's request for access to information without compromising national security or violating security regulations. If no resolution is reached at the meeting, the Navy shall notify the requesting Party of the classifying officer's decision within 14 Days following the meeting. Failure to render a timely decision shall be construed as a denial. Failure to respond is subject to dispute resolution under this Agreement.

C. Nothing in this Subsection is intended to, or should be construed as, superseding any law, regulation, or promulgated Navy directive regarding access to, release of, or protection of national security information.

XXXIV. COMMUNITY INVOLVEMENT

34.1 The Navy has developed and is implementing a Community Involvement Plan. This plan responds to the need for an interactive relationship with all interested community elements, both on and off the NCTAMSPAC, regarding environmental activities conducted pursuant to this Agreement by the Navy. Any revision or amendment to the Community Involvement Plan shall be submitted to the EPA and the HDOH for review and comment.

34.2 Except in case of an emergency requiring the release of necessary information, and except in the case of an enforcement action, any Party issuing a press release with reference to any of the Work required by this Agreement shall use its best efforts to advise the other Parties of such press release and the contents thereof upon issuance of such release.

34.3 The Parties agree to comply with all relevant EPA policy and Guidance on community relations programs and the public participation requirements of CERCLA, the NCP, and other ARARs, laws, and regulations.

34.4 The Parties agree that Work conducted under this Agreement and any subsequent proposed RA alternatives and subsequent plans for RA at the Site arising out of this Agreement shall comply with all the Administrative Record and public participation requirements of CERCLA, including Sections 113(k) and 117, 42 U.S.C. Sections 9613(k) and 9617, the NCP, and all applicable Guidance developed and provided by the EPA. This shall be achieved through implementation of the Community Involvement Plan.

34.5 The Information Repository is located at the Wahiawa Public Library and the Hamilton Library, University of Hawaii. The Navy has established and is maintaining an Administrative Record at NAVFAC Pacific which is available to the public, in accordance with CERCLA Section 113(k), 42 U.S.C. Section 9613(k), Subpart I of the NCP, and applicable Guidance issued by the EPA. The Administrative Record developed by the Navy shall be periodically updated and a copy of the Index will be provided to the EPA and the HDOH. The Navy will provide to the EPA and the HDOH on request any document in the Administrative Record.

34.6 Pursuant to 10 U.S.C. Section 2705(d) and Section XXXVI - RESTORATION ADVISORY BOARD of this Agreement, the Navy has established a Restoration Advisory Board (RAB) for NCTAMSPAC. The purpose of the RAB is to afford a forum for cooperation between the Parties, local community representatives, and natural resource trustees on action and proposed actions at the Site.

XXXV. PUBLIC COMMENT ON THIS AGREEMENT

35.1 Within 15 Days after the execution of this Agreement (the date by which all Parties have signed the Agreement) or as soon thereafter to conform with RCRA-CERCLA integration requirements, the EPA shall announce the availability of this Agreement to the public for their review and comment, including publication in the Honolulu Advertiser, Honolulu Star-Bulletin, or at least two major local newspapers of general circulation. Such public notices shall include information advising the public as to the availability and location of the Administrative Record discussed in Subsection 35.7. The EPA shall accept comments from the public for 45 Days after such announcement. Within 21 Days after completion of the public comment period, the EPA shall transmit copies of all comments received within the comment period to the other Parties. Within 30 Days after the transmittal, the Parties shall review the comments and shall decide that either:

A. The Agreement shall be made effective without any modifications; or

B. The Agreement shall be modified prior to being made effective.

35.2 If the Parties agree that the Agreement shall be made effective without any modifications, and if the Parties agree on the Responsiveness Summary, the EPA shall transmit a copy of the signed Agreement to the other Parties and shall notify the other Parties in writing that the

Agreement is effective. The Effective Date of the Agreement shall be the date of receipt by the Navy of the signed Agreement from the EPA.

35.3 If the Parties agree that modifications are needed and agree upon the modifications and amend the Agreement by mutual consent within 60 Days after the expiration of the public comment period, the EPA and the HDOH, in consultation with the Navy, will determine whether the modified Agreement requires additional public notice and comment pursuant to any provision of CERCLA. If the EPA and the HDOH determine that no additional notice and comment are required, and the Parties agree on the Responsiveness Summary, the EPA shall transmit a copy of the modified Agreement to the Navy and the HDOH and shall notify them in writing that the modified Agreement is effective as of the date of the notification. If the Parties amend the Agreement within the 60 Days and the EPA and the HDOH determine that additional notice and comment are required, such additional notice and comment shall be provided consistent with the provisions stated in Subsection 35.1 above. If the Parties agree, after such additional notice and comment has been provided, that the modified Agreement does not require any further modification and if the Parties agree on the Responsiveness Summary, the EPA shall send a copy of the mutually agreed upon modified Agreement to the Navy and the HDOH and shall notify them that the modified Agreement is effective. In either case, the Effective Date of the modified Agreement shall be receipt by the Navy from the EPA of notification that the modified Agreement is effective.

35.4 In the event that the Parties cannot agree on the modifications or on the Responsiveness Summary within 30 Days after the EPA's transmittal of the public comments, the Parties agree to negotiate in good faith for an additional 15 Days before invoking dispute resolution. The Parties agree to have at least one meeting during that 15-Day period to attempt to reach agreement.

35.5 If, after expiration of the times provided in Subsection 35.4, the Parties have not reached agreement on:

A. Whether modifications to the Agreement are needed; or

B. What modifications to the Agreement should be made; or

C. Any language, any provisions, any Deadlines, any Work to be performed, any content of the Agreement or any Appendices to the Agreement; or

D. Whether additional public notice and comments are required; or

E. The contents of the Responsiveness Summary,

then the matters in dispute shall be resolved by the dispute resolution procedures of Section XX - DISPUTE RESOLUTION, above. For the purposes of this Section, the Agreement shall not be effective while the dispute resolution proceedings are underway. After these proceedings are completed, the Final Written Decision shall be provided to the Parties indicating the results of the dispute resolution proceedings. Each Party reserves the right to withdraw from the

Agreement by providing written notice to the other Parties within 20 Days after receiving from the EPA the Final Written Decision of the resolution of the matters in dispute. If the HDOH withdraws, and the EPA and the Navy agree to proceed, the Agreement shall be effective as to the EPA and the Navy. Failure by a Party to provide such a written notice of withdrawal to the EPA within this 20-day period shall act as a waiver of the right of that Party to withdraw from the Agreement, and the EPA shall thereafter send a copy of the final Agreement to each Party and shall notify each Party that the Agreement is effective. The Effective Date of the Agreement shall be the date of receipt of that letter from the EPA to the Navy.

35.6 At the start of the public comment period, the Navy will transmit copies of this Agreement to the appropriate federal, State, and local Natural Resource Trustees for review and comment within the time limits set forth in this Section.

35.7 Existing records maintained by NCTAMSPAC that will be included in the Administrative Record such as documents, plans, and Schedules, shall be made available by the Navy for public review during the public comment period.

XXXVI. RESTORATION ADVISORY BOARD

36.1 The Navy has established a RAB pursuant 10 U.S.C. Section 2705(d), which meets the requirements of 32 C.F.R. Part 202, Restoration Advisory Boards. The RAB shall provide (1) an opportunity for stakeholders involvement in the environmental restoration process at NCTAMSPAC, (2) act as a forum for discussion and exchange of restoration program information between the Navy, EPA, HDOH, and the community, and (3) provide an opportunity for RAB members to review progress and participate in a dialogue with the decision makers concerning the cleanup of NCTAMSPAC. The Parties shall participate in the RAB as follows:

A. A NAVFAC Hawaii representative who shall co-chair the RAB;

B. An EPA representative,

C. A HDOH representative, and

The Parties shall encourage representatives from the following to serve as members of the RAB:

D. The City and County of Honolulu, Hawaii, government.

E. The Wahiawa community.

F. Natural Resource Trustees.

G. An interested environmental non-governmental organization.

36.2 The community members of the RAB shall select the community co-chair. The co-chairs shall schedule semi-annual meetings of the RAB unless the Parties agree to meet less frequently. If possible, meetings shall be held in conjunction with the meetings of the Project Managers. Meetings of the RAB shall be for the purpose of reviewing progress under the Agreement and for the following purposes:

A. To facilitate early and continued flow of information between the community, NCTAMSPAC, and the environmental regulatory agencies in relation to restoration actions taken by NCTAMSPAC under the IR Program,

B. To provide an opportunity for RAB members and the public to review and comment on actions and proposed actions taken by NCTAMSPAC under the IR Program, and,

C. To facilitate regulatory and public participation consistent with applicable laws.

Special meetings of the RAB may be held at the request of the members.

XXXVII. EFFECTIVE DATE

37.1 This Agreement shall be effective in its entirety among the Parties in accordance with Section XXXV - PUBLIC COMMENT ON THIS AGREEMENT.

XXXVIII. AMENDMENT OF AGREEMENT

38.1 Except as provided in Section XIV - PROJECT MANAGERS, this Agreement can be amended or modified solely upon written consent of all the Parties. Such amendments or modifications shall be in writing, and shall become effective on the third business day following the date on which the EPA signs the amendments or modifications. The Parties may agree on a different Effective Date. As the last signing Party, the EPA will provide notice to each signatory pursuant to Section XIV - PROJECT MANAGERS, of the Effective Date.

38.2 The Party initiating the amendment of this Agreement shall propose the amendment in writing for distribution and signature by the other Parties.

38.3 During the course of activities under this Agreement, the Parties anticipate that statutes, regulations, Guidance, and other rules will change. Those changed statutes, regulations, Guidance, and other rules will be applied to the activities under this Agreement in the following manner:

A. Applicable statutes and regulations shall be applied in accordance with the statutory or regulatory language on applicability, and if applied to ongoing activities, shall be applied on the Effective Date provided. However, the Parties shall, to the extent practicable, apply them in such a way as to avoid as much as possible the need for repeating Work already accomplished.

B. Applicable policy or Guidance shall be applied as it exists at the time of initiation of the Work in issue.

C. Applicable policy or Guidance, which is changed after the initiation of the Work in issue or after its completion, shall be applied subject to Section XX - DISPUTE RESOLUTION. The Party proposing application of such changed policy or Guidance shall have the burden of proving the appropriateness of its application. In any case, the Parties shall, to the extent practicable, apply any changed policy or Guidance in such a way as to avoid, as much as possible, the need for repeating Work already accomplished.

XXXIX. SEVERABILITY

39.1 If any provision of this Agreement is ruled invalid, illegal, or unconstitutional, the remainder of the Agreement shall not be affected by such a ruling.

XL. TERMINATION AND SATISFACTION

40.1 The provisions of this Agreement shall be deemed satisfied upon a consensus of the Parties that the Navy has completed its obligations under the terms of this Agreement. Following EPA certification of all the response actions at the Site pursuant to Subsection 9.17 of Section IX - WORK TO BE PERFORMED, any Party may propose in writing the termination of this Agreement upon a showing that the requirements of this Agreement have been satisfied. The obligations and objectives of this Agreement shall be deemed satisfied and terminated upon receipt by the Navy of written notice from the EPA, with concurrence of the HDOH, that the Navy has demonstrated that all the requirements of this Agreement have been satisfied. A Party opposing termination of this Agreement shall provide a written statement of the basis for its denial and describe the actions necessary to grant a termination notice to the proposing Party within 90 Days after receipt of the proposal.

40.2 Any disputes arising from this Termination and Satisfaction process shall be resolved pursuant to the provisions of Section XX - DISPUTE RESOLUTION, of this Agreement.

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

40.4 This Section shall not affect the Parties' obligations pursuant to Section XIX - PERIODIC REVIEW, of this Agreement. In no event will this Agreement terminate prior to the Navy's completion of the Work required by this Agreement.

AUTHORIZED SIGNATURES

Each of the undersigned representatives of the Parties certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Agreement.

IT IS SO AGREED:

By _____ Date

Donald R. Schregardus
Deputy Assistant Secretary of the Navy
(Environment)

By _____ Date

Chiyome Fukino, M.D.
Director of Health
Hawaii Department of Health

By _____ Date 1/29/2009

Jane Diamond
Acting Deputy Regional Administrator
Environmental Protection Agency, Region 9