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FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120

SDMS # 31331

BETWEEN

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
REGION 9

AND

THE UNITED STATES DEPARTMENT OF THE NAVY

AND

THE STATE OF CALIFORNIA

REPRESENTED BY

THE CALIFORNIA DEPARTMENT OF HEALTH SERVICES

AND

THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
SAN FRANCISCO BAY REGION

(AUGUST 1990)

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TOXIC SUBSTANCES
CONTROL DIVISION
LEGAL
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OFFICE
CALIFORNIA DEPARTMENT OF
HEALTH SERVICES, SACRAMENTO

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ATTACHMENTS

1. Maps
2. Outline for Management Plan
3. Timetables and Deadlines
4. Navy Actions in MEW Study Area
5. Additional Navy Actions in MEW Study Area

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THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
AND
THE CALIFORNIA DEPARTMENT OF HEALTH SERVICES
AND
THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
AND
THE UNITED STATES DEPARTMENT OF THE NAVY

IN THE MATTER OF:	)	
	)	
The U.S. Department of the Navy,	)	**FEDERAL FACILITY**
Naval Air Station Moffett Field	)	**AGREEMENT UNDER**
California	)	**CERCLA SECTION 120**
	)	

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:

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1 DEFINITIONS

Except as noted below or otherwise explicitly stated, the definitions provided in CERCLA and the NCP shall control the meaning of the terms used in this Agreement.

In addition:

1.1 "Administrator" shall mean the Administrator of the Environmental Protection Agency.

1.2 "Agreement" shall mean this document and shall include all Attachments to this document.

1.3 "ARARs" shall mean "legally applicable" or "relevant and appropriate" standards, requirements, criteria or limitations as those terms are used in CERCLA § 121(d)(2).

1.4 "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499, 42 U.S.C. § 9601, et seq.

1.5 "Days" shall mean calendar days, and shall not include the day of the act, event or default from which the designated period of time begins to run. Any submittal, that under the terms of this Agreement would be due on a Saturday, Sunday or holiday, shall be due on the following business day.

1.6 "DHS" shall mean the California Department of Health Services, its successors and assigns, and its duly authorized representatives, which may include its employees, agents, and contractors, as necessary.

1.7 "EPA" shall mean the United States Environmental Protection Agency, its successors and assigns, and its duly authorized

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representatives, which may include its employees, agents, and contractors, as necessary.

1.8 "Feasibility Study" or "FS" shall mean that study which fully evaluates and develops remedial action alternatives to prevent or mitigate the migration or the release of hazardous substances, pollutants or contaminants at or from the Site, as more fully described in the NCP.

1.9 "NASMF" shall mean the Naval Air Station, Moffett Field, located in Santa Clara County, California, bounded by the City of Mountain View on the west and the city of Sunnyvale on the south, including all areas identified in Attachment 1. This definition is for the purpose of describing a geographical area and not a political entity.

1.10 "National Contingency Plan" or "NCP" shall refer to the regulations contained in 40 C.F.R. Part 300, and any amendments thereof.

1.11 "Navy" shall mean the U.S. Department of the Navy, including the Naval Air Station Moffett Field, its successors and assigns, and its duly authorized representatives, which may include its employees, agents, and contractors, as necessary.

1.12 "Operable Unit" or "OU" shall mean all discrete response actions, other than removal actions, implemented prior to a final remedial action (FRA) which are consistent with the FRA and which are taken to prevent or minimize the release or migration of hazardous substances, pollutants or contaminants to prevent endangerment of public health, and welfare or the environment. All operable units shall be undertaken in accordance with the NCP and the requirements of CERCLA.

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1.13 "Operation and maintenance" shall mean activities required to maintain the effectiveness of response actions.

1.14 "Parties" shall mean the Navy, EPA, DHS, and RWQCB.

1.15 "RCRA" shall mean the Resource Conservation and Recovery Act as codified at 42 U.S.C. § 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616.

1.16 "RCRA permit" shall mean a treatment, storage or disposal permit issued pursuant to RCRA, incorporating the requirements of the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616).

1.17 "Remedial Investigation" or "RI" shall mean that investigation conducted to fully assess the nature and extent of the release of hazardous substances, pollutants or contaminants and to gather necessary data to support the feasibility study and risk assessment, as more fully described in the NCP.

1.18 "RWQCB" shall mean the California Regional Water Quality Control Board, San Francisco Bay Region, its successors and assigns, and its duly authorized representatives, which may include its employees, agents, and contractors, as necessary.

1.19 "Site" shall mean NASMF and other locations affected by migration of hazardous substances, pollutants or contaminants from NASMF. In Section 11 of this Agreement (Permits), the terms "on-site" and "off-site" shall mean those terms as defined or referred to in the NCP. The Parties may change the Site designation on the basis of additional investigations to more accurately reflect the areas of contamination related in whole or part to the NASMF.

1.20 "Submit," "submittal," or "submission" shall mean the following: any document to be submitted by a certain date will be

considered as submitted on time if mailed by that date by certified mail return receipt requested, registered mail, or next day mail. Any other means of submission must arrive on the due date to be considered as timely delivered.

1.21 "Timetables and deadlines" shall refer to the specific schedules for performance of described tasks to be implemented pursuant to this Agreement. Timetables and deadlines will be contained in the Attachments to this Agreement and may also be contained in other parts of this Agreement or in documents prepared pursuant to this Agreement.

1.22 "MEW Regional Groundwater Remediation Program" shall mean the regional groundwater extraction, treatment and reuse program to be implemented as part of the remedy selected by the MEW Site Record of Decision signed by the EPA Regional Administrator of Region IX on June 9, 1989.

2 JURISDICTION

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

2.1 The U.S. Environmental Protection Agency (U.S. EPA), Region IX, 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. § 9620(e) (1), and Sections 6001, 3008(h) and 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 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)[1] and Executive Order (E.O.) 12580;

1. Currently, there are no existing or proposed RCRA treatment, storage or disposal facilities at NASMF.

2.2 U.S. EPA, Region IX, enters into those portions of this Agreement that relate to remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, Sections 6001, 3008(h) and 3004(u) and (v) of RCRA and Executive Order 12580;

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

2.4 The Navy enters into those portions of this Agreement that relate to remedial actions pursuant to Section 120(e)(2) of CERCLA, Sections 6001, 3004(u), 3004(v) and 3008(h) of RCRA, Executive Order 12580 and the DERP.

2.5 The California Department of Health Services (DHS) and the California Regional Water Quality Control Board (RWQCB) enter into this Agreement pursuant to Sections 120 and 121 of CERCLA, California Health and Safety Code Division 20, Chapters 6.5 and 6.8, and Division 7 of California Water Code.

3 STIPULATED DETERMINATIONS

For purposes of this Agreement, and as a basis therefore, the Navy, EPA, DHS, and RWQCB have determined that:

3.1 The Naval Air Station Moffett Field (NASMF), located in Santa Clara Country, constitutes a facility within the meaning of 42 U.S.C. § 9601(9).

3.2 NASMF is a federal facility within the meaning of 42 U.S.C. § 9620 and is subject to all guidelines, rules, regulations, and criteria in the same manner and to the same extent as other facilities, as specified in 42 U.S.C. § 9620(a).

3.3 There are areas within NASMF boundaries where hazardous substances, as defined in 42 U.S.C. § 9601(14), have been deposited, stored, placed or otherwise come to be located.

3.4 There have been releases of hazardous substances, pollutants or contaminants into the environment, within the meaning of 42 U.S.C. §§ 9601(22), 9604, 9606 and 9607, California Health and Safety Code §§ 25316 and 25320 and Division 7 of the California Water Code, at NASMF.

3.5 With respect to those releases, the Navy is an owner and operator, as defined in 42 U.S.C. § 9601(20), subject to the provisions of 42 U.S.C. § 9607, Health and Safety Code § 25323.5(a) and California Water Code § 13050.

3.6 Pursuant to 42 U.S.C. § 9604(b), E.O. 12580 and Health and Safety Code § 25355.5(a)(1)(c), the Navy is the agency responsible for implementing the RI/FS.

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

3.8 The Navy, RWQCB, and DHS recognize that for purposes of Section 36 (Cost Reimbursement), DHS shall be the lead state agency, responsible for collecting reimbursable cost, and distributing portions as identified by the Navy to the RWQCB. The Navy, DHS, and RWQCB recognize that the RWQCB has had, and shall continue to have, substantial technical lead for all activities

incidental and consequential to this Agreement. Notwithstanding RWQCB's role, the Parties recognize the DHS shall not be limited in any way in the participation or consultation under this Agreement, or in asserting or carrying out authorities under state or federal laws. However, DHS and RWQCB will in good-faith endeavor to minimize any duplication of effort.

4 PARTIES BOUND

4.1 The Parties to this Agreement are the EPA, Navy, and the State of California as represented by DHS, and RWQCB. The terms of this Agreement shall apply to and be binding upon the Parties and all subsequent owners, operators and lessees of NASMF. Each Party will notify all other Parties of the identity and assigned tasks of each of its contractors performing work under this Agreement upon their selection. This Section shall not be construed as an agreement to indemnify any person. Each Party shall provide copies of this Agreement to its contractors who are performing any work called for by this Agreement. The Navy shall require compliance with this Agreement in any contracts it executes for work performed under this Agreement.

4.2 No change in ownership of NASMF shall in any way alter the status or responsibility of the Parties under this Agreement. Should the Navy transfer ownership of any or all of the property which constitutes NASMF, the notice and remedial action responsibilities specified in Section 28 of this Agreement (Transfer of Real Property) shall apply.

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5 PURPOSE

5.1 The general purposes of this Agreement are to:

5.1.1 ensure that the environmental impacts associated with past and present activities at the Site are thoroughly investigated and appropriate remedial action taken as necessary to protect the public health, welfare and the environment;

5.1.2 establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with CERCLA, the NCP, CERCLA guidance and policy, RCRA, RCRA guidance and policy; and,

5.1.3 facilitate cooperation, exchange of information and participation of the Parties in such actions.

5.2 Specifically, the purposes of this Agreement are to:

5.2.1 identify operable units (OUs) which are appropriate at the Site prior to the implementation of final remedial action(s) for the Site. OUs shall be identified and proposed to the Parties as early as possible prior to formal proposal of OUs to the Parties pursuant to CERCLA. This process is designed to promote cooperation among the Parties in identifying OU alternatives prior to selection of final OUs;

5.2.2 establish requirements for the performance of a RI to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of a FS for the Site to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent,

mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA;

5.2.3 identify the nature, objective and schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA;

5.2.4 implement the selected interim and final remedial action(s) in accordance with CERCLA and meet the requirements of Section 120(e)(2) of CERCLA for an interagency agreement among the Parties;

5.2.5 assure compliance, through this Agreement, with RCRA and other federal and state laws and regulations for matters covered herein;

5.2.6 coordinate response actions at the Site with the mission and support activities at NASMF;

5.2.7 expedite the cleanup process to the extent consistent with protection of human health and the environment;

5.2.8 conduct operation and maintenance of remedial action(s) selected and implemented pursuant to this Agreement; and

5.2.9 adequately characterize source areas of contamination at the Site and identify and implement removal actions to control such source areas in accordance with Attachments 4 and 5 prior to and in coordination with the implementation of the MEW Regional Groundwater Remediation Program. The purpose of such source control removals is to eliminate any impediment to the effective implementation of the MEW Regional Groundwater Remediation Program North of Highway 101 that otherwise would be caused by the failure to implement such source control removals.

6 STIPULATED FACTS

For the purposes of this Agreement, the following constitutes a summary of the facts upon which this Agreement is based. None of the facts related herein shall be considered admissions by any Party.

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6.1 NASMF occupies about 1,500 acres of land located between the cities of Mountain View and Sunnyvale. NASMF was commissioned by the Navy in 1933. Since April, 1962, the Navy has used NASMF to support anti-submarine warfare training and patrol squadrons. As part of the Navy's past operations, the Navy handled, generated, accumulated and disposed of hazardous materials and wastes at NASMF.

6.2 The Department of the Navy developed the Navy Assessment and Control of Installation Pollutants (NACIP) to identify and control environmental contaminants from past use and disposal of hazardous substances at Navy installations. The program was later renamed the Installation Restoration Program (IRP) of the Department of Defense and is similar to the U.S. EPA's Superfund Program authorized by CERCLA. As part of the NACIP, the Navy conducted a record and field survey of the NASMF to identify areas potentially contaminated by past operations and disposal activities. The results were presented in a report titled "Initial Assessment Study of Naval Air Station, Moffett Field, Sunnyvale, California" (IAS) dated April, 1984. The IAS identified nine sites on NASMF for further investigation.

6.3 The RWQCB issued Waste Discharge Requirements Order No. 85-66 on May 15, 1985 requiring the Navy to fully define the extent of contaminants at each of the nine sites identified in the IAS. In addition, Order No. 85-66 required the Navy to submit an interim cleanup plan and to conduct an investigation to identify, locate, and evaluate deep wells with potential to serve as conduits for inter-aquifer cross contamination. The Navy submitted reports in response to Order No. 85-66, but the RWQCB determined

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that the scope of work performed was not satisfactory to comply with the requirements.

6.4 In a report titled "Final Report Industrial Waste Engineering Study, Naval Air Station, Moffett Field, CA" dated April, 1986, the Navy identified four active sites on NASMF with potential contamination problems. The Navy modified their waste disposal practices in 1987 at three of the active sites to reduce or eliminate further releases. The Navy intends to address past releases from these three sites under this Agreement.

6.5 In response to State and Santa Clara County regulations regarding registration and monitoring requirements for underground storage tanks, the Navy submitted a report dated June 10, 1986. This report contained a listing of 68 underground tanks and sumps. Based on a limited investigation performed by the Navy in 1987 of 31 of the 68 tanks, 12 tanks were shown to be leaking. To date, most of the tanks are slated for removal, approximately 20 are to remain in use with some form of leak monitoring system.

6.6 NASMF was proposed as a National Priorities List (NPL) site by EPA in June, 1986 and was placed on the NPL in July, 1987 (see 52 Fed. Reg. 27620). Section 120 of CERCLA requires that a Remedial Investigation and Feasibility Study (RI/FS) be commenced within 6 months of NPL listing. The RI/FS must be conducted in accordance with the National Contingency Plan and guidance issued by U.S. EPA for the CERCLA Program. Executive Order 12580, January 23, 1988, delegates the responsibility to the Department of the Defense to carry out the RI/FS in consultation with EPA and appropriate State regulatory agencies.

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6.7 The RWQCB issued Cease and Desist Order No. 87-125 to the Navy on September 16, 1987. Order No. 87-125 was issued to the Navy for their failure to comply with the requirements of Order No. 85-66, and for violations of the California Water Code and prohibitions of the RWQCB's Basin Plan for the sites mentioned in Sections 6.4 and 6.5 above. Order No. 87-125 required the Navy to investigate all the sites identified, prepare interim and final cleanup plans, identify and evaluate potential deep well conduits, and prepare and submit reports to comply with the statutory requirements of the California Water Code and the California Health and Safety Code.

6.8 The wastes generated by the Navy at NASMF from past operations include the following: waste oil; chlorinated hydrocarbons, including trichloroethylene (TCE), Trichloroethane (TCA), and tetrachloroethylene (PCE); Methyl Ethyl Ketone (MEK); toluene; dry cleaning fluids and other solvents; fuel; Polychlorinated Biphenyls (PCBs); industrial wastewater; and paints and thinners. A detailed description of the areas currently being investigated, including locations, is presented in the Sampling and Analysis Plan, Phase I & II.

7 SCOPE OF AGREEMENT

7.1 Remedial Investigation

The Navy agrees it shall develop, implement and report upon a RI(s) of the Site (including a RI for any operable unit at the Site) in accordance with the requirements specified in 42 U.S.C.

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9601 et seq., the NCP, Attachment 2, and the timetables and deadlines specified in Attachment 3 to this Agreement. The RI shall be subject to the review process set forth in Section 9 (Consultation with EPA, DHS, and RWQCB) of this Agreement. The RI shall meet the purposes set forth in Section 5 of this Agreement. The Parties agree that final Site cleanup level criteria will only be determined following completion of a risk assessment.

7.2 Feasibility Study

The Navy agrees it shall design, propose, undertake and report upon a FS(s) for the Site (including a FS for any operable unit of the Site) which is in accordance with the requirements specified in 42 U.S.C. 9601, et seq., the NCP, Attachment 2, and the timetables and deadlines specified in Attachment 3 to this Agreement. The FS shall be subject to the review process set forth in Section 9. The FS shall meet the purposes set forth in Section 5 of this Agreement.

7.3 Remedial Action Selection And Implementation

Following completion and a review in accordance with Section 9 of this Agreement by EPA, DHS, and RWQCB of a RI (including a RI for any operable unit) and the corresponding FS (including a FS for any operable unit) for all or part of the Site, the Navy shall, after consultation with EPA, DHS, and RWQCB pursuant to Section 9, publish its Proposed Plan for public review and comment in accordance with CERCLA § 117(a), 42 U.S.C. § 9617(a), the NCP, and applicable guidance. Upon completion of the public comment period, all Parties will consult with each other about the need for modification of the Proposed Plan and additional public

comment based on public response. When public comment has been properly considered, the Navy shall submit its draft Record of Decision (ROD) in accordance with Section 9, Attachment 2 and Attachment 3. At the time of submittal of the draft Proposed Plan, the Navy shall submit a proposed schedule for implementation of the selected remedial action(s) to the other Parties in accordance with Section 9, and Attachment 3. In the event the Parties cannot reach agreement on selection of the Final Remedial Action, the EPA Administrator shall select the Final Remedial Action in accordance with Section 10 (Resolution of Disputes). After approval in accordance with Section 9, the ROD shall be published by the Navy before commencement of the remedial action, in accordance with CERCLA §§ 117(b), (c), and (d). The Navy shall implement the remedial action(s) in accordance with approved time schedules. The Navy shall conduct operation and maintenance to maintain the effectiveness of response actions at the Site.

7.4 Removal Actions

7.4.1 The provisions of this Subsection shall apply to all removal actions as defined in CERCLA Section 101(23), 42 U.S.C. § 9601(23), and Health and Safety Code Section 25323, including all modifications to, or extensions of, the ongoing removal actions, and all new removal actions proposed or commenced following the effective date of this Agreement, including those removal actions undertaken pursuant to the schedules contained in Attachments 4 and 5.

7.4.2 Any removal actions conducted on the Site shall be conducted in a manner consistent with CERCLA, the NCP, and 10 U.S.C. § 2705.

7.4.3 Except for the specific review and comment process that applies to removals undertaken pursuant to Attachment 5, and the provisions of Subsection 7.4.9, nothing in this Agreement shall alter the Navy's authority with respect to removal actions conducted pursuant to

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Section 104 of CERCLA, 42 U.S.C. § 9604.

7.4.4 EPA, DHS, and RWQCB reserve any authority they may have concerning removal actions conducted on the Site, and nothing in this Agreement shall alter any authority the State or EPA may have with respect to removal actions conducted on the Site.

7.4.5 All reviews conducted by EPA, DHS, and RWQCB pursuant to 10 U.S.C. § 2705(b)(2) will be expedited so as not to unduly jeopardize fiscal resources of the Navy for funding the removal actions.

7.4.6 The Navy shall provide the other Parties with timely notice and opportunity to review and comment upon any proposed removal action for the Site, in accordance with 10 U.S.C. § 2705(a) and (b). The Navy will provide the other Parties with any information required by CERCLA, the NCP, and pertinent EPA guidance, including but not limited to the Action Memorandum and the Engineering Evaluation/Cost Analysis (in the case of non-time critical removals). Such information shall be furnished at least forty-five (45) days before the proposed removal action is to begin.

7.4.7 All activities related to ongoing removal actions shall be reported by the Navy in the progress reports as described in Section 13, Monthly Progress Report.

7.4.8 Any dispute among the Parties as to whether a proposed non-emergency response action is properly considered a removal action, as defined by 42 U.S.C. § 9601(23), or as to the consistency of such a removal action with the final remedial action, shall be resolved pursuant to Section 10, Resolution of Disputes. Such dispute may be brought directly to the DRC at any Party's

request.

7.4.9 Any dispute among the Parties as to the adequacy of the Navy's design, implementation or operation of the source control removals at the Site described in Attachment 5 shall be resolved pursuant to Section 10 of this Agreement (Resolution of Disputes).

7.5 Document Submittal

The Navy agrees to submit to the other Parties certain documents to fulfill the obligations and meet the purposes of this Agreement. A description of these documents and the schedule for their submittal are specified in Section 9 (Consultation with EPA, DHS, and RWQCB), and the Attachments to this Agreement.

7.6 Guidance

EPA, DHS, and RWQCB agree to 1) assist the Navy in identifying applicable guidance and, whenever practicable, supply the Navy with copies of such guidance and; 2) give a timely response to requests for guidance to assist the Navy in the performance of the requirements under this Agreement.

7.7 On-Site Contamination Originating Off-NASMF

The Parties recognize that releases of hazardous substances originating off-NASMF, including certain groundwater plumes comingled with plumes originating on-NASMF, may be addressed pursuant to a separate agreement entered into by the responsible parties and the regulatory agencies.

8 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 com-

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prehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will be deemed to achieve compliance with CERCLA, 42 U.S.C. 9601 et seq.; to satisfy the corrective action requirements of Sections 3004(u) and (v) of RCRA, 42 U.S.C. 6924(u) and (v), for a RCRA permit, and Section 3008(h), 42 U.S.C. 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 Section 121 of CERCLA, 42 U.S.C. 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 Section 121 of CERCLA.

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 on-going hazardous waste management activities at the NASMF 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, the issuing party shall reference and in-

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corporate any appropriate provisions, including appropriate schedules (and the provision 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 shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

9 CONSULTATION WITH EPA, DHS, AND RWQCB

Review and Comment Process for Draft and Final Documents

9.1 Applicability:

9.1.1 The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either primary or secondary documents. In accordance with Section 120 of CERCLA and 10 U.S.C. §§ 2701 and 2705, the Navy will normally be responsible for issuing primary and secondary documents to the other Parties. As of the effective date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with Subsections 9.2 through 9.10 below.

9.1.2 The designation of a document as "draft" or "final" is solely for purposes of consultation among the Parties in accordance with this Part. 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 com-

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ment as appropriate and as required by law.

9.2 General Process for RI/FS and RD/RA documents:

9.2.1 Primary documents include those reports that are major, discrete portions of RI/FS or RD/RA activities. Primary documents are initially issued by the Navy in draft subject to review and comment by the other Parties. 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 receipt by EPA, DHS, and RWQCB of a draft final document if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

9.2.2 Secondary documents include those reports that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by the Navy in draft subject to review and comment by the other Parties. 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.

9.3 Primary Documents:

9.3.1 The Navy shall complete and submit draft reports for the following primary documents to the other Parties for review and comment in accordance with the provisions of this Section:

1. Quality Assurance Project Plan (Final already submitted)

2. Sampling and Analysis Plan(s) (Final Phase I and II Sampling and Analysis Plan already submitted)
3. Work Plan Phase I & II (Final already submitted)
4. Community Relations Plan (Final already submitted)
5. Management Plan
6. Known Abandoned Wells Closure Report
7. Suspected Abandoned Wells Closure Report
8. Initial Screening of Remedial Alternatives
9. RI Report(s)
10. FS Report(s) (including Baseline Risk Assessment)
11. Proposed Plan(s)
12. Record(s) of Decision
13. Remedial Design(s)
14. Remedial Action Operations Plan(s)
15. Action Memoranda relating to Attachment 5.

9.3.2 Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. The Navy shall complete and submit draft primary documents in accordance with the timetables and deadlines established in Attachment 3 and Attachment 5 of this Agreement.

9.4 <u>Secondary Documents</u>:

9.4.1 The Navy shall complete and submit draft reports for secondary documents to the other Parties for review and comment in accordance with the provisions of this Section. The secondary

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documents include, but are not limited to, the following:

1. Research Report - Potential Conduits Investigation (Vertical) (Final already submitted)
2. Water Quality SWAT Proposal(already submitted)
3. Health and Safety Plan (already submitted)
4. Removal Action Plan for Tanks 2, 14, 43, 53, 67 and 68 and Sump 66 (already submitted)
5. Active Wells Report (already submitted)
6. Water Quality SWAT Report
7. Plan for Evaluation and Closure of Abandoned Wells
8. Suspected Wells Investigation Report
9. Phase I Characterization Report
10. Additional Removal Action Plan(s) (only if generated)
11. Detailed Analysis of Alternatives (only if generated as a separate document)
12. Post-screening Investigation Work Plan(s) (only if generated)
13. Treatability Studies (only if generated)

9.4.2 Although EPA, DHS, and RWQCB may comment on the draft reports for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Subsection 9.2 hereof. Target dates for the completion and submission of draft secondary documents which are not in Attachment 3 shall be established by the Project Managers. The Project Managers may also identify additional secondary documents and establish target dates for the completion and submission of these

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secondary documents.

9.5 Meetings of the Project Managers on Development of Reports:

The Project Managers shall meet approximately every sixty (60) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site on the primary and secondary documents. Prior to preparing any draft document specified in Paragraphs 9.3 and 9.4 above, the Project Managers shall meet to discuss the document results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft document.

9.6 Identification and Determination of Potential ARARs:

9.6.1 For those primary reports or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft report, the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the report being addressed. Draft ARAR determinations shall be prepared by the Navy, in coordination with EPA, DHS, and RWQCB, in accordance with § 121(d)(2) of CERCLA, the NCP and pertinent guidance issued by EPA, which is not inconsistent with CERCLA and the NCP.

9.6.2 In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances, pollutants and contaminants at a site, the particular actions proposed as a remedy and the characteristics of a site. The Parties recognize that ARAR identification is necessarily an

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iterative process and that potential ARARs must be re-examined throughout the RI/FS process until a ROD is issued.

9.7 Review and Comment on Draft Reports:

9.7.1 The Navy shall complete and submit each draft primary report to EPA, DHS, and RWQCB on or before the corresponding deadline established for the issuance of the report. The Navy shall complete and submit each draft secondary document in accordance with the target dates established for the issuance of such documents.

9.7.2 Unless the Parties mutually agree to another time period, all primary draft reports shall be subject to a sixty (60) day period for review and comment. Review of any document by the Parties may concern all aspects of the report (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP and any pertinent guidance or policy issued by EPA, DHS or RWQCB. Comments by EPA, DHS, and RWQCB shall be provided with adequate specificity so that the Navy may respond to the comment and, if appropriate, make changes to the draft report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Navy, the commenter shall provide a copy of the cited authority or reference, if not generally available in the public domain. In cases involving complex or unusually lengthy reports, the Parties may extend the sixty (60) day comment periods for an additional thirty (30) days by written notice to the Navy prior to the end of the sixty (60) day period for which the extension is necessary. On or before the close of the

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comment period, EPA, DHS, and RWQCB shall submit their written comments to the Navy in accordance with Section 14 (Notification and Distribution List).

9.7.3 Representatives of the Navy shall make themselves readily available to EPA, DHS, and RWQCB during the comment period for purposes of informally responding to questions and comments on draft reports. Oral comments made during such discussions need not be the subject of a written response by the Navy on the close of the comment period.

9.7.4 In commenting on a draft report which contains a proposed ARAR determination, EPA, DHS, and RWQCB shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that EPA, DHS or RWQCB does object, the objecting Party shall explain the bases for its objection in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

9.7.5 Following the close of the comment period for a draft report, the Navy shall give full consideration to all written comments on the draft report submitted during the comment period. Within sixty (60) days of the close of the comment period on a draft secondary report, the Navy shall transmit to the other Parties its written response to comments received within the comment period. Within sixty (60) days of the close of the comment period on a draft primary report, the Navy shall transmit to the other Parties a draft final primary report, which shall include the Navy's response to all written comments, received within the comment period. While the resulting draft final report shall be

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the responsibility of the Navy, it shall be the product of consensus to the maximum extent possible.

9.7.6 The Navy may extend the sixty (60) day period for either responding to comments on a draft report or for issuing the draft final primary report for an additional thirty (30) days by providing notice to the other Parties.

9.7.7 In appropriate circumstances, these time periods may be further extended in accordance with Section 27 (Extensions).

9.8 Availability of Dispute Resolution for Draft Final Primary Documents:

9.8.1 Dispute resolution shall be available to the Parties for draft final primary reports as set forth in Section 10.

9.8.2 When dispute resolution is invoked on a draft final primary report, work may be stopped in accordance with the procedures set forth in Section 10 regarding dispute resolution.

9.9 Finalization of Reports:

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 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 of resolution of the dispute pursuant to Section 10, 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 27 (Extensions).

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9.10 Subsequent Modifications of Final Reports

9.10.1 Following finalization of any primary report pursuant to Paragraph 9.9 above, the Parties may seek to modify the report, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Subsections 9.10.2 and 9.10.3 below.

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

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

9.10.4 Nothing in this Subsection shall alter the ability of EPA, DHS or RWQCB 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

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modification of a report or document or by amendment to this Agreement.

10 RESOLUTION OF DISPUTES

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

10.2 All Parties may invoke the dispute resolution procedures. 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.

10.3 Within thirty (30) days after: (1) the receipt by EPA, DHS, and RWQCB of a draft final primary document pursuant to Section 9 (Consultation with EPA, DHS, and RWQCB) of this Agreement, or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position.

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

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necessary to discuss and attempt resolution of the dispute.

10.5 The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on the DRC is the Waste Management Division Director of U.S. EPA's Region IX. The Navy's designated member is the Director, Office of Environmental Management, Western Division, Naval Facilities Engineering Command (WESTNAVFACENGCOM). DHS's designated member is the Chief of the Site Mitigation Unit, Toxic Substances Control Division, Region 2. RWQCB's designated member is the Division Chief of the appropriate division. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section 14 (Notification and Distribution List).

10.6 Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution, within seven (7) days after the close of the twenty-one (21) day resolution period.

10.7 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA

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representative on the SEC is the Regional Administrator of EPA's Region IX. The Navy's representative on the SEC is the Commander, WESTNAVFACENGCOM. DHS's representative on the SEC is the Section Chief, Toxic Substances Control Division, Region 2. RWQCB's representative on the SEC is the Executive Officer. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, EPA's Regional Administrator shall issue a written position on the dispute within five (5) days after the twenty-one (21) day period. Any other Party may, within fourteen (14) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event that the other Parties elect not to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, the other Parties shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

10.8 Upon escalation of a dispute to the Administrator of EPA pursuant to Subsection 10.7, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Navy's Secretariat Representative, the DHS's Deputy Director, and/or the Chairman of the RWQCB to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the Parties with a written final decision setting forth resolution of the dispute. The duties of the

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Administrator set forth in this Section shall not be delegated.

10.9 Whenever formal dispute resolution procedures are invoked, DHS and RWQCB, as agencies of the State of California, shall attempt, in good faith, to take a consistent position on the matter to be resolved, thereby presenting one State position.

10.10 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.

10.11 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if a DRC member requests, in writing, that work related to the dispute be stopped because, in its 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. To the extent possible, the DRC member requesting the work stoppage shall consult with the other DRC members prior to initiating a work stoppage request. After stoppage of work, if another DRC member believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the DRC may meet to discuss the work stoppage.

10.12 Following this meeting, and further consideration of the

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issues, the DRC members (other than the Navy's member) will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the DRC may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to the SEC.

10.13 Within thirty-five (35) 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.

10.14 Except as provided in Section 25 (Covenant Not to Sue and Reservation of Rights), resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution of the 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.

11 PERMITS

11.1 The Parties recognize that under 42 U.S.C. 9621(e)(1), no federal, state or local permit shall be required for the portion of any removal or remedial action conducted entirely on-site, where such action is selected and carried out in compliance with 42 U.S.C. 9621. However, the Navy must satisfy all the ARARs which would have been included in any such permit.

11.2 When the Navy proposes a response action to be conducted

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entirely "on-site," as that term is defined in the NCP, which in the absence of 42 U.S.C. § 9621(e)(1) would require a federal, state, or local permit, the Navy, in consultation with EPA, DHS, and RWQCB shall include, in the appropriate submittal:

11.2.1 Identification of each permit, including applicable standards and requirements, which would otherwise be required;

11.2.2 Explanation of how the response action will meet the standards and requirements identified in Subsection 11.2.1 above.

11.3 This section is not intended to relieve the Navy from any and all regulatory requirements, including but not limited to CERCLA § 121(d)(3), whenever it proposes a response action involving the movement of hazardous substances, pollutants or contaminants off-site.

11.4 The Navy shall furnish EPA, DHS, and RWQCB with copies of all permits obtained in implementing this Agreement. Such copies shall be appended to the appropriate submittal or monthly progress report.

11.5 Nothing in this section shall affect or impair the obligation of the Navy to comply with any applicable requirement of 42 U.S.C. 6901 et seq. the Hazardous Waste Control Law, Health and Safety Code 25100 et seq. or Division 7 of the California Water Code.

12 PROTECTION OF PUBLIC HEALTH AND THE ENVIRONMENT

12.1 All activities pursuant to this Agreement will be conducted under the Health and Safety Plan and will be conducted so

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as to minimize any threat to the surrounding public. In the event EPA, DHS or RWQCB determines, in that Party's best professional judgment, that any activities conducted pursuant to this Agreement are creating a threat to the public health or welfare or the environment, EPA, DHS or RWQCB may request the Navy to stop further implementation of all or part of this Agreement for such period of time as needed to abate the danger.

12.2 In complying with any such requests, the Navy shall not be liable for failure to comply with other sections of this Agreement that may be caused by such compliance. EPA, DHS, and RWQCB reserve any authority they may have to respond to threats to public health and the environment.

13 MONTHLY PROGRESS REPORT

The Navy shall submit to EPA, DHS, and RWQCB monthly written progress reports which shall include, but may not be limited to, a description of the actions which the Navy has taken during the previous month to implement the requirements of this Agreement, including significant community relations activities or contacts; a description of the activities scheduled to be taken during the current month; and a description of the activities scheduled for the next month. Progress reports shall be submitted by the fifteenth (15) day of each month following the effective date of this Agreement. The progress reports shall include a statement of the manner and extent to which the timetables and deadlines provided for pursuant to this Agreement are being met. In addi-

tion, the progress reports shall identify anticipated delays in meeting schedules, the reason(s) for the delay and actions taken to prevent future delays. However, formal extensions required, if any, must still be requested pursuant to Section 27 (Extensions). The Project Managers may agree to make the progress reports quarterly rather than monthly.

14 NOTIFICATION AND DISTRIBUTION LIST

14.1 Unless otherwise specified by a Party, any report or submittal provided pursuant to a schedule identified in or developed under this Agreement shall be hand delivered, sent by certified mail, return receipt requested, or sent by next day mail, and addressed as follows:

U.S. Environmental Protection Agency, Region 9
1235 Mission St., Mail Code H-7-3
San Francisco, CA 94103
Attn: (Project Manager)

California Department of Health Services
Toxic Substances Control Program, Region 2
700 Heinz Avenue, Building F, Suite 200
Berkeley, CA 94710
Attn: (Project Manager)

Regional Water Quality Control Board
San Francisco Bay Region
1800 Harrison St., Suite 700
Oakland, CA 94612
Attn: (Project Manager)

Naval Facilities Engineering Command
Western Division, Code 18
Office of Environmental Management
900 Commodore Dr., Bldg. 101
P.O. Box 727
San Bruno, CA 94066-0720
Attn: (Project Manager)

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14.2 Any other correspondence may be sent by first class mail.

15 PROJECT MANAGERS

15.1 The Navy, EPA, DHS, and RWQCB shall each designate a Project Manager and Alternate (hereinafter jointly referred to as Project Manager) for the purpose of overseeing the implementation of this Agreement. Within ten (10) days of the effective date of this Agreement, all Parties shall notify the other Parties, in writing, of the name and address of its Project Manager. Any Party may change its Project Manager by notifying the other Parties, in writing, within five days of the change. To the maximum extent possible, communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Managers as set forth in Section 14 of this Agreement. Each Project Manager shall be responsible for assuring that all communications from the other Project Managers are appropriately disseminated and processed by the entities which the Project Managers represent.

15.2 The absence of the EPA, DHS, RWQCB or Navy Project Manager from the Site shall not be cause for work stoppage.

16 SAMPLING AND DATA/DOCUMENT AVAILABILITY

16.1 Quarterly data reports containing quality assured data will be submitted by the Navy to the other Parties. In addition, if requested, the Parties shall make available to each other raw

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data or results, or quality assured results of sampling, testing or other data generated by any Party, or on their behalf, with respect to the implementation of this Agreement, as soon as such data or results become available.

16.2 Any Party may request, and the party taking the sample shall allow, split or duplicate samples to be taken during sample collection conducted during the implementation of this Agreement. The Project Managers collecting the sample shall endeavor to notify each other not less than ten (10) days in advance of any sample collection. At this time, the Parties shall make known their request to be present or to collect split or duplicate samples. If it is not possible to provide ten (10) days prior notification, the Parties shall notify each other as soon as possible after becoming aware that samples will be collected.

17 QUALITY ASSURANCE

17.1 Field work

The Navy has prepared the quality assurance project plan in accordance with EPA Document QAMS-005/80 and other applicable guidance furnished by EPA.

17.2 Laboratory work

The Navy agrees to use, at a minimum, laboratory methods and procedures which are functionally equivalent to the methods and procedures used in the EPA contract laboratory program and, where there is no conflict in field or laboratory procedures and methodologies, the DHS certified laboratory program.

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17.3 Documentation

The Navy shall document compliance with all EPA and state approved field and laboratory procedures and methodologies, including but not limited to element-specific sampling methodologies, chain of custody procedures, sample storage and shipping methods, calibration procedures and frequencies, and other laboratory quality control and quality assurance procedures.

18 RETENTION OF RECORDS

The Navy shall preserve for a minimum of ten (10) years after termination of this Agreement the complete Administrative Record, and post ROD primary and secondary documents. After this ten (10) year period, the Navy shall notify EPA, DHS, and RWQCB at least forty-five (45) days prior to the destruction or disposal of any such documents or records. Upon request by the EPA, DHS, or RWQCB, the Navy shall make available such records or documents to EPA, DHS, or RWQCB, subject to Section 23 (Release of Records).

19 ACCESS

19.1 The Parties to this Agreement and their duly authorized representatives may enter the site for the following purposes: (1) inspecting records relevant to the implementation of this

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Agreement; (2) reviewing the progress of the remedial investigation; (3) conducting relevant sampling procedures; (4) verifying data submitted pursuant to the remedial investigation; and (5) exercising any other right or responsibility assigned the Party pursuant to this Agreement.

19.2 The Parties shall contact the Navy's Project Manager at least forty-eight (48) hours in advance of all routine site visits to coordinate access. At this time, the Party seeking access shall coordinate with the Navy the date and time for the Site visit, the purpose of such visit, and the areas to which access is sought; and shall assure that the Navy is provided the appropriate credentials for the individual(s) who are to visit the Site. Submittal of this information will enable the Navy's Project Manager to accommodate all reasonable requests for such access. Entry to NASMF shall then be granted upon verification of proper credentials. Such access shall be granted in accordance with Navy security regulations and National Security considerations, and shall be exercised in a manner minimizing interference with normal military operations at NASMF. EPA, DHS or RWQCB shall not use any camera, sound recording or other electronic recording device at NASMF without the permission of the NASMF Commander. The Navy shall not unreasonably withold such permission.

19.3 If a Party obtains any samples, before leaving the Site, the Party shall give the Navy Project Manager a receipt describing the sample obtained, and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be provided to all Parties in accordance with Sec-

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tion 16 (Sampling and Data/Document Availability).

19.4 To the extent that the Navy needs access to off-NASMF property to carry out the work required by this Agreement, the Navy shall use its best efforts, including exercising its authority, if necessary, pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), to obtain all necessary access agreements from the owners or lessees of such lands. Any such access agreements shall provide for reasonable access to EPA, DHS, and RWQCB. In the event that the Navy is unable to obtain necessary access to off-NASMF property, and EPA, DHS, and RWQCB agree such access is necessary, EPA, DHS, and RWQCB agree to use their best efforts to obtain the needed access.

19.5 With respect to non-Navy property upon which monitoring wells, pumping wells, or other response actions are to be located, the access agreements shall also provide that no conveyance of title, easement, or other interest in the property shall be consummated for the duration of the access agreement without provisions for the continued right of entry to maintain operation of such wells or response actions on the property.

19.6 Nothing in this Section shall be construed to limit EPA's, DHS's and RWQCB's full right of access as provided in 42 U.S.C. § 9604(e), Health and Safety Code § 25358.1 and California Water Code § 13267 for off-NASMF access or for access to NASMF for matters not covered by this Agreement, except as that right may be limited by 42 U.S.C. § 9620(j)(2), necessary National Security regulations, and E.O. 12580.

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20 FIVE YEAR REVIEW

20.1. Consistent with 42 U.S.C. § 9621(c) and in accordance with this Agreement, if the selected remedial action results in any hazardous substances, pollutants or contaminants remaining at the Site, the Parties shall review the remedial action program at least every five (5) years after the initiation of the final remedial action to assure that human health and the environment are being protected by the remedial action being implemented.

20.2 If upon such review it is the conclusion of any of the Parties that additional action or modification of remedial action is appropriate at the Site in accordance with 42 U.S.C. 9604 or 9606, the Navy shall implement such additional or modified action as agreed upon by all Parties.

20.3 Any dispute by the Parties regarding need for or the scope of additional action or modification to a remedial action shall be resolved under Section 10 (Resolution of Disputes) of this Agreement.

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

21 OTHER CLAIMS

21.1 Nothing in this Agreement shall constitute or be construed as a bar or release from any claim, cause of action or demand in

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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. Unless specifically agreed to in writing by the Parties, EPA, DHS, and RWQCB shall not be held as a party to any contract entered into by the Navy to implement the requirements of this Agreement.

21.2 The Agreement shall not restrict EPA, DHS, RWQCB or the Navy from taking any legal, equitable, or administrative action for any matter not covered by this Agreement.

22 OTHER APPLICABLE LAWS

All actions required pursuant to this Agreement shall be accomplished consistent with applicable state and federal laws and regulations to the extent required by 42 U.S.C. 9601 et seq.

23 RELEASE OF RECORDS

Information, records, or other documents produced under the terms of this Agreement by the Navy, EPA, DHS, or RWQCB shall be available to the public except: (a) those identified to the receiving Party(s) as classified within the meaning of federal or

state law, or (b) those that could otherwise be withheld pursuant to the Federal Freedom of Information Act, Federal Privacy Act, or California Public Records Act, unless expressly authorized for release by the originating Party. Documents or information so identified shall be handled in accordance with those regulations. Except for draft primary and secondary documents, no document marked draft may be made available without prior consultation and approval by the originating Party. If the document is final and no confidentiality claim accompanies information which is submitted to any Party, the information may be made available to the public without further notice to the originating Party.

24 AMENDMENT OF AGREEMENT

This Agreement may be amended only upon written agreement by all Parties to this document.

25 COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

25.1 In consideration for the Navy's compliance with this Agreement, and based on the information known to the Parties on the effective date of this Agreement, the Navy, EPA, DHS, and RWQCB agree that compliance with this Agreement shall stand in lieu of any administrative, legal and equitable remedies against the Navy available to EPA, DHS or RWQCB regarding the currently known releases or threatened releases of hazardous substances in-

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cluding hazardous wastes, pollutants or contaminants at the Site which are within the scope of this Agreement, which are the subject of the RI/FS(s) to be conducted pursuant to this Agreement, and which will be adequately addressed by the remedial action(s) provided for under this Agreement; except that nothing in this Agreement shall preclude EPA, DHS or RWQCB from exercising any administrative, legal, or equitable remedies available to them to require additional response actions by the Navy in the event that: (1)(a) conditions previously unknown or undetected by EPA, DHS or RWQCB arise or are discovered at the Site, or (b) EPA, DHS or RWQCB receive additional information not previously available concerning the premises which they employed in reaching this Agreement; and (2) the implementation of the requirements of this Agreement are no longer protective of public health and the environment. To the extent deemed appropriate by EPA, DHS or RWQCB after consultation with the Navy, such additional response actions shall be implemented through the amendment process described in Section 24 of this Agreement, or in accordance with Section 9 of this Agreement addressing modification of final reports.

25.2 Notwithstanding this Section, or any other Section of this Agreement, DHS and RWQCB shall retain any statutory right they may have absent this Agreement to obtain judicial review of any final decision of EPA on selection of a remedial action pursuant to any authority DHS or RWQCB may have under CERCLA, including Sections 113, 121(e)(2), 121(f), and 310, and/or state law.

26 STIPULATED PENALTIES

26.1 In the event that the Navy fails to submit a primary document to the other Parties pursuant to the appropriate timetable or deadline established in Section 9.3.2 and the Attachments in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an operable unit or final remedial action, EPA, after consultation with DHS and RWQCB, may assess a stipulated penalty against the Navy. DHS or RWQCB may also recommend that a stipulated penalty be assessed. A stipulated penalty may be assessed in an amount not to exceed $5,000 for the first week (or part thereof), and $10,000 for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs.

26.2 Upon determining that the Navy has failed in a manner set forth in Paragraph 26.1, EPA 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 EPA or DHS 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.

26.3 The annual reports required by Section 120(e)(5) of CERCLA

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shall include, with respect to each final assessment of a stipulated penalty against the Navy under this Agreement, each of the following:

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

26.4 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. EPA, DOHS, and RWQCB agree, to the extent allowed by law, to share equally any stipulated penalties paid by NASMF between the Hazardous Substance Response Trust Fund and an appropriate State fund.

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

26.6 This Section shall not affect the Navy's ability to obtain an extension of a timetable and deadline or schedule pursuant to

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Section 27 of this Agreement.

26.7 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.

27 EXTENSIONS

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

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

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

1. An event of force majeure;
2. A delay caused by another Party's failure to meet any requirement of this Agreement;
3. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
4. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another

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timetable and deadline or schedule; and

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

27.3 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 whether good cause exists.

27.4 Within seven days of 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 any other Party to respond within the 7-day period shall be deemed to constitute concurrence in the request for extension. If any other Party does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

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

27.6 Within seven days of receipt of a statement of nonconcurrence with the requested extension, the disputing party may invoke dispute resolution.

27.7 A timely and good faith request for an extension shall

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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 against the Navy and may accrue from the date of the original timetable, deadline or schedule. Following the grant of an extension, an assessment of stipulated penalties or an application for judicial enforcement may be sought only to compel compliance with the timetable and deadline or schedule as most recently extended.

28 TRANSFER OF REAL PROPERTY

28.1 The Navy shall not transfer any real property comprising the Site except in compliance with Section 120(h) of CERCLA.

28.2 No conveyance of title, easement, or other interest in Navy property on which any containment system, treatment system, monitoring system, or other response action is installed or implemented pursuant to this Agreement shall be consummated by the Navy without provision for continued maintenance of any such system or other response action.

28.3 The Navy shall include notice of this Agreement in any document transferring ownership or operation of NASMF to any subsequent owner and/or operator of any portion of NASMF and shall notify EPA, DHS, and RWQCB of any such sale or transfer and of provisions made for any additional remedial action measures, if

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required, at least thirty (30) days prior to such sale or transfer.

29 PUBLIC PARTICIPATION

29.1 The Parties agree that proposed remedial action alternative(s) and plan(s) for remedial action at the Site shall comply with the administrative record and public participation requirements of the NCP, 42 U.S.C. 9613(k), 9617(a), (b), (c) and (d), and satisfy requirements of California Health and Safety Code 25356.1(d) and 25358.7 and regulations promulgated thereunder.

29.2 The Navy shall develop and implement a Community Relations Plan (CRP) which responds to the need for an interactive relationship with all interested community elements regarding activities and elements of work undertaken by the Navy as specified under this Agreement. The Navy agrees to develop and implement the CRP in a manner consistent with the NCP, 42 U.S.C. 9617(a), (b), (c) and (d), regulations promulgated thereunder, and relevant EPA, DHS, and RWQCB guidance.

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

29.4 The Navy agrees it shall establish and maintain two administrative records in accordance with 42 U.S.C. 9613(k) and the NCP. One copy shall be maintained at WESTNAVFACENGCOM, and

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one copy shall be maintained at a location near NASMF convenient to the public. The administrative record shall be established and maintained in accordance with EPA policy and guidelines. An index to the Administrative Record shall be prepared by the Navy and a copy shall be provided to EPA, DHS, and RWQCB. The administrative record and the index developed by the Navy shall be updated on a quarterly basis. Updates of the index shall be supplied to EPA, DHS, and RWQCB. EPA, DHS, and RWQCB will provide the Navy with copies of documents generated by the Party in question which should be included in the Administrative Record. Upon request by EPA, DHS or RWQCB, the Navy shall provide a copy of any document in the Administrative Record to the requesting Party.

30 PUBLIC COMMENT/EFFECTIVE DATE

This Agreement shall be subject to public comment as follows:

30.1 Within 15 days of the execution of this Agreement, the Navy shall publish notice in at least one major local newspaper of general circulation that this Agreement is available for a 45-day period of public review and comment.

30.2 Promptly upon completion of the public comment period, the Navy shall transmit to the other Parties copies of all comments received within the comment period.

30.3 The Parties shall review the comments and shall either:

30.3.1 Determine that this Agreement should be made effective in its present form, in which case EPA shall notify all Parties

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in writing and this Agreement shall become effective on the date that the Navy receives such notification; or

30.3.2 Determine that modification of this Agreement is necessary, in which case the Parties shall meet to discuss and agree upon any proposed changes. Upon agreement of any proposed changes, the Agreement, as modified, shall be re-executed by the Parties, with EPA signing last, and shall become effective on the date that it is signed by EPA.

30.4 In the event a Party determines that it is necessary to modify this Agreement as a result of public comment received, and there is disagreement among the Parties as to the need for such modification, any Party may withdraw from this Agreement. Withdrawal by the Navy shall not minimize the obligation of the Navy to comply with § 120 of CERCLA, 42 U.S.C. § 9620.

31 ACTIONS AGAINST OTHER PERSONS

EPA, DHS, and RWQCB agree that if an additional potentially responsible party is identified subsequent to the date of this Agreement, EPA, DHS, and RWQCB do not waive any enforcement options with respect to that other potentially responsible party by entering into this Agreement. Nothing in this Agreement shall interfere with the ability of EPA, DHS, and/or RWQCB from entering into an agreement with another potentially responsible party pursuant to 42 U.S.C. § 9622(c)(2) or comparable state authorities. The Navy reserves any and all rights that it may have under law with respect to any potentially responsible party.

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32 FUNDING

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

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

32.3 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. § 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.

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

32.5 Funds authorized and appropriated annually by Congress un-

der the "Environmental Restoration, Defense" appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense (Environment) (DASD(E)) to the Navy will be the source of funds for activities required by this Agreement consistent with § 211 of CERCLA, 10 U.S.C. Section 2703. However, should the Environmental Restoration, Defense appropriation be inadequate in any year to meet the total Navy CERCLA implementation requirements, the DoD shall employ and the Navy shall follow a standardized DoD prioritization process which allocates that year's appropriations in a manner which maximizes the protection of human health and the environment. A standardized DoD prioritization model shall be developed and utilized with the assistance of EPA and the States.

33 TERMINATION DATE

Following the completion of all remedial response actions and upon written request by the Navy, EPA, with the concurrence of DHS and RWQCB, will send to the Navy a written notice of satisfaction of the terms of this Agreement within ninety (90) days of the request. The notice shall state that, in the opinion of EPA, DHS, and RWQCB, the Navy has satisfied all of the terms of this Agreement in accordance with the requirements of CERCLA, the NCP, RCRA §§ 3004(u) and (v), 42 U.S.C. §§ 6924 (u) and (v), pertinent RCRA regulations, related guidance, and applicable State laws, and that the work performed by the Navy was consistent with the agreed-to remedial actions.

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34 ENFORCEABILITY

34.1 The Parties agree that:

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

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

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

34.1.4 any final resolution of a dispute pursuant to Section 10 of this Agreement which establishes a term, condition, timetable and deadline, or schedule shall be enforceable by any person pursuant to § 310(c) of CERCLA, and any violation of such term, condition, timetable and deadline, or schedule will be sub-

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ject to civil penalties under §§ 310(c) and 109 of CERCLA.

34.2 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 § 113(h) of CERCLA.

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

35 FORCE MAJEURE

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

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such funds as part of the budgetary process as set forth in Section 32 (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.

36. COST REIMBURSEMENT

36.1. The Navy, pursuant to its authority under 10 U.S.C. 2701(d), agrees to request funding from Congress and to reimburse DHS and the RWQCB for the costs related to the implementation of this Agreement as provided in this Section. The Navy agrees to advise DHS and the RWQCB of the status of available funds as soon as the appropriations are enacted and final program allocations are made by DOD to the Navy.

36.1.1. The amount of reimbursable costs payable under this Agreement shall not exceed seventy thousand dollars ($70,000) for federal fiscal year 1989 and shall not exceed ninety thousand dollars ($90,000) for federal fiscal year 1990.

36.1.2. Prior to the end of the second year, the amount of reimbursable costs for the subsequent years shall be renegotiated

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in accordance with any then existing agreement on the subject between DOD and any agencies of the State of California that are parties to this Agreement.

36.1.3. If no such agreement has been reached between DOD and any agencies of the State of California, the Navy, DHS, and the RWQCB agree to negotiate in good faith an annual cap for future reimbursable costs. If the Navy, DHS and the RWQCB are unable to agree to the amount of the annual cap after such negotiations, they shall refer the issue to dispute resolution in accordance with Subsection 36.7.

36.1.4. If the Navy, DHS, and the RWQCB are unable to resolve the issues in dispute through the dispute resolution process of Subsection 36.7, DHS or the RWQCB, as the case may be, may withdraw as a Party to this Agreement by providing written notice of its withdrawal to each of the remaining Parties. Such withdrawal by DHS or the RWQCB, as the case may be, shall terminate all of the rights and obligations the withdrawing Party may have under this Agreement; provided, however, that any actions taken under or pursuant to this Agreement by the withdrawing Party prior to its withdrawal shall continue to have full force and effect as if the withdrawing Party were still a Party to this Agreement.

36.1.5. Nothing in this Agreement constitutes a waiver of any

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claims by DHS or the RWQCB for costs expended but not reimbursed under this Agreement.

36.2. Implementation Activities:

36.2.1. Reimbursable costs shall consist only of actual expenditures required to be made and actually made by DHS or the RWQCB to fulfill their participation under this Agreement.

36.2.2. All reimbursable costs are subject to Section 32 Funding, of this Agreement. Reimbursable costs must be reasonable; they shall not include payment for any activity for which DHS or the RWQCB, as the case may be, receives payment or reimbursement from another agency of the United States Government; they shall not include payment for anything violative of Federal or State statutes or regulations; and, they must be allocable to the implementations activities provided in accordance with Subsection 36.2.1.

36.2.3 Duplicative laboratory work by one State agency of that of another already reimbursed shall not be reimbursable. Travel expenses shall not exceed those expenses allowed by the California State Board of Control for reimbursement of travel expenses.

36.3. Invoice Submittal:

36.3.1. Within 30 days after the effective date of this Agreement DHS will submit an invoice for costs incurred by DHS and by the RWQCB for carrying out activities of the type contemplated by this Agreement for the first three quarters of federal fiscal year 1989.

36.3.2. Thereafter, within forty-five (45) days after the end of each quarter of the federal fiscal year, DHS shall submit to

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the Navy an invoice for all reimbursable costs incurred during the previous quarter by DHS and the RWQCB related to Subsection 36.2.

36.4. Payment:

36.4.1. The Navy shall pay any invoices submitted pursuant to Subsections 36.3.1. and 36.3.2. within sixty (60) days of receipt, except for any portion of the invoice that is disputed in accordance with the procedures in Subsection 36.7. The Navy reserves the right to dispute amounts claimed in said invoices.

36.4.2. The Navy shall reimburse DHS and the RWQCB costs by submittal of payment to DHS. Pursuant to a Separate Memordandum of Agreement between DHS and the RWQCB, the DHS shall disburse to the RWQCB its share in accordance with the RWQCB's invoice submitted to, and acknowledged by, the Navy.

36.5. DHS and the RWQCB shall maintain adequate accounting records sufficient to identify all expenses related to this Agreement. DHS and the RWQCB agree to maintain these financial records for a period of five (5) years from the termination date of this Agreement. DHS and RWQCB agree to provide the Navy or its designated representative reasonable access to all financial records for the purpose of audit for a period ending five (5) years from the termination date of this Agreement.

36.6. The Navy, DHS and the RWQCB recognize that a necessity for effectuating sufficient funding for this Agreement is that the DHS and the RWQCB provide timely and accurate estimates of reimbursable costs. Within thirty (30) days of the effective date of this Agreement, DHS and the RWQCB shall provide the Navy with cost estimates for all anticipated reimbursable expenses to be

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incurred for the remainder of the current federal fiscal year, 1989. Within thirty (30) days of the effective date of this Agreement, DHS and the RWQCB shall each provide the Navy with cost estimates for all anticipated reimbursable expenses to be incurred during fiscal year 1990. DHS or the RWQCB, as the case may be, shall expeditiously notify the Navy if it becomes aware that the cost estimates provided under this Subsection are no longer substantially accurate and provide in their place new cost estimates.

36.7. Notwithstanding Section 10 of this Agreement, any dispute between the Navy, DHS or the RWQCB regarding the application of this Section or any matter controlled by said Section 36, including but not limited to allowable expenses and caps of expenses under Subsection 36.1.3., shall be resolved in accordance with this Subsection 36.7.

36.7.1. The Navy, DHS and the RWQCB Project Managers shall be the primary points of contact to coordinate resolution of disputes under Subsection 36.7.

36.7.2. If the Navy, DHS or the RWQCB Project Managers are unable to resolve a dispute, the matter shall be referred to the Director, Office of Environmental Management, Western Division, Naval Facilities Engineering Command (WESTNAVFACENGCOM) for the Navy, the Chief of the Site Mitigation Unit, Region 2, for DHS, and the Division Chief of the appropriate division for the RWQCB, as soon as practicable, but in any event within forty (40) days of receipt of the invoice.

36.7.3. Should the representative designated in Subsection 36.7.2. be unable to resolve the dispute within ten (10) days,

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the matter shall be elevated to the Commander WESTNAVFACENGCOM for the Navy, the Chief of Region 2 for DHS and the Executive Officer of the RWQCB, who will render a written report on the results of their efforts to resolve the dispute in ten (10) working days.

36.7.4. It is the intention of the Navy, DHS and the RWQCB that all disputes shall be resolved strictly in accordance with Subsection 36.7; however, the use of informal dispute resolution, including use of mediation and arbitration techniques is encouraged. In the event the representatives designated in Subsection 36.7.3. are unable to resolve the dispute, DHS or the RWQCB, as the case may be, retains all of its legal and equitable remedies to recover its costs.

37 RESERVATION OF RIGHTS FOR RECOVERY OF OTHER EXPENSES

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

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

IT IS SO AGREED:

10 Sept. 1990
Date

Jacqueline E. Schafer
Assistant Secretary (Installations and Environment)
United States Department of the Navy

9.14.90
Date

Daniel W. McGovern
Regional Administrator
United States Environmental Protection Agency, Region 9

AUG 27 1990
Date

John J. Kearns
Acting Deputy Director
Toxic Substances Control Program
California Department of Health Services

8/10/90
Date

Steven R. Ritchie
Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region

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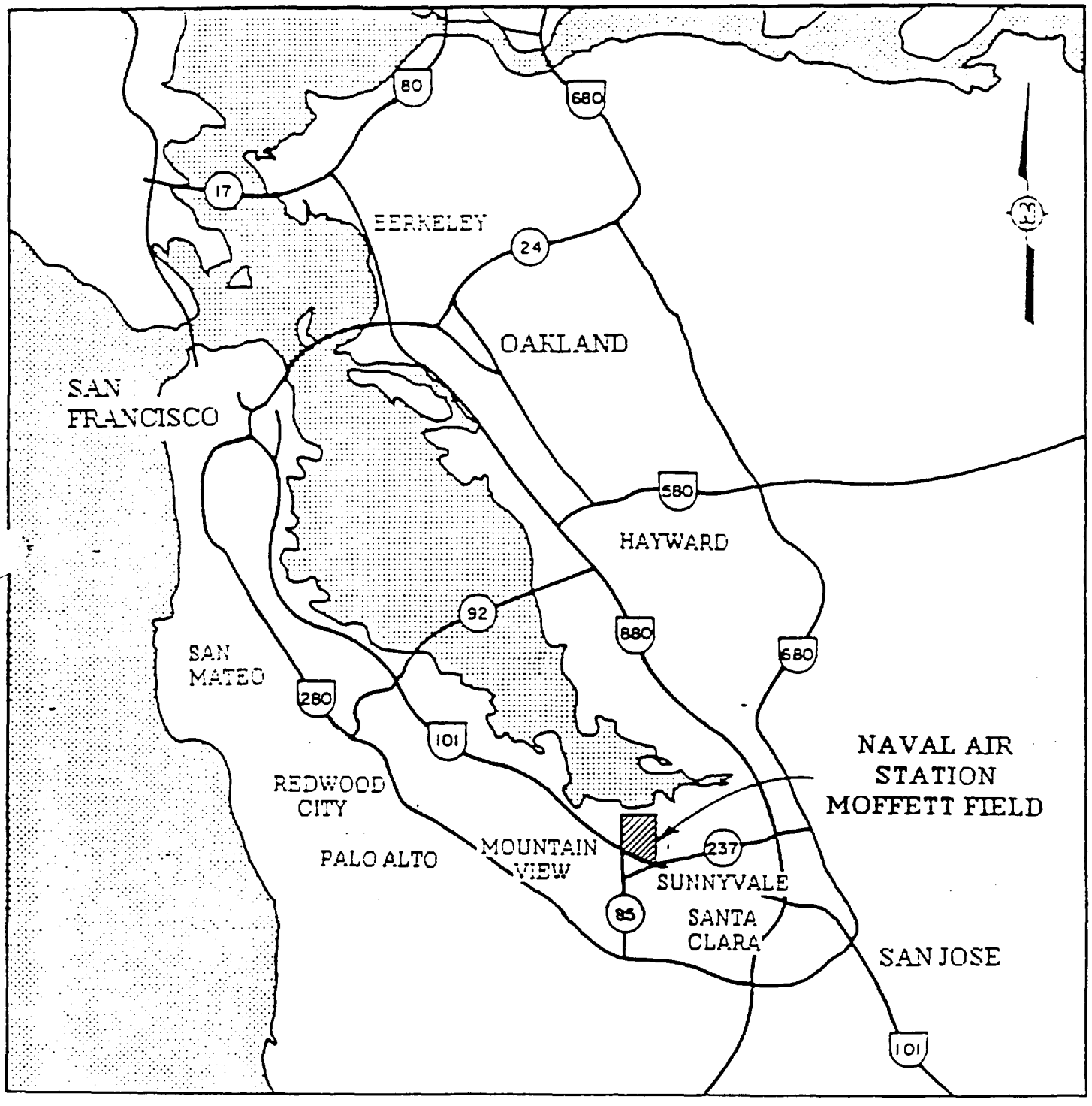
ATTACHMENT 1
MAPS



LOCATION
OF
NAVAL AIR STATION, MOFFETT FIELD, CALIFORNIA

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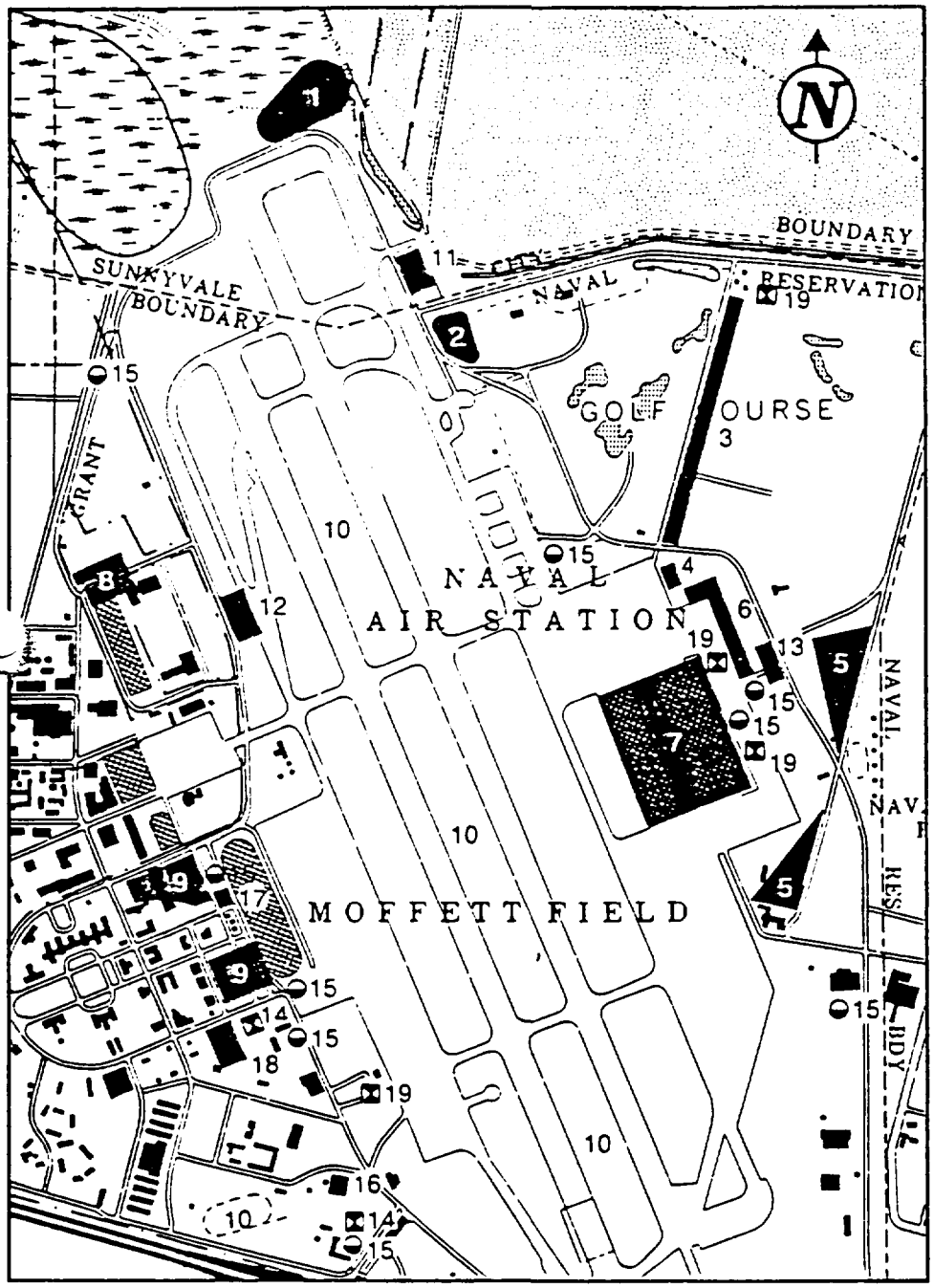
Potentially Contaminated Sites



Site	Type of Waste
SITE 1	Runway landfill Solvents, oils
SITE 2	Golf course landfill Transformer oil (PCBs), solvents
SITE 3	Marriage Road ditch Solvents, fuels, paints
SITE 4	Former industrial wastewater surface impoundments Solvents, fuels, oils
SITE 5	Fuel farm french drains Volatile organics
SITE 6	Runway apron Solvents, oils, fuels, paints
SITE 7	Unpaved areas surrounding Hangars 2 and 3 Paints, oils, solvents, fuels
SITE 8	Waste oil transfer area Transformer oil (PCBs), solvents
SITE 9	Old fuel farm Paints, oils, solvents
SITE 10	Chase park area (and runway) Oils, fuels, solvents
SITE 11	Engine test stand area Oils, metals
SITE 12	Firefighting training area Fuels, solvents, firefighting agents
SITE 13	Equipment parking area (B-142) Fuels, oils, solvents
SITE 14	Abandoned tanks (Nos. 19, 20, 67, and 68) Tank contents unknown; tanks 19 and 20 have already been removed
SITE 15	Nine sumps and oil/water separators Oils, neutralized battery acid
SITE 16	PW steam rack sump No. 60 Petroleum hydrocarbons
SITE 17	Paint shop sump No. 61 Paints, solvents
SITE 18	Dry cleaners sump No. 66 Solvents
SITE 19	Leaking tanks (Nos. 2, 14, 43, and 53) Fuels, solvents, oils, paint.

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Attachment 2
Management Plan Outline

The Management Plan is intended to be a flexible document and the Parties recognize that changes may be necessary after finalization of the Plan. At a minimum, the Management Plan should generally address the following tasks.

I. RI/FS Tasks in the Management Plan

1.0 MANAGEMENT PLAN OBJECTIVES

- o Confirm, characterize and define the lateral and vertical extent of chemicals of concern at each site known or suspected to be a source of contaminant release,
- o Supplement and refine the existing geologic, geochemical, hydrogeologic and chemical data base for the study sites,
- o Evaluate the chemical migration pathways, site geohydrology, and specifics of groundwater movement that influence the migration of site-related chemicals,
- o Evaluate potential risks and hazards to public health and the environment,
- o Identify Federal and state applicable or relevant and appropriate requirements,
- o Address RCRA action, if applicable,
- o Identify and evaluate remedial alternatives in accordance with EPA RI/FS guidance,
- o Identify PRP's and coordinate remedial alternative selection,
- o Modify the Management Plan based on new information received during the course of the investigation.

2.0 CERCLA RESPONSE STRATEGY

- o Navy Cleanup Strategy
  - -CERCLA Process
  - -Installation Restoration (IR) Program, including the coordination which must take place between NAS Moffett Field (NASMF), Western Division Naval Facilities Engineering Command (WESTDIV) and the consultant/contractor
  - -UST Program
  - -WESTDIV's Responsibility
  - -NASMF's Reponsibility
  - -Response to Federal and State Concerns
- o NASMF Cleanup Strategy
  - -Background and Physical Setting
    - =Site Description
    - =Site History
  - -Results of Previous Investigations
  - -RI/FS Status
  - -Phasing of the RI (i.e., I, II, III, etc.)
  - -Removal Action(s)
  - -Operable Units (OUs)
    - =Identification of Groundwater OUs
  - -New Site Discovery
  - -Off-Site Concerns (e.g. MEW Study Area)
  - -Role of Federal and State Agencies
    - =EPA
    - =DHS
    - =RWQCB

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=Other

3.0 REMEDIAL INVESTIGATION

- o Management
  - -Agency Coordination

    In addition to those federal and state agencies identified as signatories to the Agreement, the Navy also coordinates with the following agencies on the cleanup at NASMF:

    State Water Resources Control Board
    Santa Clara Valley Water District
    Santa Clara County Health Deapartment
    City of Mountain View
    City of Sunnyvale
    U.S. Fish and Wildlife Service
    California Department of Fish and Game
    San Francisco Bay National Wildlife Refuge
    National Oceanic and Atmospheric Administration
    California Waste Management Board
    Middlefield-Ellis-Whisman (MEW) Study Area
  - -Sample Evaluation/Validation

    In accordance with EPA guidelines and specifications
    =Quality Assurance/Quality Control (QA/QC) of Data
    =QA/QC Standard Operating Procedures (SOP)
    =Specific QA/QC Procedures
    =Data Validation Package
    =Interference Check Sample Analysis
    =Laboratory Audits
  - -Data Evaluation
  - -Risk Assessment
  - -Reporting

    =Monthly Progress Reports
    =Quarterly Reports
  - -Administrative Record

    In accordance with CERCLA Section 113(k) and EPA guidelines
    =Listing of Administrative Record
    =Location(s) of Repository
- o The Navy shall provide the Agency for Toxic Substances and Disease Regisrty (ATSDR) with all necessary environmental investigation results, including that of the Remedial Investigation. The ATSDR will conduct a Health Assessment for NASMF.

  The Navy provided the ATSDR with all investigative data through April 1988 for the purposes of completing a draft Health Assessment on NASMF by December 1988.
- o Applicable or Relevant and Appropriate Requirements (Federal and State ARARs) ARARs can only be identified on a site specific basis. ARARs are to be identified at the following points in the remedial planning process:

  =During scoping of the RI/FS
  =During the site characterization phase
  =During development of remedial alternatives in Operable Unit (OU) Feasibility Studies and the FS
  =During screening of alternatives
  =During detailed analysis of alternatives
  =When alternative(s) is(are) selected

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Identify Ambient of Chemical-specific ARARs
Identify Performance, Design or Action-specific ARARs
Identify Location-specific ARARs

o Plans

-Quality Assurance Project Plan (QAPP)

The QAPP shall be prepared pursuant to Section 17 of this Agreement, and in accordance with EPA document QAMS-005/80 and other applicable guidance furnished by EPA.

=Title Page with Provisions for Approval Signatures

=Table of Contents

Project Description
Project Organization and Responsibility
Quality Assurance Objectives for Measurement of Data in terms of Precision, Accuracy, Completeness, Representativeness and Comparability
Sampling Procedures
Sample Chain of Custody Procedures
Field Sampling Operation
Lab Operation
Calibration Procedures & Frequency for Field and Lab Equipment
Analytical Procedures
Data Reduction, Validation and Reporting
Internal Quality Control Checks and Frequency
Performance and System Audits
Internal Audits
External Audits
Preventative Maintenance
Schedule of Equipment, Maintenance, Internal and Critical Spare Parts
Specific Routine Procedures Used to Assess Data Precision, Accuracy and Completeness
Corrective Action
Quality Assurance Report to Management

-Sampling Plans

According to EPA guidance and in accordance with the Sampling and Chemical Analysis Quality Assurance Requirements for the Navy Installation Restoration Program, NEESA 20.2-047B.

=Objective of Sampling Effort
=Site Background
=Maps of all Pertinent Locations and Sampling Points
=Rationale for Sampling Locations and Numbers of Samples
=Request for Analysis
=Field Methods and Procedures
=Site Safety Plan

-Data Management

Description of the storage and retrieval system used for data/information gathered during the RI/FS investigation.

=Data Management System

Hardware
Software
Quality Control
Data Security

=Data Processing Procedures

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Field Collection Procedures
=Numbering Methodology
Site Identification Number
Sample Type and Identification Number
Other Codes
QA/QC Sample Identification Code

-Health and Safety Plan

All activities shall be conducted pursusant to Section 12 of the Agreement.

=Facility Background
=Key Personnel and Responsibilities
=Job Hazard Analysis
=Risk Assessment Summary
=Air Monitoring Plan
=Personal Protective Equipment
=Work Zones and Security Measures
=Decontamination Procedures
=General Safe Work Practices
=Emergency Response Plans
=Training Requirements
=Medical Surveillance Program
=Documentation
=Regulatory Requirements

-Community Relations

Shall provide the Community with information, and provide for citizen input and involvement on the cleanup.

=Community Interviews
=Community Relations Plan (CRP)
=Information Repositories and Administrative Records
=Proposed Plan and RI/FS Completion
=Public Comment Period and Opportunity for Public Meeting on the Proposed Plan, Administrative Order on Consent, Consent Decree, and Responsiveness Summary
=Explanation of Differences
=Public Notice on Selection of Remedy
=Revision of the Community Relations Plan, if necessary, for Remedial Design/Remedial Action (RD/RA)
=Fact Sheet and Notification on Engineering Design
=Technical Review Committee (TRC)

4.0 RI TASKING

The details on carrying out the tasks specified below will be further described in the Management Plan.

o Location, Description and Background

-Environmental Setting
-Topography
-Climatology
-Biotic Environment
-Geology and Physiography
-Hydrology
-Contaminant Sources
=On NASMF Property

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Site 1 - Runway Landfill
Site 2 - Golf Course Landfill
Site 3 - Marriage Road Ditch
Site 4 - Wastewater Holding Ponds
Site 5 - Fuel Farm French Drains
Site 6 - Runway Apron
Site 7 - Hangars 2 and 3
Site 8 - Waste Oil Transfer Area
Site 9 - Old Fuel Farm
Site 10 - Chase Park Area and Runway
Site 11 - Engine Test Stand Area
Site 12 - Fire Fighting Training Area
Site 13 - Equipment Parking Area
Site 14 - Abandoned Tanks Nos. 19, 20, 67 & 68
Site 15 - Sumps and Oil/Water Separators Nos. 25, 42, 54, 58, 59, 62, 63, 64 & 65
Site 16 - Public Works Steam Rack and Sump No. 60
Site 17 - Paint Shop Sump No. 61
Site 18 - Dry Cleaners Sump No. 66
Site 19 - Leaking Tanks Nos. 2, 14, 43 & 53

=Off NASMF Property

-Previous Investigations

-Other Current Investigations

=Underground Storage Tanks (UST)
=Wastewater Flux Ponds
=Potential Conduits
=Water Quality SWAT
=Air SWAT

-Project Planning
-Community Relations
-Field Investigations
-Sample Analysis/Validation
-Data Validation
-Risk Assessment

o RCRA/CERCLA Integration

NASMF is not a RCRA site. However, should it ever become one, NASMF shall abide by the Agreement under Section 8, Statutory Compliance/RCRA-CERCLA Integration.

o Supplemental Survey(s) and Investigation(s)

The Navy may need to perform additional tasks in order to accomplish the RI/FS objectives. Such tasks may include additional field work and studies to provide information on newly discovered contaminants, pathways of concern, and bench scale tests of possible remedial technologies.

o Community Relations Support

This task includes, but may not be limited to:

=Revisions and Additions to the CRP
=Analysis of Community Attitudes Toward Proposed Action(s)
=Preparation and Dissemination of Information
=Establishment of a Community Information Center
=Arrangement for Briefings, Press Conferences
=Technical Review Committee (TRC)

o Sampling and Data/Document Availability

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Quarterly data reports shall be submitted to the EPA, DHS and RWQCB pursuant to Section 16 of this Agreement

- o Final Remedial Investigation Report(s)

  The RI report shall include results from Task 2.0 through the Supplemental Survey(s) and Investigation(s) section of Task 4.0 of this Attachment, interpretations of such results (including any graphical presentations), and correlations of such results. The RI report shall be consistent with CERCLA, the NCP, EPA Guidance on Conducting RI/FSs Under CERCLA, Interim Final, October 1988, and any subsequent revisions therof, and other applicable EPA guidance.

5.0 FEASIBILITY STUDY

The objective of the Feasibility Study (FS) is to develop a range of remedial options that will be considered. The FS process will be in accordance with the NCP and current EPA guidance. The following tasks shall be included, but are not limited to:

- o Description of the Current Situation

  -The Navy shall summarize the current situation based on previous investigative work, Task 2.0, and new data and information obtained through Task 4.0 of this Attachment.

  -Identify actual and potential exposure pathways that should be addressed in selecting remedial action alternatives.

- o Baseline Risk Assessment

  The Baseline Risk Assessment involves an ecological study and the following five steps which cover a range of complexity, quantification, and levels of effort.

  STEP 1: SELECTION OF INDICATOR CHEMICALS
  =Develop Initial List of Indicator Chemicals
  =Select Final Indicator Chemicals

  STEP 2: ESTIMATION OF EXPOSURE POINT CONCENTRATION OF INDICATOR CHEMICALS
  =Identify Exposure Pathway
  =Estimate Exposure Point Concentrations
  =Compare to Requirements, Standards and Criteria

  STEP 3: ESTIMATION OF CHEMICAL INTAKES
  =Calculate Air Intakes
  =Calculate Groundwater Intakes
  =Calculate Surface Water Intakes
  =Calculate Intakes from Other Exposure Pathways
  =Combine Pathway-Specific Intakes to Yield Total Oral and Total Inhalation Intakes

  STEP 4: TOXICITY ASSESSMENT

  STEP 5: RISK CHARACTERIZATION
  =Noncarcinogenic Effects
  =Potential Carcinogenic Effects
  =Uncertainties

- o Development of Performance Goals and Analysis of Risks for each Remedial Alternative Perform this sub-task for each remedial action alternative at the alternative evaluation stage.

  =Re-evaluate Indicator Chemicals
  =Identify Potential Exposure Pathways
  =Determine Target Concentrations at Human Exposure Points
  =Estimate Target Release Rates

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=Assess Chronic Risk for Noncarcinogens
=Assess Potential Short-term Health Effects of each Remedial Alternative

- Development of Alternatives

  Alternatives should be developed concurrently with the RI site characterization, with the results of one influencing the other in an iterative fashion.

  =Establishment of Remedial Response Objectives based on the Baseline Risk Assessment and ARARs identification. Remedial Response Objective should be developed to specify contaminants and media of interest, exposure pathways, and remediation goals that permit a range of treatment and containment alternatives to be developed.
  =Identifying volumes and areas of media to which treatment or containment action may be applied
  =Developing response actions for each medium
  =Identifying potential treatment technologies
  =Assembling technologies into alternatives
  =Detailed analysis of alternatives
  =Community relations during development of alternatives
  =Reporting and communication during development of alternatives

- New Technology as an Alternative
- Initial Screening of Alternatives

  In accordance with EPA guidance
  -Community Relations During Screening of Alternatives
  -Evaluate Process Options Based on:
  =Effectiveness
  =Implementability
  =Cost
  -Reporting and Communication During Screening of Alternatives

- Post-Screening Investigations

  -Determination of Data Requirements
  -Treatability Testing
  -Bench vs Pilot Testing
  -Treatability Test Work Plan
  -Application of Results
  -Community Relations During the Post-Screening Investigation
  -Reporting and Communication During the Post-Screening Investigation

- Detailed Analysis of Alternatives

  Detailed analysis is used to assess each alternative against evaluation criteria. The detailed analysis consists of analysis and presentation of relevant information, including treatability studies, needed to select a remedy for the site. Tasks include, but are not limited to:

  =Individual Analysis of Alternatives against Evaluation Criteria
  =Evaluation Criteria for Detailed Analysis of Alternatives
  Short-term Effectiveness
  Long-term Effectiveness
  Reduction of Toxicity, Mobility of Volume
  Implementability
  Cost
  Compliance with ARARs
  Overall Protection of Human Health and the Environment
  State Acceptance
  Community Acceptance
  =Post-RI/FS Selection of the Preferred Alternative
  =Community Relations During Detailed Analysis

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=Reporting and Communication During Detailed Analysis

o Final Feasibility Study Report(s)

The report shall include the results from Task 5.0 of this Attachment with specific criteria listed in the Management Plan. The FS shall be consistent with CERCLA, the NCP, EPA Guidance on Conducting RI/FSs Under CERCLA, Interim Final, October 1988, any subsequent revision thereof, and other applicable EPA guidance.

II. Development of Proposed Plan for Remedial Action

The Prosed Plan shall recommend remedial alternatives and shall be consistent with CERCLA, the NCP, and other applicable EPA guidance.

III. Formal Public Review and Comment

The Navy shall provide the public the opportunity of a formal review and comment on the Final Remedial Action Proposed Plan(s), and the underlying FS report, in a manner consistent with Section 29, Public Participation of this Agreement.

IV. Prepare Record of Decision

The Navy shall prepare a Record of Decision (ROD) in a manner consistent with CERCLA, the NCP, Guidance on Preparing Superfund Decision Documents: The Proposed Plan and Record of Decision, EPA, Draft, March 1988, any subsequent revisions thereof, and other applicableEPA guidance. The Navy shall document the final remedy(ies) selected for the site. The ROD shall be based on the material contained within the Administrative Record. The ROD shall include a Responsiveness Summary, prepared after the public comment period. The Responsiveness Summary shall address public comments, concerns, criticisms, or new data raised during the Formal Public Comment Period on the Remedial Action Proposed Plan(s), including those that may lead to significant changes from the proposal(s) contained in the Proposed Remedial Action Plan. The Responsiveness Summary shall be prepared in a manner consistent with CERCLA, other parts of this Agreement, the EPA Community Relations in Superfund Guidance, Draft, March 1988, any revisions thereof, and other applicable EPA guidance. The ROD shall also include a schedule for remedial design.

V. Remedial Design

The Navy shall prepare a Remedial Design which provides detailed engineering design and specifications which allow other Parties to review and ensure the selected remedy(ies) is(are) fully incorporated by the Navy in the Remedial Design.

VI. Remedial Action Operations Plan

The Navy shall document standard procedures in the Remedial Action Operations Plan for conducting remedial action operations and long-term operations and maintenance.

Attachment 3
Timetables and Deadlines

(The deadlines in this Attachment 3 are enforceable and although Target Dates are only for the purpose of projecting an overall schedule and are not enforceable, all Parties will endeavor to complete all tasks as quickly as practical.)

The Navy agrees to conduct an RI/FS pursuant to Section 7 of the Agreement and Attachment 2, and meet the following deadlines:

Primary Documents and Activities [1]	Deadlines	Target Dates [2]
Draft Work Plan (I & II) [3]	Submitted 15 December 1987	-----
Draft Sampling and Analysis Plan (SAP) (I & II)	Submitted 15 December 1987	-----
Draft Quality Assurance Project Plan (QAPP)	Submitted 15 December 1987	-----
Final QAPP	Submitted 30 March 1988	-----
Final SAP (I & II)	Submitted 21 April 1988	-----
Final Work Plan (I & II)	Submitted 9 June 1988	-----
Draft Community Relations Plan (CRP)	Submitted 2 November 1988	-----
Final CRP	Submitted 13 June 1989	-----
Draft Management Plan	Submitted 1 October 1989	-----
Final Management Plan	Per Consultation Section [4]	1 July 1990
Begin Field Work for Known Abandoned Wells	1 June 1990	-----
Final Known Abandoned Well Physically Closed	1 October 1990	-----
Draft Known Abandoned Wells Closure Report[5]	150 days after closure of the last well	1 March 1991
Final Known Abandoned Wells Closure Report	Per Consultation Section	1 August 1991
Begin Field Work for Suspected Abandoned Wells	90 days following contract award	1 October 1990
Final Suspected Abandoned Well Physically Closed	11 months following contract award	1 September 1991
Draft Suspected Abandoned Wells Closure Report	150 days after closure of the last well	1 February 1992

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Final Suspected Abandoned Wells Closure Report	Per Consultation Section	1 July 1992
Draft RI Report (I & II) [6]	1 July 1991[9]	-----
Draft Initial Screening of Remedial Alternatives (I & II)	Submission concurrent with Draft RI Report (I & II)	1 July 1991
Final Initial Screening of Remedial Alternatives (I & II)	Per Consultation Section	1 December 1991
Final RI Report (I & II)	Per Consultation Section	1 December 1991
Draft FS Report (I & II)	1 June 1992[9]	-----
Draft Proposed Plan (I & II)	1 June 1992[9]	-----
Draft RD/RA Schedule	1 June 1992[9]	-----
Final Proposed Plan (I & II) (for public comment)	Per Consultation Section (the Navy shall publish a public notice and brief analysis of the Proposed Plan (I & II) within 15 days after the Proposed Plan (I & II) becomes a final document)	1 November 1992
Final FS Report (I & II)	Per Consultation Section (a revised FS may be required as a result of public comment on the Proposed Plan (I & II))	1 November 1992
Draft Record of Decision (ROD) (I & II) (includes a responsiveness summary and schedule for remedial design)	10 April 1993[9]	-----
Final ROD (I & II)[7] (with Navy signature)	Per Consultation Section	10 September 1993
Draft SAP (III) [8]	1 April 1992[9]	-----
Final SAP (III)	Per Consultation Section	1 September 1992
Draft RI Report (III)	1 November 1994]9]	-----
Draft Initial Screening of Remedial Alternatives (III)	Submission concurrent with Draft RI Report (III)	1 November 1994
Final Initial Screening of Remedial Alternatives (III)	Per Consultation Section	1 April 1995
Final RI Report (III)	Per Consultation Section	1 April 1995

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Draft FS Report (III)	1 October 1995[9]	-----
Draft Proposed Plan (III)	1 October 1995[9]	-----
Draft RD/RA Schedule	1 October 1995[9]	-----
Final Proposed Plan (III) (for public comment)	Per Consultation Section (the Navy shall publish a public notice and brief analysis of the Proposed Plan (I & II) within 15 days after the Proposed Plan (I & II) becomes a final document)	1 March 1996
Final FS Report (III)	Per Consultation Section (a revised Final FS may be required as a result of public comment on the Proposed Plan (III))	1 March 1996
Draft ROD (III) (includes a responsiveness summary and schedule for remedial design)	10 August 1996[9]	-----
Final ROD (III) (with Navy signature)	Per Consultation Section	10 January 1997

Secondary Documents (Interim Deliverables)	Target Dates
Research Report - Potential Conduits Investigation (Vertical)	Submitted 13 January 1988
Water Quality SWAT Proposal	Submitted 6 April 1988
Health and Safety Plan	Submitted 5 May 1988
Removal Action Plan for Tanks 2, 14, 43, 53, 67, 68, and Sump 66	Submitted 17 August 1988
Active Wells Report (Potential Conduits Investigation - Vertical)	Submitted 23 November 1988
Water Quality SWAT Report	Submitted 30 March 1989
Suspected Wells Investigation Report	Submitted 23 May 1989
Plan for Evaluation and Closure of Abandoned Wells	Submitted 7 August 1989
Draft Phase I Characterization Report	1 August 1990
Final Phase I Characterization Report (including Response Summary)	1 December 1990 (60 days following reciept of last agency's commments)
Removal Action Documents (only if generated)	To Be Determined
Detailed Analysis of Alternatives (only if generated as a separate document)	To Be Determined

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Post-Screening Investigative Work Plan (only if generated)	To Be Determined
Treatability Studies (only if generated)	To Be Determined

Other Reports [10]	**Timetables**
Monthly Progress Reports	15th day of each month
Quarterly Reports	45 days after the end of the calendar quarter

[1] Draft Final Primary Documents are subject to Dispute Resolution procedures. Primary Documents submitted prior to this Agreement are considered Final Primary Documents.

[2] Target Dates are estimated only for the purpose of projecting an overall schedule and are not enforceable. Actual dates of finalization of documents may vary depending on actual document review times of EPA, DHS and RWQCB, actual response times of the Navy, and/or whether or not dispute resolution is invoked during finalization of a primary document. See discussion under footnote [4] for consultation clause period estimate. Estimated dates will be revised periodically, as necessary, and will be available to the public.

[3] The RI/FS process has been phased into two parts. Phase I consists of defining the nature and extent of contamination (i.e., waste types, concentrations, distributions). The results of Phase I are evaluated and used to define a more focused scope for the Phase II RI. Work for both phases is described in each document indicated by the parenthetical I & II.

[4] See Section 9, Consultation with EPA, DHS and RWQCB, of the Agreement for discussion of review time periods, response time periods, and consultation procedures.

[5] Closure Reports document activities and findings following well closure field activities.

[6] Parties recognize that the RI Report (I & II) may recommend a feasibility study for identified Operable Units (OUs) to address groundwater contamination.

[7] Parties anticipate the primary focus of this document to be groundwater.

[8] Implementation of Phase III is contingent upon the results contained in the RI report for Phase I and II. If it is determined that further investigative work is required, Phase III tasks will be initiated.

[9] Parties recognize that this date may be extended persuant to Section 27.

[10] These reports are discussed in Section 13, Monthly Progress Report, and Section 16, Sampling and Data/Document Availability, of the Agreement and will be further addressed in the Management Plan. Pursuant to Section 13 of the Agreement, the monthly progress report may be changed to a quarterly progress report upon agreement by the Project Managers.

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Attachment 4
Navy Actions in MEW[1] Study Area

(The deadlines in this Attachment 4 are enforceable and although Target Dates are only for the purpose of projecting an overall schedule and are not enforceable, all Parties will endeavor to complete all tasks as quickly as practical.)

Action	Deadline	Target Dates[2]
TANK & SUMP REMOVALS [3]		
Field work for Removals at Site 19 (Tanks 2,14, 43, 53); Site 14 (Tank 67);Site 18 (Sump 66)[4]	Initiated 7 May 1990	-----
EE/CA for Additional Removals & Monitoring Well Installations at Site 9 (Tanks 47, 48, 49, 50[5], 56A-D); Site 10 (Tanks 51, 52); Site 16 (Sump 60); Site 17 (Sump 61)[6]	1 August 1990 (Submit EE/CA[7] to agencies and public for 30 day review and comment [8])	-----
Action Memorandum for Additional Removals and Monitoring Well Installation at Site 9, Site 10, Site 16 & Site 17	Submit Action Memorandum 30 days after the end of the public comment period and agency review	1 October 1990
Additional Removals and Monitoring Well Installation at Site 9, Site 10, Site 16 & Site 17	Initiate field work 60 days after receipt of comments from both the agencies and the public	1 November 1990
Summary Report for Tank and Sump Removals[9]	6 months after initiation of field work for additional tank/sump removal or 30 days after the last tank/sump is removed, whichever is sooner	1 May 1991

[1] Middlefield, Ellis and Whisman.

[2] Estimated dates are calculated only for the purpose of projecting an overall schedule and are not enforceable. Actual dates of finalization of documents may vary depending on actual document review times of EPA, DHS, and RWQCB, and actual response times of the Navy.

[3] Documents associated with Tank and Sump Removals are considered Secondary Documents under this Agreement. The purpose of this task is to locate and remove leaking or abandoned underground storage tanks within the MEW Study Area and address possible source loading to groundw via soil.

[4] Existence of Tanks 47,48,49,& 50 have not as yet been confirmed.

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[5] Removal Action Plan for Tanks 2, 14, 43, 53, 67, 68, and Sump 66 was submitted to the agencies on 17 August 1988 which satisfies the requirements of an Engineering Evaluation and Cost Analysis (EE/CA). Sufficient monitoring well coverage exists at these sites, however if additional wells are required based on new soil and groundwater analysis they will be installed under the subsequent removal contract.

[6] Monitoring wells shall be installed as necessary based upon soil and groundwater analysis following tank removal should sufficient coverage not already exist.

[7] Engineering Evaluation/Cost Analysis.

[8] The EE/CA will be submitted to the signatories for review and comment concurrent with the public comment period required for non-time critical removals. Concurrent reviews will shorten the total review time thereby expediting the total schedule for removal of the tanks and sumps.

[9] The summary report will set out the findings developed in the course of implementing this action. Groundwater source control, if any, will be addressed in the Phase II Removals at Sites 8 & 9. Final cleanup measures will be determined in the Record of Decision for the Phase I & II RI/FS.

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Attachment 5
Additional Navy Actions in MEW Study Area

(The deadlines in this Attachment 5 are enforceable and although Target Dates are only for the purpose of projecting an overall schedule and are not enforceable, all Parties will endeavor to complete all tasks as quickly as practical.)

Action	Deadline	Target Dates[2]
SITE INVESTIGATIONS FOR INFERRED SOURCES IS8 & IS9[1]		
Contract Award for Site Investigations at Inferred Sources IS8 & IS9	Awarded 7 March 1990	-----
Work Plans for Inferred Sources IS8 & IS9[2]	15 July 1990	-----
Site Investigation Report for Inferred Sources IS8 & IS9[3]	90 days following completion of field work	1 March 1991
PHASE I REMOVALS AT SITES 12 & SITE 14 (TANKS 19 & 20)[4]		
Draft Action Memorandum for Phase I Removal at Site 12 & Site 14 (Tanks 19 & 20)	1 July 1990[17]	-----
Final Action Memorandum for Phase I Removal at Site 12 & Site 14	Per Consultation Section[5]	1 September 1990
35% Design Work Plan for Phase I Removal at Site 12 & Site 14[6]	Submit 35% Design 90 days following submission of Draft Action Memorandum	1 November 1990
100% Design Work Plan for Phase I Removal at Site 12 &Site 14[7]	Submit 100% Design 120 days after receipt of comments from agencies on 35% Design)	1 March 1991
Final Design Removal Work Plan for Phase I Removal at Site 12 & Site 14[8]	Per Consultation Section. Final Design submitted 45 days after receipt of comments from agencies on 100% Design.	15 May 1991
Construction Start for Phase I Removal at Site 12 & Site 14	60 days after final design approval[9]	15 July 1991
Start-Up Date for Phase I Removal at Site 12 & Site 14	5 months after construction start date	15 December 1991

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PHASE II REMOVALS AT SITES 8 & 9 [10]

Phase II Removal Contract Award at Sites 8 & 9[11]	90 days after initiation of Phase II Groundwater Sampling	Complete
Draft Action Memorandum for Phase II Removal at Sites 8 & 9[12]	1 March 1991[17]	-----
Final Action Memorandum for Phase II Removal at Sites 8 & 9	Per Consultation Section	1 May 1991
35% Design Work Plan for Phase II Removal at Sites 8 &9[13]	Submit 35% Design 90 days following submission of Draft Action Memorandum	1 July 1991
100% Design Work Plan for Phase II Removal at Sites 8 & 9[14]	Submit 100% Design 120 days after receipt of comments from agencies on 35% Design	1 December 1991
Final Design Removal Work Plan for Phase II Removal at Sites 8 & 9[15]	Per Consultation Section Final design submitted 45 days after receipt of comments from agencies on 100% Design	15 February 1992
Construction Start for Phase II Removal at Sites 8 & 9	60 days after final design approval[9]	15 April 1992
Start-Up Date[16] for Phase II Removal at Sites 8 & 9	5 months after construction start date	15 September 1992

[1] Inferred Sources IS8 & IS9 are those sources identified in the MEW RI/FS for which groundwater data indicates contamination levels in excess of plume "background" levels, but for which no known source can be identified. IS 8 and IS 9 are not associated with sites 8 and 9 of the NAS Moffett Field RI/FS.

[2] The work plans for the site investigation are considered Secondary Documents under this agreement.

[3] The site investigation report shall be considered a Primary Document under this Agreement. Further work, if necessary, shall be addressed within the context of the on-going RI/FS at NAS Moffett Field.

[4] Tanks 19 and 20 have already been removed. Documents under Phase I Removals at Sites 12 & 14 are considered Primary Documents for the purposes of this attachment (except as noted otherwise). Review times have been agreed upon by the signatories to this Agreement as thirty (30) days for Draft Primary Documents. A Draft Final Primary Document becomes a Final

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Primary Document 30 days after the receipt of a Draft Final Primary Document by the EPA, DHS and RWQCB, if Section 10, Resolution of Disputes, is not invoked.

[5] See Section 9, Consultation with EPA, DHS and RWQCB, of the Agreement for discussion of review time periods, response time periods, and consultation procedures. See footnote [4] above for agency review times.

[6] The 35% Design Work Plan for Phase I Removals at Sites 12 & 14 is a Secondary Document under this Agreement. Comments received on this plan will be addressed in the 100% Design Work Plan for Phase II Removals at Sites 12 & 14.

[7] The 100% Design Work Plan for Phase I Removals at Sites 12 & 14 is a Draft Primary Document. Comments received on the 35% and 100% will be addressed in the Final Design Work Plan for Phase I Removals at Sites 12 & 14.

[8] The Final Design Work Plan for Phase I Removals at Sites 12 & 14 is a Draft Final Primary Document. A Draft Final Primary Document becomes a Final Primary Document 30 days after the receipt of the Draft Final by EPA, DHS and RWQCB if Section 10, Resolution of Disputes, is not invoked.

[9] Initiation of specifications for the source control will begin following incorporation of 100% design comments.

[10] Documents under Phase II Removals at Sites 8 & 9 are considered Primary Documents for the purposes of this attachment (except as noted otherwise). Review times have been agreed upon by the signatories to this Agreement as thirty (30) days for Draft Primary Documents. A Draft Final Primary Document becomes a Final Primary Document 30 days after the receipt of a Draft Final Primary Document by the EPA, DHS and RWQCB, if Section 10, Resolution of Disputes, is not invoked.

[11] Site 9 shall mean the area west of Hangar 1 at Moffett Field which lies directly over the MEW plume depicted in the July 1989 MEW Study Area Record of Decision. The tanks and sumps identified in the Tank and Sump Removal Action (2, 14, 43, 47, 48, 49, 50, 51, 52, 53, 56A-D, 60, 61, 66, 67) of this attachment are located within this Site 9 area. Any groundwater source control, if required, from the Tank and Sump Removal Action shall be addressed in this action.

[12] If after three rounds of Phase II sampling it can be determined that a Removal can be established, an Action Memorandum will be generated. However, if three rounds of sampling are insufficient, an additional round of sampling and analysis will be taken and a Letter of Notification shall be submitted as required to the Parties amending the Action Memorandum.

[13] The 35% Design Work Plan for Phase II Removal at Sites 8 & 9 is a Secondary Document under this Agreement. Comments received on this plan will be addressed in the 100% Design Work Plan for Phase II Removal at Sites 8 & 9.

[14] The 100% Design Work Plan for Phase II Removal at Sites 8 & 9 is a Draft Primary Document. Comments received on the 35% and 100% will be addressed in the Final Design Work Plan for Phase II Removal at Sites 8 & 9.

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[15] The Final Design Work Plan for Phase II Removal at Sites 8 & 9 is a Draft Final Primary Document. A Draft Final Primary Document becomes a Final Primary Document 30 days after the receipt of the Draft Final by EPA, DHS and RWQCB if Section 10, Resolution of Disputes, is not invoked.

[16] Actual clean up operations begin.

[17] Parties recognize that this date may be extended pursuant to Section 27.

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ATTACHMENT ONE

AMENDMENTS TO THE FFA

FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120

BETWEEN

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
REGION 9

AND

THE UNITED STATES DEPARTMENT OF THE NAVY

AND

THE STATE OF CALIFORNIA

REPRESENTED BY

THE CALIFORNIA DEPARTMENT OF HEALTH SERVICES

AND

THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
SAN FRANCISCO BAY REGION

(AUGUST 1990)

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ATTACHMENTS

1. Maps
2. Outline for Management Plan
3. Timetables and Deadlines
4. Navy Actions in MEW Study Area
5. Additional Navy Actions in MEW Study Area

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considered as submitted on time if mailed by that date by certified mail return receipt requested, registered mail, or next day mail. Any other means of submission must arrive on the due date to be considered as timely delivered.

1.21 "Timetables and deadlines" shall refer to the specific schedules for performance of described tasks to be implemented pursuant to this Agreement. Timetables and deadlines will be contained in the Attachments to this Agreement and may also be contained in other parts of this Agreement or in documents prepared pursuant to this Agreement.

1.22 "MEW Regional Groundwater Remediation Program" shall mean the regional groundwater extraction, treatment and reuse program to be implemented as part of the remedy selected by the MEW Site Record of Decision signed by the EPA Regional Administrator of Region IX on June 9, 1989.

2 JURISDICTION

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

2.1 The U.S. Environmental Protection Agency (U.S. EPA), Region IX, 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. § 9620(e) (1), and Sections 6001, 3008(h) and 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 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)[1] and Executive Order (E.O.) 12580;

1. Currently, there are no existing or proposed RCRA treatment, storage or disposal facilities at NASMF.

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2.2 U.S. EPA, Region IX, enters into those portions of this Agreement that relate to remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, Sections 6001, 3008(h) and 3004(u) and (v) of RCRA and Executive Order 12580;

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

2.4 The Navy enters into those portions of this Agreement that relate to remedial actions pursuant to Section 120(e)(2) of CERCLA, Sections 6001, 3004(u), 3004(v) and 3008(h) of RCRA, Executive Order 12580 and the DERP.

2.5 The California Department of Health Services (DHS) and the California Regional Water Quality Control Board (RWQCB) enter into this Agreement pursuant to Sections 120 and 121 of CERCLA, California Health and Safety Code Division 20, Chapters 6.5 and 6.8, and Division 7 of California Water Code.

3 STIPULATED DETERMINATIONS

For purposes of this Agreement, and as a basis therefore, the Navy, EPA, DHS, and RWQCB have determined that:

3.1 The Naval Air Station Moffett Field (NASMF), located in Santa Clara Country, constitutes a facility within the meaning of 42 U.S.C. § 9601(9).

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3.2 NASMF is a federal facility within the meaning of 42 U.S.C. § 9620 and is subject to all guidelines, rules, regulations, and criteria in the same manner and to the same extent as other facilities, as specified in 42 U.S.C. § 9620(a).

3.3 There are areas within NASMF boundaries where hazardous substances, as defined in 42 U.S.C. § 9601(14), have been deposited, stored, placed or otherwise come to be located [in accordance with 42 U.S.C. § 9601(14)].

3.4 There have been releases of hazardous substances, pollutants or contaminants into the environment, within the meaning of 42 U.S.C. §§ 9601(22), 9604, 9606 and 9607, California Health and Safety Code §§ 25316 and 25320 and Division 7 of the California Water Code, at NASMF.

3.5 With respect to those releases, the Navy is an owner and[/or] operator, as defined in 42 U.S.C. § 9601(20), subject to the provisions of [and/or person within the meaning of] 42 U.S.C. § 9607, Health and Safety Code § 25323.5(a) and California Water Code § 13050.

3.6 Pursuant to 42 U.S.C. § 9604(b), E.O. 12580 and Health and Safety Code § 25355.5(a)(1)(c), the Navy is the agency responsible for implementing the RI/FS.

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

3.8 The Navy, RWQCB, and DHS recognize that for purposes of Section 36 (Cost Reimbursement), DHS shall be the lead state agency, responsible for collecting reimbursable cost, and distributing portions as identified by the Navy to the RWQCB. The Navy, DHS, and RWQCB recognize that the RWQCB has had, and shall continue to have, substantial technical lead for all activities

incidental and consequential to this Agreement. Notwithstanding RWQCB's role, the Parties recognize the DHS shall not be limited in any way in the participation or consultation under this Agreement, or in asserting or carrying out authorities under state or federal laws. However, DHS and RWQCB will in good-faith endeavor to minimize any duplication of effort.

4 PARTIES BOUND

4.1 The Parties to this Agreement are the EPA, Navy, and the State of California as represented by DHS, and RWQCB. The terms of this Agreement shall apply to and be binding upon the Parties and all subsequent owners, operators and lessees of NASMF. Each Party will notify all other Parties of the identity and assigned tasks of each of its contractors performing work under this Agreement upon their selection. This Section shall not be construed as an agreement to indemnify any person. Each Party shall provide copies of this Agreement to its contractors who are performing any work called for by this Agreement. The Navy shall require compliance with this Agreement in any contracts it executes for work performed under this Agreement.

4.2 No change in ownership of NASMF shall in any way alter the status or responsibility of the Parties under this Agreement. Should the Navy transfer ownership of any or all of the property which constitutes NASMF, the notice and remedial action responsibilities specified in Section 28 of this Agreement (Transfer of Real Property) shall apply.

mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA;

5.2.3 identify the nature, objective and schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA;

5.2.4 implement the selected interim and final remedial action(s) in accordance with CERCLA and meet the requirements of Section 120(e)(2) of CERCLA for an interagency agreement among the Parties;

5.2.5 assure compliance, through this Agreement, with RCRA and other federal and state laws and regulations for matters covered herein;

5.2.6 coordinate response actions at the Site with the mission and support activities at NASMF;

5.2.7 expedite the cleanup process to the extent consistent with protection of human health and the environment; [and]

5.2.8 conduct operation and maintenance of remedial action(s) selected and implemented pursuant to this Agreement; and

5.2.9 adequately characterize source areas of contamination at the Site and identify and implement removal actions to control such source areas in accordance with Attachments 4 and 5 prior to and in coordination with the implementation of the MEW Regional Groundwater Remediation Program. The purpose of such source control removals is to eliminate any impediment to the effective implementation of the MEW Regional Groundwater Remediation Program North of Highway 101 that otherwise would be caused by the failure to implement such source control removals.

6 STIPULATED FACTS

For the purposes of this Agreement, the following constitutes a summary of the facts upon which this Agreement is based. None of the facts related herein shall be considered admissions by any Party.

comment based on public response. When public comment has been properly considered, the Navy shall submit its draft Record of Decision (ROD) in accordance with Section 9, Attachment 2 and Attachment 3. At the time of submittal of the draft [ROD] Proposed Plan, the Navy shall submit a proposed schedule for implementation of the selected remedial action(s) to the other Parties in accordance with Section 9, and Attachment 3. In the event the Parties cannot reach agreement on selection of the Final Remedial Action, the EPA Administrator shall select the Final Remedial Action in accordance with Section 10 (Resolution of Disputes). After approval in accordance with Section 9, the ROD shall be published by the Navy before commencement of the remedial action, in accordance with CERCLA §§ 117(b), (c), and (d). The Navy shall implement the remedial action(s) in accordance with approved time schedules. The Navy shall conduct operation and maintenance to maintain the effectiveness of response actions at the Site.

7.4 Removal Actions

7.4.1 The provisions of this Subsection shall apply to all removal actions as defined in CERCLA Section 101([3]23), 42 U.S.C. § 9601(23), and Health and Safety Code Section 25323, including all modifications to, or extensions of, the ongoing removal actions, and all new removal actions proposed or commenced following the effective date of this Agreement, including those removal actions undertaken pursuant to the schedules contained in Attachments 4 and 5.

7.4.2 Any removal actions conducted on the Site shall be conducted in a manner consistent with CERCLA, the NCP, and 10 U.S.C. § 2705.

7.4.3 Except for the specific review and comment process that applies to removals undertaken pursuant to Attachment 5, and the provisions of Subsection 7.4.9, [N]nothing in this Agreement shall alter the Navy's authority with respect to removal actions conducted pursuant to

request.

7.4.9 Any dispute among the Parties as to the adequacy of the Navy's design, implementation or operation of the source control removals at the Site described in Attachment 5 shall be resolved pursuant to Section 10 of this Agreement (Resolution of Disputes).

7.5 Document Submittal

The Navy agrees to submit to the other Parties certain documents to fulfill the obligations and meet the purposes of this Agreement. A description of these documents and the schedule for their submittal are specified in Section 9 (Consultation with EPA, DHS, and RWQCB), and the Attachments [2 and Attachment 3] to this Agreement.

7.6 Guidance

EPA, DHS, and RWQCB agree to 1) assist the Navy in identifying applicable guidance and, whenever practicable, supply the Navy with copies of such guidance and; 2) give a timely response to requests for guidance to assist the Navy in the performance of the requirements under this Agreement.

7.7 On-Site Contamination Originating Off-NASMF

The Parties recognize that releases of hazardous substances originating off-NASMF, including certain groundwater plumes comingled with plumes originating on-NASMF, may be addressed pursuant to a separate agreement entered into by the responsible parties and the regulatory agencies.

8 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 com-

2. Sampling and Analysis Plan(s) (Final Phase I and II Sampling and Analysis Plan already submitted)
3. Work Plan Phase I & II (Final already submitted)
4. Community Relations Plan (Final already submitted)
5. Management Plan
6. Known Abandoned Wells Closure Report
7. Suspected Abandoned Wells Closure Report
8. Initial Screening of Remedial Alternatives
9. RI Report(s)
10. FS Report(s) (including Baseline Risk Assessment)
11. Proposed Plan(s)
12. Record(s) of Decision
13. Remedial Design(s)
14. Remedial Action Operations Plan(s)
15. Action Memoranda relating to Attachment 5.

9.3.2 Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. The Navy shall complete and submit draft primary documents in accordance with the timetables and deadlines established in Attachment 3 and Attachment 5 of this Agreement.

9.4 Secondary Documents:

9.4.1 The Navy shall complete and submit draft reports for secondary documents to the other Parties for review and comment in accordance with the provisions of this Section. The secondary

tion, the progress reports shall identify anticipated delays in meeting schedules, the reason(s) for the delay and actions taken to prevent future delays. However, formal extensions required, if any, must still be requested pursuant to Section 27 (Extensions). The Project Managers may agree to make the progress reports quarterly rather than monthly.

14 NOTIFICATION AND DISTRIBUTION LIST

14.1 Unless otherwise specified by a Party, any report or submittal provided pursuant to a schedule identified in or developed under this Agreement shall be hand delivered, sent by certified mail, return receipt requested, or sent by next day mail, and addressed as follows:

U.S. Environmental Protection Agency, Region 9
1235 Mission St., Mail Code H-7-3
San Francisco, CA 94103
Attn: (Project Manager)

California Department of Health Services
Toxic Substances Control Program, Region 2
2151 Berkeley Way, Annex 9
Berkeley, CA 94704
Attn: (Project Manager)

Regional Water Quality Control Board
San Francisco Bay Region
1800 Harrison St., Suite 700
Oakland, CA 94612
Attn: (Project Manager)

Naval Facilities Engineering Command
Western Division, Code 18
Office of Environmental Management
900 Commodore Dr., Bldg. 101
P.O. Box 727
San Bruno, CA 94066-0720
Attn: (Project Manager)

state law, or (b) those that could otherwise be withheld pursuant to the Federal Freedom of Information Act, Federal Privacy Act, or California Public Records Act, unless expressly authorized for release by the originating Party. Documents or information so identified shall be handled in accordance with those regulations. Except for draft primary and secondary documents, no document marked draft may be made available without prior consultation and approval by the originating Party. If the document is final and no confidentiality claim accompanies information which is submitted to any Party, the information may be made available to the public without further notice to the originating Party.

24 AMENDMENT OF AGREEMENT

This Agreement may be amended only upon written agreement by all Parties to this document.

25 COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

25.1 In consideration for the Navy's compliance with this Agreement, and based on the information known to the Parties on the effective date of this Agreement, the Navy, EPA, DHS, and RWQCB agree that compliance with this Agreement shall stand in lieu of any administrative, legal and equitable remedies against the Navy available to EPA, DHS or RWQCB regarding the currently known releases or threatened releases of hazardous substances in-

26 STIPULATED PENALTIES

26.1 In the event that the Navy fails to submit a primary document to the other Parties pursuant to the appropriate timetable or deadline established in Section 9.3.2 and the Attachments in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an operable unit or final remedial action, EPA, after consultation with DHS and RWQCB, may assess a stipulated penalty against the Navy. DHS or RWQCB may also recommend that a stipulated penalty be assessed. A stipulated penalty may be assessed in an amount not to exceed $5,000 for the first week (or part thereof), and $10,000 for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs.

26.2 Upon determining that the Navy has failed in a manner set forth in Paragraph 26.1, EPA 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 EPA or DHS 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.

26.3 The annual reports required by Section 120(e)(5) of CERCLA

der the "Environmental Restoration, Defense" appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense (Environment) (DASD(E)) to the Navy will be the source of funds for activities required by this Agreement consistent with § 211 of CERCLA, 10 U.S.C. Section 2703. However, should the Environmental Restoration, Defense appropriation be inadequate in any year to meet the total Navy CERCLA implementation requirements, the DoD shall employ and the Navy shall follow a standardized DoD prioritization process which allocates that year's appropriations in a manner which maximizes the protection of human health and the environment. A standardized DoD prioritization model shall be developed and utilized with the assistance of EPA and the States.

33 TERMINATION DATE

Following the completion of all remedial response actions and upon written request by the Navy, EPA, with the concurrence of DHS and RWQCB, will send to the Navy a written notice of satisfaction of the terms of this Agreement within ninety (90) days of the request. The notice shall state that, in the opinion of EPA, DHS, and RWQCB, the Navy has satisfied all of the terms of this Agreement in accordance with the requirements of CERCLA, the NCP, RCRA §§ 3004(u) and (v), 42 U.S.C. §§ 6924 (u) and (v), [and] pertinent RCRA regulations, related guidance, and applicable State laws, and that the work performed by the Navy was consistent with the agreed-to remedial actions.

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

IT IS SO AGREED:

Date	Jacqueline E. Schafer Assistant Secretary (Installations and Environment) United States Department of the Navy
Date	Daniel W. McGovern Regional Administrator United States Environmental Protection Agency, Region 9
Date	John J. Kearns Acting Deputy Director Toxic Substances Control Program California Department of Health Services
Date	Steven R. Ritchie Executive Officer California Regional Water Quality Control Board San Francisco Bay Region

Attachment 4
Navy Actions in MEW[1] Study Area

(The deadlines in this Attachment 4 are enforceable and although Target Dates are only for the purpose of projecting an overall schedule and are not enforceable, all Parties will endeavor to complete all tasks as quickly as practical.)

Action	Deadline	Target Dates[2]
TANK & SUMP REMOVALS [3]		
Field work for Removals at Site 19 (Tanks 2,14, 43, 53); Site 14 (Tank 67);Site 18 (Sump 66)[4]	Initiated 7 May 1990	-----
EE/CA for Additional Removals & Monitoring Well Installations at Site 9 (Tanks 47, 48, 49, 50[5], 56A-D); Site 10 (Tanks 51, 52); Site 16 (Sump 60); Site 17 (Sump 61)[6]	1 August 1990 (Submit EE/CA[7] to agencies and public for 30 day review and comment [8])	-----
Action Memorandum for Additional Removals and Monitoring Well Installation at Site 9, Site 10, Site 16 & Site 17	Submit Action Memorandum 30 days after the end of the public comment period and agency review	1 October 1990
Additional Removals and Monitoring Well Installation at Site 9, Site 10, Site 16 & Site 17	Initiate field work 60 days after receipt of comments from both the agencies and the public	1 November 1990
Summary Report for Tank and Sump Removals[9]	6 months after initiation of field work for additional tank/sump removal or 30 days after the last tank/sump is removed, whichever is sooner	1 May 1991

[1] Middlefield, Ellis and Whisman.

[2] Estimated dates are calculated only for the purpose of projecting an overall schedule and are not enforceable. Actual dates of finalization of documents may vary depending on actual document review times of EPA, DHS, and RWQCB, and actual response times of the Navy.

[3] Documents associated with Tank and Sump Removals are considered Secondary Documents under this Agreement. The purpose of this task is to locate and remove leaking or abandoned underground storage tanks within the MEW Study Area and address possible source loading to groundw via soil.

[4] Existence of Tanks 47,48,49,& 50 have not as yet been confirmed.

[5] Removal Action Plan for Tanks 2, 14, 43, 53, 67, 68, and Sump 66 was submitted to the agencies on 17 August 1988 which satisfies the requirements of an Engineering Evaluation and Cost Analysis (EE/CA). Sufficient monitoring well coverage exists at these sites, however if additional wells are required based on new soil and groundwater analysis they will be installed under the subsequent removal contract.

[6] Monitoring wells shall be installed as necessary based upon soil and groundwater analysis following tank removal should sufficient coverage not already exist.

[7] Engineering Evaluation/Cost Analysis.

[8] The EE/CA will be submitted to the signatories for review and comment concurrent with the public comment period required for non-time critical removals. Concurrent reviews will shorten the total review time thereby expediting the total schedule for removal of the tanks and sumps.

[9] The summary report will set out the findings developed in the course of implementing this action. Groundwater source control, if any, will be addressed in the Phase II Removals at Sites 8 & 9. Final cleanup measures will be determined in the Record of Decision for the Phase I & II RI/FS.

Attachment 5
Additional Navy Actions in MEW Study Area

(The deadlines in this Attachment 5 are enforceable and although Target Dates are only for the purpose of projecting an overall schedule and are not enforceable, all Parties will endeavor to complete all tasks as quickly as practical.)

Action	Deadline	Target Dates[2]
SITE INVESTIGATIONS FOR INFERRED SOURCES IS8 & IS9[1]		
Contract Award for Site Investigations at Inferred Sources IS8 & IS9	Awarded 7 March 1990	-----
Work Plans for Inferred Sources IS8 & IS9[2]	15 July 1990	-----
Site Investigation Report for Inferred Sources IS8 & IS9[3]	90 days following completion of field work	1 March 1991
PHASE I REMOVALS AT SITES 12 & SITE 14 (TANKS 19 & 20)[4]		
Draft Action Memorandum for Phase I Removal at Site 12 & Site 14 (Tanks 19 & 20)	1 July 1990[17]	-----
Final Action Memorandum for Phase I Removal at Site 12 & Site 14	Per Consultation Section[5]	1 September 1990
35% Design Work Plan for Phase I Removal at Site 12 & Site 14[6]	Submit 35% Design 90 days following submission of Draft Action Memorandum	1 November 1990
100% Design Work Plan for Phase I Removal at Site 12 &Site 14[7]	Submit 100% Design 120 days after receipt of comments from agencies on 35% Design)	1 March 1991
Final Design Removal Work Plan for Phase I Removal at Site 12 & Site 14[8]	Per Consultation Section. Final Design submitted 45 days after receipt of comments from agencies on 100% Design.	15 May 1991
Construction Start for Phase I Removal at Site 12 & Site 14	60 days after final design approval[9]	15 July 1991
Start-Up Date for Phase I Removal at Site 12 & Site 14	5 months after construction start date	15 December 1991

PHASE II REMOVALS AT SITES 8 & 9 [10]

Phase II Removal Contract Award at Sites 8 & 9[11]	90 days after initiation of Phase II Groundwater Sampling	Complete
Draft Action Memorandum for Phase II Removal at Sites 8 & 9[12]	1 March 1991[17]	-----
Final Action Memorandum for Phase II Removal at Sites 8 & 9	Per Consultation Section	1 May 1991
35% Design Work Plan for Phase II Removal at Sites 8 &9[13]	Submit 35% Design 90 days following submission of Draft Action Memorandum	1 July 1991
100% Design Work Plan for Phase II Removal at Sites 8 & 9[14]	Submit 100% Design 120 days after receipt of comments from agencies on 35% Design	1 December 1991
Final Design Removal Work Plan for Phase II Removal at Sites 8 & 9[15]	Per Consultation Section Final design submitted 45 days after receipt of comments from agencies on 100% Design	15 February 1992
Construction Start for Phase II Removal at Sites 8 & 9	60 days after final design approval[9]	15 April 1992
Start-Up Date[16] for Phase II Removal at Sites 8 & 9	5 months after construction start date	15 September 1992

[1] Inferred Sources IS8 & IS9 are those sources identified in the MEW RI/FS for which groundwater data indicates contamination levels in excess of plume "background" levels, but for which no known source can be identified. IS 8 and IS 9 are not associated with sites 8 and 9 of the NAS Moffett Field RI/FS.

[2] The work plans for the site investigation are considered Secondary Documents under this agreement.

[3] The site investigation report shall be considered a Primary Document under this Agreement. Further work, if necessary, shall be addressed within the context of the on-going RI/FS at NAS Moffett Field.

[4] Tanks 19 and 20 have already been removed. Documents under Phase I Removals at Sites 12 & 14 are considered Primary Documents for the purposes of this attachment (except as noted otherwise). Review times have been agreed upon by the signatories to this Agreement as thirty (30) days for Draft Primary Documents. A Draft Final Primary Document becomes a Final

Primary Document 30 days after the receipt of a Draft Final Primary Document by the EPA, DHS and RWQCB, if Section 10, Resolution of Disputes, is not invoked.

[5] See Section 9, Consultation with EPA, DHS and RWQCB, of the Agreement for discussion of review time periods, response time periods, and consultation procedures. See footnote [4] above for agency review times.

[6] The 35% Design Work Plan for Phase I Removals at Sites 12 & 14 is a Secondary Document under this Agreement. Comments received on this plan will be addressed in the 100% Design Work Plan for Phase II Removals at Sites 12 & 14.

[7] The 100% Design Work Plan for Phase I Removals at Sites 12 & 14 is a Draft Primary Document. Comments received on the 35% and 100% will be addressed in the Final Design Work Plan for Phase I Removals at Sites 12 & 14.

[8] The Final Design Work Plan for Phase I Removals at Sites 12 & 14 is a Draft Final Primary Document. A Draft Final Primary Document becomes a Final Primary Document 30 days after the receipt of the Draft Final by EPA, DHS and RWQCB if Section 10, Resolution of Disputes, is not invoked.

[9] Initiation of specifications for the source control will begin following incorporation of 100% design comments.

[10] Documents under Phase II Removals at Sites 8 & 9 are considered Primary Documents for the purposes of this attachment (except as noted otherwise). Review times have been agreed upon by the signatories to this Agreement as thirty (30) days for Draft Primary Documents. A Draft Final Primary Document becomes a Final Primary Document 30 days after the receipt of a Draft Final Primary Document by the EPA, DHS and RWQCB, if Section 10, Resolution of Disputes, is not invoked.

[11] Site 9 shall mean the area west of Hangar 1 at Moffett Field which lies directly over the MEW plume depicted in the July 1989 MEW Study Area Record of Decision. The tanks and sumps identified in the Tank and Sump Removal Action (2, 14, 43, 47, 48, 49, 50, 51, 52, 53, 56A-D, 60, 61, 66, 67) of this attachment are located within this Site 9 area. Any groundwater source control, if required, from the Tank and Sump Removal Action shall be addressed in this action.

[12] If after three rounds of Phase II sampling it can be determined that a Removal can be established, an Action Memorandum will be generated. However, if three rounds of sampling are insufficient, an additional round of sampling and analysis will be taken and a Letter of Notification shall be submitted as required to the Parties amending the Action Memorandum.

[13] The 35% Design Work Plan for Phase II Removal at Sites 8 & 9 is a Secondary Document under this Agreement. Comments received on this plan will be addressed in the 100% Design Work Plan for Phase II Removal at Sites 8 & 9.

[14] The 100% Design Work Plan for Phase II Removal at Sites 8 & 9 is a Draft Primary Document. Comments received on the 35% and 100% will be addressed in the Final Design Work Plan for Phase II Removal at Sites 8 & 9.

[15] The Final Design Work Plan for Phase II Removal at Sites 8 & 9 is a Draft Final Primary Document. A Draft Final Primary Document becomes a Final Primary Document 30 days after the receipt of the Draft Final by EPA, DHS and RWQCB if Section 10, Resolution of Disputes, is not invoked.

[16] Actual clean up operations begin.

[17] Parties recognize that this date may be extended pursuant to Section 27.

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ATTACHMENT TWO

JOINT RESPONSES

REPRODUCED AT GOVERNMENT EXPENSE

RESPONSES OF THE PARTIES
TO THE PUBLIC COMMENTS
TO THE FEDERAL FACILITY AGREEMENT
FOR NAVAL AIR STATION MOFFETT FIELD, CALIFORNIA
(AUGUST 1990)

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1. Several commenters suggested that the clean-up of Naval Air Station Moffett Field (NAS Moffett) be handled in a regional context, with state and federal officials working in coordination with private industry to address the sites at NAS Moffett in coordination with those south of NAS Moffett.

The clean-up of NAS Moffett and the clean-up of the regional groundwater plume from the Middlefield-Ellis-Whisman (MEW) Superfund site are each being overseen by the Environmental Protection Agency (EPA), Region IX, and the California Department of Health Services (DHS) and the California Regional Water Quality Control Board (RWQCB), San Francisco Bay Region, representing the State of California. The regulatory agencies are carefully reviewing clean-up plans for both NAS Moffett and the regional groundwater plume from the MEW Superfund site in order to assure that the clean-up for each site is consistent with the other.

2. Several commenters suggested amending the Federal Facility Agreement (FFA) for NAS Moffett to provide for accelerated response actions, including the identification and control of sources of contamination at NAS Moffett. Some of these commenters suggested that the accelerated response actions would be a means to facilitate the clean-up of the regional groundwater plume at the MEW Superfund site.

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The United States Department of the Navy, as part of its obligations under the FFA, has agreed to identify and control the sources of contamination at NAS Moffett. In response to public comments regarding identification and control of sources, the Navy has agreed to amend the FFA to include a schedule that provides for the implementation of source control actions as soon as practicable. See, Attachments 4 and 5 to the FFA. Soil analyses and the removal of abandoned and potentially leaking underground storage tanks are currently underway. Potential vertical conduits (abandoned wells) are being located and destroyed in compliance with applicable laws and regulations. The Navy has focused its current investigation efforts on the area of NAS Moffett nearest the regional groundwater plume from the MEW Superfund site. The Navy's investigations will lead to response actions facilitating the efforts of the potentially responsible parties (PRPs) at the MEW Superfund site to remediate the regional groundwater contamination. This systematic approach is necessary because a source control of any groundwater plume undertaken without sufficient information regarding the source, extent and chemical constituents of the contamination could risk spreading the contamination, resulting in a more complicated clean-up and in an increase in the time and expense of the remediation of the groundwater plume.

3. Several commenters noted that the clean-up of NAS Moffett should begin as soon as technically possible (and particularly before

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1995). The commenters further suggested that the FFA should provide opportunities to accelerate the clean-up at NAS Moffett, rather than provide grounds for extending the schedule for remediation.

The Parties to the FFA agree that groundwater clean-up efforts at NAS Moffett should begin as soon as practicable. To that end, the Parties have amended the FFA to provide enforceable schedules for the performance of certain source control measures before 1995. In addition, the Navy has committed to undertake significant clean-up activities before 1995. For example, the FFA's schedules provide for the closing of abandoned wells located throughout NAS Moffett within the next two years. The FFA schedules also provide for the taking of interim control measures to prevent any further contamination of the groundwater from Navy sources. The source control measures should allow the PRPs at the MEW Superfund site to install an effective and environmentally sound regional groundwater extraction and treatment system. The schedules incorporated into the FFA provide maximum time limits for completion of the required tasks. The Parties may perform the tasks and submit or review the required documents within shorter time periods.

4. A commenter expressed concern over the definition of the regional groundwater plume from the MEW Superfund site, inquiring particularly as to whether that plume may affect the City of Sunnyvale.

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The Navy's Site Investigations and those of the PRPs at the MEW Superfund site have defined the approximate boundaries of the regional groundwater plume from the MEW Superfund site. The Navy will continue to monitor that portion of the plume underlying NAS Moffett during Phase 2 of its Remedial Investigation (RI) and will continue to more precisely define and monitor the extent of the plume. The regional groundwater plume from the MEW Superfund site is migrating in a northerly direction, away from the City of Sunnyvale. As a result, it should have no impact on the City of Sunnyvale.

5. A commenter suggested that storm drains located on NAS Moffett be monitored during the clean-up in order to ensure that the treatment and discharge of effluent does not have an adverse impact on off-site water treatment plants or on the San Francisco Bay.

As part of the Management Plan required by the FFA, the Navy will conduct detailed studies of the vertical and horizontal conduits, which include the storm drains. The studies will determine the nature, source and extent of contaminants, if any, that might be migrating through the storm sewers. Based on the results of this study, the Navy will undertake appropriate response actions. At present, as part of its clean-up of NAS Moffett, the Navy does not intend to discharge any effluent, treated or otherwise, into storm drains. Any decision to discharge effluent,

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treated or otherwise, would only be made as part of the Remedial Investigation/Feasibility Study (RI/FS) process and would receive public comment and regulatory review. The RI/FS process will ensure that any discharge into the storm drains would only be allowed if it were protective of human health and the environment. If effluent, treated or otherwise, were to be discharged into storm drains, such discharge would have to comply with all appropriate discharge limitations and monitoring requirements of the Federal Water Pollution Control Act (which would also be applicable or relevant and appropriate requirements (ARARs) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)).

6. Two commenters noted that the regulatory agencies appeared to have traded away their enforcement authority over NAS Moffett in exchange for the Navy agreeing to enter into the FFA.

The Parties recognize that absent an FFA, disputes among the Parties could lead to lengthy administrative or judicial enforcement actions. The consultation and dispute resolution processes in the FFA are designed to quickly focus the Parties' attention on any dispute and to resolve any disputes expeditiously, without resorting to the time consuming administrative and judicial enforcement processes. See, Sections 9 (Consultation with EPA, DHS and RWQCB) and 10 (Resolution of Disputes) of the FFA. The consultation process establishes a framework for obtaining regulatory agency

concurrences on the Navy's technical documents. Moreover, the FFA places EPA in the role as the ultimate decision-maker in the dispute resolution process. The regulatory agencies view the consultation and dispute resolution scheme set forth in the FFA as an effective and enforceable means to ensure the Navy's compliance with CERCLA and with the terms and conditions of the FFA.

In exchange for the Navy's agreement to enter into the FFA, the regulatory agencies provided the Navy with a limited covenant not to sue. See, Section 25 (Covenant Not to Sue and Reservation of Rights) of the FFA. The covenant not to sue covers only currently known releases or threatened releases that are within the scope of the FFA and that are the subject of any RI/FS to be conducted pursuant to the terms of the FFA. Should the Navy violate a term or condition of the FFA, the regulatory agencies retain their rights to pursue administrative or judicial enforcement actions, concerning releases or threatened releases that are not part of an RI performed pursuant to the the terms of the FFA. An example of such a release would be a release or threatened release that becomes known after an RI/FS required by the FFA is completed. Also, the covenant not to sue pertains only to a release or threatened release of a hazardous substance that will be adequately addressed by a remedial action provided for in the FFA. The regulatory agencies will narrowly construe the application of the covenant not to sue in Section 25 of the FFA.

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In addition, the FFA specifically provides that EPA, DHS or RWQCB may exercise any administrative, legal or equitable remedies available to each to require the Navy to take additional response actions, should previously unknown conditions or information demonstrate the need for such actions. Also, the regulatory agencies may require additional response actions if the actions called for by the FFA are no longer protective of human health or the environment. See, Section 25.1 of the FFA.

EPA may assess, and DHS or RWQCB, acting on behalf of the State of California, may recommend that EPA assess, a stipulated penalty against the Navy in the event that the Navy fails to submit a draft final primary document pursuant to the appropriate timetable or deadline, or fails to comply with a term or condition of the FFA relating to an operable unit or final remedial action. See, Section 26 (Stipulated Penalties) of the FFA. The Parties have amended Section 26 to clarify that the section applies to the enforceable deadlines for the Navy's submission of draft final primary documents. Under the terms of the FFA, EPA may assess a stipulated penalty 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) that the failure occurs. In addition to the enforcement powers of the regulatory agencies, any person may be able to seek to enforce certain provisions of the FFA pursuant to the citizen-suit provision of CERCLA, 42 U.S.C. § 9659.

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7. Several commenters recommended that the Parties amend the FFA to more clearly define remediation goals and the ARARs for the clean-up at NAS Moffett. Some commenters also sought amendments to the FFA making clean-up goals and ARARs more enforceable.

The Navy agrees to conduct all investigations, remedial actions and removal actions at the site in a manner consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (also known as the National Contingency Plan or the NCP), 55 Fed. Reg. 8665 (March 8, 1990). The NCP requires the Navy, as part of the RI/FS process, to identify remedial action objectives, preliminary remediation goals, remediation goals, as well as ARARs. Consistent with the requirements of the NCP, the Navy will establish remedial action objectives specifying contaminants and media of concern, potential exposure pathways and remediation goals. See, NCP, 55 Fed. Reg. at 8713. The Navy will develop preliminary remediation goals based on readily available information, such as chemical-specific ARARs or other reliable information. The Navy then will modify the preliminary remediation goals, as necessary, during the RI/FS. The Navy will establish final remediation goals, specifying the acceptable exposure levels that are protective of human health and the environment, by considering ARARs and other factors.

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The Navy will determine the ARARs based upon an analysis of the requirements that are applicable or relevant and appropriate to the specific circumstances and actions contemplated at NAS Moffett. The NCP requires attainment of ARARs during the implementation of a remedial action, at the completion of a remedial action and to the extent practicable, considering the exigencies of the situation, during removal actions. See, NCP, 55 Fed. Reg. at 8741. Section 9.6 of the FFA establishes the process for the identification of ARARs for any remedial action taken at NAS Moffett. This process requires the Parties to cooperate in the ARAR identification stage and acknowledges that ARAR identification is an iterative process and that the Navy must re-examine potential ARARs throughout the RI/FS, until a Record of Decision (ROD) is signed.

Pursuant to the terms of the FFA, the Navy agrees to perform all remedial actions consistent with CERCLA and the NCP. The Parties have the ability to enforce this obligation. In addition to the regulatory agencies' enforcement powers, any person may seek to enforce certain provisions of the FFA pursuant to the citizen-suit provision of CERCLA. In addition, Section 121(e)(2) of CERCLA establishes a mechanism for a State to enforce any ARAR. Further, Section 121(f)(3) of CERCLA provides an opportunity for the State to concur in or dissent from any remedial action selected by the Navy that waives compliance with an ARAR pursuant to Section 121(d)(4) of CERCLA.

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In light of the lengthy and complex process for establishing clean-up goals and ARARs, it is not possible to identify with greater specificity the clean-up objectives and ARARs in the FFA.

8. Several commenters noted that the Technical Review Committee (TRC) had never met and asked that it be activated immediately.

The TRC for NAS Moffett held its first meeting on February 12, 1990. Meetings will be conducted once every 90 days, or as appropriate. The Navy planned to convene the TRC before the end of calendar year 1989. However, the October 1989 earthquake and subsequent complications delayed matters until the beginning of 1990.

The TRC is chaired by the Commanding Officer, NAS Moffett, and is comprised of designated representatives from the following member agencies and organizations: the Department of the Navy, National Aeronautics and Space Administration (NASA), Ames Research Center, EPA, Region IX, DHS, RWQCB, Bay Area Air Quality Management District, Santa Clara County Board of Supervisors, Mountain View Chamber of Commerce, Sunnyvale Chamber of Commerce, League of Women Voters, Silicon Valley Toxics Coalition, and the MEW Area Study Group.

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9. A commenter stated that he had requested copies of the technical data related to the RI and clean-up activities at NAS Moffett but that he had never been provided a copy of those documents.

Due to the enormous volume of documents pertaining to the RI/FS at NAS Moffett (most of which have large engineering maps and fold-out pages), the Navy is unable to provide free photocopies of this material to all requesters. However, in compliance with the public participation requirements of Section 117 of CERCLA, these documents are available for review by the public at the Mountain View Public Library. In addition, interested persons may make an appointment to review this material at the offices of the Public Works Environmental Division at NAS Moffett. Finally, a request for these records can be made pursuant to the Freedom of Information Act or the California Public Records Act.

10. With respect to the regional groundwater plume from the MEW Superfund site, several commenters wanted to modify the FFA to include provisions that would require the following: (1) coordination of the Navy's RI with remedial activities undertaken by the PRPs at the MEW Superfund site, (2) joint remedial design/remedial action by the Navy and the PRPs at the MEW Superfund site to address merged plumes, (3) cost allocation and dispute resolution between the Navy and the PRPs at the MEW Superfund site, (4) access by the PRPs for the MEW Superfund site to Moffett, (5)

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determination of ARARs, remediation technology and remediation goals that are consistent with EPA's ROD for the MEW Superfund site, and (6) coordination of termination rights and obligations. One commenter offered to enter into the FFA as a Party, or to enter into a separate agreement with the Navy, the regulatory agencies and the other PRPs for the MEW Superfund site, in order to facilitate the coordination of the overall clean-up efforts.

The Parties to an FFA are the federal department or agency (in this case, the Navy), EPA, and the State (in this case, DHS and RWQCB representing the State of California). Therefore, an FFA cannot address all potential issues relating to non-Parties. The Navy has been and is willing to negotiate an agreement with the parties responsible for the groundwater contamination flowing from the MEW Superfund site. Such an agreement would resolve the issues raised by the commenter.

To the extent that the Navy will be addressing specific sources within the regional groundwater plume flowing from the MEW Superfund site, the FFA's consultation provisions give EPA and the State the opportunity to identify ARARs and appropriate remediation goals as well as the ability to comment on proposed remediation technology. Moreover, as the clean-up of both sites is being overseen by EPA and the State, the regulatory agencies will be able to ensure that ARAR determinations and remediation goals strategies and technologies will not conflict with one another.

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11. A commenter suggested that the deadline for closing abandoned wells at NAS Moffett be accelerated from the proposed August 1991 date to August 1990.

Deadlines for initiation and completion of field work have been added to Attachment 3 of the FFA to ensure timely closure of abandoned wells. The estimated dates in Attachment 3 to the FFA have been changed to reflect more accurately the time that is necessary to evaluate and close the wells. Most of the unknowns (for example, the location, depth or condition of the well) have been factored into the estimated dates so completion of the work should not go beyond these new dates. In June 1990, the Navy started field work to close the abandoned wells at NAS Moffett. Based on current schedules, the three known wells should be sealed by October 1990, and all associated reports submitted by August 1991. Investigation to locate the presence of suspected wells will begin in October 1990.

12. One commenter inquired as to who was responsible for coordinating the NAS Moffett clean-up effort with the Bay Area Air Quality Management District (BAAQMD).

The BAAQMD is a member of the Technical Review Committee for NAS Moffett. As such, the BAAQMD receives copies of major reports generated in the course of the RI/FS. In addition, under the FFA,

the State will solicit the BAAQMD's applicable or relevant and appropriate requirements for the Navy's clean-up efforts at NAS Moffett.

13. Some commenters suggested that the FFA include a provision in which the Navy agrees to undertake appropriate interim clean-up measures during the development of the Feasibility Study and the Proposed Plan.

In response to these comments, the Navy has agreed to amend the FFA to include a schedule for undertaking certain removal actions. Schedules for these removal actions have been incorporated into the FFA as Attachments 4 and 5.

14. Some commenters stressed that the FFA should require the Navy to clean up NAS Moffett consistent with what would be required of a private party. Specifically, these commenters sought assurances in the FFA that the Navy will proceed with the remedial actions at NAS Moffett according to time schedules and substantive requirements that are consistent with those required of private parties.

The Navy must proceed with all response actions at NAS Moffett in a manner consistent with the requirements placed on private parties. Section 120(a)(1) of CERCLA provides that each federal

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department or agency shall be subject to, and comply with, CERCLA in the same manner and to the same extent, both procedurally and substantively, as any non-governmental entity. The Navy agrees to perform all response actions at NAS Moffett consistent with CERCLA and the NCP. Therefore, the standards placed on the Navy are the same as would be required of any private party performing a CERCLA response action.

The FFA, as amended in response to public comments, requires the Navy to investigate the release or threatened release of hazardous substances at NAS Moffett and to perform any appropriate response action in a time frame that is consistent with any that would be required of a private party clean-up. The schedules attached to the FFA reflect the reality that the Navy is addressing a large, complex contamination situation at NAS Moffett. The clean-up of the entire base is governed by the FFA. The base actually consists of nineteen disparate areas of contamination, making "base-wide" remediation a formidable task. In response to the public comments, the Parties have amended the FFA to include expedited schedules for the performance of the RI/FS activities and specified certain removal actions to be undertaken at NAS Moffett. In addition, the Parties have incorporated enforceable deadlines into the Attachments.

15. A commenter proposed that the Parties amend the FFA to clarify that: (1) the FFA does not, in and of itself, limit the rights of

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the PRPs at the MEW Superfund site to seek judicial review under a consent decree with respect to any issue arising under such decree relating to actions taken by EPA or the Navy pursuant to the FFA; and (2) the FFA does not alter the rights of non-Parties to the FFA to bring an action against the Navy to seek reimbursement for response costs incurred with respect to releases originating at NAS Moffett.

The Navy, EPA and the State of California are parties to the FFA. None of the Parties to the FFA has the legal ability to restrict or expand the jurisdiction of a court with regard to the legal rights, if any, of non-Parties to the FFA.

16. One commenter suggested that the Parties amend the FFA to establish a fixed and enforceable deadline for completion of the final RI/FS, consistent with Section 120(e)(1) of CERCLA, which requires the Administrator of EPA and the State to publish a timetable and deadlines for expeditious completion of such investigation and study.

The duty to publish the timetable and deadlines, pursuant to Section 120(e)(1) of CERCLA, exists independent of the FFA. Therefore, EPA and the State will publish the enforceable schedule for completion of each RI/FS for NAS Moffett. In response to the public comments, the Parties have amended the FFA to establish fixed

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and enforceable deadlines for submittal of draft final primary documents. Such documents will become final during the time periods allowed in the consultation section of the FFA.

17. A commenter questioned whether the FFA's estimated schedule for implementation of remedial action complied with Section 120(e)(2) of CERCLA which requires the Navy to commence substantial continuous physical on-site remedial action within fifteen months after completion of the RI/FS.

Section 120(e)(2) of CERCLA requires the Navy to commence substantial continuous physical on-site remedial action within fifteen months after completion of the RI/FS for NAS Moffett. Attachment 3 to the proposed FFA listed estimated dates by which the Navy was to begin remedial construction. These dates were target dates. The enforceable deadlines for initiation of remedial action were to be established pursuant to Section 7.3 of the proposed FFA. That section required the Navy to submit a proposed schedule for the implementation of the selected remedial actions at the site at the time the Navy submits the draft ROD to the regulatory agencies for review. The final schedule for implementation of the remedial actions, therefore, might have differed from the estimated dates specified in Attachment 3 to the proposed FFA.

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To avoid any potential conflict between the estimated dates and the enforceable deadlines for the initiation of remedial action, and to remove any ambiguity concerning Section 120(e)(2) of CERCLA, the Parties have amended the FFA by: (1) deleting the estimated dates for the initiation of remedial construction; and (2) requiring the Navy to submit the proposed schedule for implementation of remedial action at the time it submits the draft Proposed Plan to the regulatory agencies. By providing for the submittal at the time of the draft Proposed Plan rather than the draft ROD, the amended FFA allows the schedule to be offered for public review and comment along with the Proposed Plan for remedial actions at NAS Moffett.

18. One commenter expressed concern that the FFA contained no fixed and enforceable schedule for the completion of the remedial actions at NAS Moffett. The commenter cited Section 120(e)(4) of CERCLA as requiring such a schedule.

Section 120(e)(4) of CERCLA requires "interagency agreements" entered into pursuant to Section 120(e)(2) of CERCLA, to include, among other provisions, a schedule for the completion of each remedial action reviewed in that interagency agreement. The interagency agreement to which Section 120(e)(2) of CERCLA refers, however, is the agreement required by CERCLA after completion of each RI/FS for the site. The Parties are entering into the FFA for NAS Moffett before completion of each RI/FS. Therefore, CERCLA does

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not require that the elements specified in Section 120(e)(4) of CERCLA for interagency agreements, which are entered into post-RI/FS, to be included in the FFA at this time. As stated above, upon completion of the RI/FS, and according to Attachment 3 to the FFA, the Navy will publish a Proposed Plan that will include a schedule for remedial actions to be implemented at the site. Once final, the schedule for completion of the remedial action at NAS Moffett will be incorporated in and made an enforceable part of the FFA.

19. Two commenters stated that the FFA's document review and dispute resolution provisions were too lengthy.

The schedules attached to the FFA reflect the reality that the Navy is addressing a large, complex contamination situation at NAS Moffett. The Parties agreed to document review periods based on actual past experiences which required review of complex engineering reports and technical documents. The Parties will consult as quickly as possible. Further, the initiation of the dispute resolution process does not automatically stop all remedial activity at NAS Moffett. See, Section 10 (Resolution of Disputes) of the FFA. The dispute resolution process is designed to avoid even more lengthy administrative or judicial proceedings that might be necessary in the absence of an FFA.

20. A commenter stated that the definition of NAS Moffett should be more clearly delineated. The commenter questioned whether, for example, NAS Moffett includes any facilities presently or formerly operated by NASA.

NAS Moffett is defined as the current boundaries of the Naval Air Station Moffett Field, California. NAS Moffett does not include any facilities presently or formerly operated by NASA.

21. A commenter noted that Section 8.2 of the FFA dealing with additional work provides that no further corrective action will be required. The commenter suggested that this language was overbroad and should be deleted.

Under Section 8.1 of the FFA, the Navy agrees to integrate the corrective action requirements of the Resource Conservation and Recovery Act (RCRA) with the CERCLA remedial actions taken at NAS Moffett. As a result of this integration, the Parties intend that the CERCLA remedial actions will satisfy the RCRA corrective action requirements for a RCRA permit (and for interim status facilities). In addition, Section 8.2 of the FFA provides that the Parties agree that RCRA is an ARAR for the CERCLA remedial actions taken at NAS Moffett. Therefore, the Navy will comply with all applicable and relevant and appropriate RCRA requirements during implementation and upon completion of the CERCLA remedial actions at NAS Moffett.

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22. Two commenters suggested that the Parties should amend Section 9.10.4 of the FFA to provide for a procedure by which the regulatory agencies may order additional work without requiring the amendment of a report or the Navy's consent. These commenters expressed concern that modification of a previously finalized report would be inappropriate for addressing new work required, for example, by the discovery of a new source. These commenters also requested clarification that EPA has the right to require further investigations.

Section 120 of CERCLA requires that federal departments or agencies that own or operate facilities that are on the National Priorities List enter into interagency agreements with EPA for the clean-up of those facilities. The FFA will provide an efficient mechanism to address the issues of newly discovered sources of contamination and the need for further investigations. The Parties have concluded that the procedures provided in the FFA adequately address the regulators' ability to require the Navy to perform additional investigation and response activities. By setting forth a specific list of primary and secondary documents, the FFA provides a comprehensive framework for the documents supporting the CERCLA remedial actions at NAS Moffett. The RI/FS reports, for example, are intended to cover all releases of hazardous substances to be addressed under CERCLA.

Should the Navy discover an additional source of contamination, the RI/FS could be modified to investigate and analyze potential remedial actions for that source. Section 9.10.2 of the FFA provides for a modification under such a circumstance. Further, in the event the Parties do not reach consensus on the need for a modification, any Party may raise the issue through the dispute resolution process provided in Section 10 of the FFA. The Administrator of EPA could ultimately resolve any dispute so elevated in accordance with the prerequisites for such a modification as provided for in Section 9.10.3 of the FFA.

ATTACHMENT THREE

COMMENT LETTERS

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Congress of the United States
House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY
COMMITTEE ON SMALL BUSINESS

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CO-CHAIRMAN, TASK FORCE ON TOXICS
HOUSE COMPETITIVENESS CAUCUS
ENVIRONMENTAL AND ENERGY STUDY CONFERENCE
CONGRESSIONAL HUMAN RIGHTS CAUCUS
ARMS CONTROL AND FOREIGN POLICY CAUCUS
CONGRESSIONAL CAUCUS FOR WOMENS' ISSUES

October 6, 1989

Mr. Michael Cain
Environmental Division Director
Public Affairs Office
Naval Air Station
Moffett Field, California 94035

Dear Mr. Cain:

I am writing to comment on the August 8, 1989 Interagency Agreement between the Department of the Navy, the U.S. Environmental Protection Agency, and the State of California.

First of all, let me commend the Navy and the other parties for entering into the agreement. I believe that the agreement establishes an excellent precedent for cooperation between various state and federal agencies. It also provides a good starting framework for providing a rapid cleanup of the Moffett sites to the satisfaction of all parties involved.

At the same time, I believe that certain elements of the agreement must be strengthened. In particular, I am concerned about the cleanup schedule as specified in the original agreement; its 1995 cleanup start is too much of a delay, and it does not provide for a proper coordination of regional cleanup schedules.

1. 1995 Cleanup Start: Actual cleanup must begin as soon as technically possible, but the current agreement allows numerous opportunities to further extend the 1995 target date. These loopholes should be closed and the policy reversed: opportunities should be included to move up the target date.

2. Coordinated Regional Cleanup: The federal agencies at Moffett Field should commit themselves to a schedule that coordinates with the schedule of other Superfund sites in the area, particularly the Middlefield-Ellis-Whisman (MEW) site. Technical data submitted by the MEW companies and independent scientists indicates that the Moffett and MEW plumes are co-mingled, thus making individual liabilities difficult to determine. Cleaning up the MEW site ahead of the Moffett sites, as presently proposed, may result in the migration of Moffett plumes into unaffected areas. This will compromise the effectiveness of any final remedial action by MEW or the Navy.

The interagency agreement must address these technical realities, providing for immediate identification and control of Moffett's chemical residue sources, and for coordination of regional cleanup schedules.

It is essential that the above concerns and suggested improvements be incorporated into the final Interagency Agreement. As part of the public record, I would also like to submit a recent communication from the Navy to my office on this matter.

Thank you for the opportunity to comment on the Interagency Agreement and for your consideration of these views. Again, let me state the Interagency Agreement, if improved, should provide an excellent precedent for cleaning up contaminated federal sites across the country.

Best regards,

Tom Campbell

Congressman Tom Campbell

TC:jhs
Enclosure
cc: Alex Cunningham, Toxic Substance Div./State of CA
Frank Swofford, U.S. Department of the Navy
Daniel McGovern, Environmental Protection Agency
Steven Ritchie, Regional Water Quality Control Board
Ted Smith, Silicon Valley Toxics Coalition
Stephen Quigley, Moffett Air Station
League of Women Voters
Bob Bostic, Schlumberger Technology Corporation
Delos Knight, MacKenzie Communications
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September 5, 1989

Public Affairs Office
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Re: Comments on Naval Air Station Moffett Field Federal Facility Agreement

Dear Sirs:

Enclosed are the comments of Fairchild Semiconductor Corporation regarding the proposed August 8th, 1989 NAS Moffett Field Federal Facility Agreement.

Sincerely,

TUTTLE & TAYLOR

Ronald C. Hausmann

By
Ronald C. Hausmann

RCH/fl
Enclosure

cc: Terry Wilson - EPA - w/encl.
Jill Singleton - DOHS - w/encl.
Jim Thompson - RWQCB - w/encl.

Schlumberger

Schlumberger Technology Corporation

September 5, 1989

VIA FEDERAL EXPRESS

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Captain S. T. Quigley, Jr.
Commanding Officer
Naval Air Station
Moffett Field, CA 94035-5000

Re: Comments on Naval Air Station Moffett Field
Federal Facility Agreement

Ladies and Gentlemen:

This letter submits Fairchild Semiconductor Corporation's ("Fairchild's") comments on the Federal Facilities Agreement (the "Agreement"), for Naval Air Station Moffett Field ("Moffett Field"), executed on August 8, 1989, by the Department of the Navy (the "Navy"), the Environmental Protection Agency ("EPA"), the California Department of Health Services ("DOHS") and the California Regional Water Quality Control Board - San Francisco Bay Region (the "RWQCB"). The Navy, EPA, DOHS and the RWQCB shall sometimes be referred to collectively in these comments as the "Parties".

Fairchild applauds the Navy's decision to proceed with a Remedial Investigation ("RI") and Feasibility Study ("FS") at Moffett Field. At the same time, however, Fairchild contends the Agreement must be modified to address the environmental problems present at Moffett Field in a much more timely manner. In particular, Fairchild contends the federal government must commit to remediate Moffett Field on a schedule coordinated with the remedial program for the industrial area south of Highway 101. We are dismayed that the involved governmental agencies have concluded by the terms of the proposed agreement that the remediation of this federal facility does not need to proceed at the same pace as privately financed remedial programs in the Bay Area.

The federal government's failure to commit to a schedule coordinated with, or equally as fast as, the schedules private companies have followed and propose to continue following is troubling, given the magnitude of the environmental problems identified at Moffett Field. In short, Fairchild expects the federal government to match the remedial efforts being made by private companies in the area.

The data indicate that substantial chemical releases at Moffett Field have occurred during a lengthy period of time. According to the March 30, 1988 work plan prepared by IT Corporation for the Navy (the "Work Plan"), a long list of chemicals was released into the environment from Moffett Field operations over a 50-year period. These chemicals include polychlorinated biphenyls (PCBs), trichloroethylene (TCE), trichloroethane (TCA), tetrachloroethene (PCE), methyl ethyl ketone (MEK), toluene, freon 113, ethylene glycol, asbestos and a variety of fuels, paint thinners and solvents.

The volume of hazardous substances disposed of by the Navy at Moffett is staggering. For example, as the Work Plan describes, 150,000 to 750,000 gallons of hazardous substances were disposed of over a 30-year period into storm drains that emptied into a ditch at Moffett Field and eventually into San Francisco Bay (Work Plan, p. 2-39). Moreover, Navy personnel reportedly dumped 120,000 to 600,000 gallons of hazardous materials off the runway apron near hangars 2 and 3 and another 120,000 to 600,000 gallons of hazardous materials onto unpaved areas near the hangars themselves (Work Plan, p. 2-40). Another 75,000 to 150,000 gallons of hazardous materials were reportedly disposed of at the "runway" landfill (Work Plan, p. 2-38).

In addition to these and other areas in which hazardous

chemicals were disposed of, the Navy has identified 68 underground tanks and sumps at Moffett Field. A limited investigation of 31 tanks in 1987 showed that 12 tanks were leaking fuel or other hazardous materials into the soil. See Section 6.5 of the Agreement. Data that the Navy only recently made available confirm that many of the Navy's chemical releases have occurred in the area west of the runways, where they have merged in part with the plume emanating from the Middlefield-Ellis-Whisman area south of Highway 101.

Based on this evidence, Fairchild contends the federal government must proceed more quickly than is now required by the Agreement. In addition, the Navy should be required to coordinate its activities with remedial actions to be conducted by Fairchild and those private companies at Moffett Field. Fairchild and the other private companies are prepared to commence remediation of chemical residues underlying Moffett Field that were released from their facilities within a year. As discussed below, however, any attempt by these companies to commence remediation without the Navy's cooperation will risk spreading Moffett's contamination in the shallow aquifers, which will make it more difficult, more time consuming and more expensive to remediate the Moffett area. The Agreement also will make it more difficult for the Navy to identify its own sources of chemical residues, and will jeopardize the Navy's ability to implement appropriate source remedial controls.

Fairchild's specific comments and proposals are set forth below.

A. Coordination with MEW PRPs. Section 7.7 of the Agreement recognizes that chemical plumes originating in the Middlefield-Ellis-Whisman Study Area (the "MEW Area") south of Highway 101 have merged with chemical releases resulting from Navy operations. This section goes on to indicate that these releases "may be addressed" by a separate agreement between the regulatory agencies and the potentially responsible parties in the MEW Area (the "MEW PRPs"), a group that includes Fairchild. Except for this provision, and two vague references to the MEW Area in the Management Plan Outline (Attachment 2), the Agreement contains no reference to coordination of the investigations and remedial activities to be conducted by the Navy with those of the companies. Fairchild contends that the discretionary nature of Section 7.7 must be changed to mandate that the Navy coordinate its activities with the actions of the private party MEW PRPs.

Both the existing and the proposed version of the

National Contingency Plan require federal agencies to coordinate response actions with private parties. 40 CFR §300.22(b); § 300.105(a)(3) (proposed). The Agreement should, therefore, be modified to include provisions that require (1) coordination of the Navy's remedial investigation with remedial activities undertaken by the MEW PRPs, (2) joint remedial design/remedial action by the Navy and the MEW PRPs to address merged plumes, (3) cost allocation and dispute resolution between the Navy and the MEW PRPs, (4) access by the MEW PRPs to Moffett Field, (5) determination of ARARs, remediation technology and remediation goals that are consistent with EPA's Record of Decision for the MEW Area and (6) coordination of termination rights and obligations. In addition, Section 34.2 of the Agreement, which addresses judicial review of actions taken under the Agreement, should be modified to clarify that it does not apply to the exercise of the rights of the MEW PRPs to seek judicial review under a consent decree for the MEW Area if an issue arises under that decree that relates to actions taken by EPA or the Navy under the Agreement.

In addition to the legal requirements for coordinated and expeditious remedial actions, there are very significant technical and practical reasons to accelerate the investigation and control of Navy sources of chemical residues in the area of the merged plumes. Without knowing more about the Navy's sources than its investigations have revealed so far, there is a very high likelihood that any attempt at area-wide groundwater remediation will be counter-productive. This is because area-wide groundwater pumping and treatment will cause chemicals to migrate in and possibly between the shallow aquifer zones from areas of relatively high chemical concentration to clean areas or areas with relatively low concentrations. This in turn will create even larger areas with chemical residues, which will be more difficult, time-consuming, and expensive to remediate.

In short, effective remediation of the Moffett area requires immediate identification and control of the Navy's sources of chemical residues. This is the central technical basis of the MEW regional remedial program proposed in the MEW Feasibility Study approved by EPA in 1988. This approach must be employed in a coordinated fashion at Moffett Field because Moffett's underground contaminants are already commingled with the MEW plume and because Moffett and the MEW sites are physically contiguous.

Fairchild proposes that the most efficient way to handle this coordination is to identify areas in which the chemical plumes may have merged so that appropriate interim remedial source control

measures may be initiated. For areas where the Moffett sources have already been identified, interim remedial measures can be constructed immediately; for areas where further source investigation must be performed before remedial measures can be designed, the investigations must be completed on a priority basis. This approach will allow the earliest possible installation of a groundwater extraction system to begin remediation of the regional plume. Fairchild is willing to bear its fair share for these remedial actions.

Moreover, to help in the coordination of activities, Fairchild is willing to become a party to the Agreement with EPA and the Navy. Alternatively, Fairchild is willing to enter into a separate agreement with the Navy, the regulatory agencies, and other potentially responsible parties. In either case, Fairchild believes remediation can and should be commenced within nine months rather than waiting until July 1995 as the proposed Agreement contemplates.

B. Scheduling Concerns.

1. RI/FS. Attachment 3 to the Agreement requires the Navy to submit a draft RI report for Phases I and II of its investigation by July 1, 1991, or within 180 days of the last Phase II sample. The Agreement indicates that this date may be extended "based on field conditions". The deadline for completion of a draft FS is 180 days after the initial screening of remedial alternatives becomes final, with a non-enforceable "target" date of June 1, 1992.

Section 120(e)(1) of CERCLA requires EPA and state regulatory agencies to require "expeditious completion" of the RI/FS. The need for prompt completion is heightened here because of the potential effect of the investigation on the remedial activities to be conducted by the private party MEW PRPs. Nevertheless, the Parties have agreed to a schedule allowing the Navy to submit a draft of the RI almost three years after submission of the Navy's work plan and setting no enforceable deadlines for completion of the RI/FS. The leisurely pace contemplated by the Agreement does not comply with the requirement for expeditious completion mandated by Section 120(e)(1). Fairchild contends that the Agreement should be amended to establish a fixed and enforceable deadline for completion of the final RI/FS.

2. Commencement of Remedial Action. Section

120(e)(2) of CERCLA requires the Navy to commence "substantial continuous physical on-site remedial action" within 15 months after completion of the RI/FS. In contrast, the Agreement provides for "initiation of remedial construction" within 15 months after signature of the ROD, which, in turn, will be at least 11 months after the FS becomes final. The Agreement sets no deadline for the completion of construction and commencement of actual remediation. This schedule directly contravenes Section 120(e)(2).

3. Other Reports. The schedule set forth in Attachment 3 lists a number of significant additional reports to be submitted by the Navy. With the exception of the draft RI, however, the schedule does not establish a fixed and enforceable deadline for any of these reports. The Agreement provides for establishment of deadlines for some reports "per consultation section". The footnote interpreting this reference indicates that these deadlines will be established pursuant to Section 9 of the Agreement. (Fairchild assumes this reference means that the outside deadline will be the last date on which dispute resolution may be invoked following submission of a final draft incorporating all comments or 35 days after a final decision if dispute resolution has been invoked.) For other documents (the draft RD and the O & M Plan), the attachment simply indicates that the deadline is "to be determined".

Section 120(e)(4) of CERCLA requires each interagency agreement to contain a schedule for completion of remedial actions. Fairchild believes that, at the very least, the Agreement should establish fixed and enforceable deadlines for each "primary" document. Fairchild recognizes that unforeseen events could require extensions but believes that Section 27 of the Agreement provides a more than adequate procedure for handling these contingencies. Similarly, the fact that other provisions of the Agreement (such as the dispute resolution provisions) may result in extensions should not prevent the Parties from establishing specific deadlines that are enforceable unless extended in accordance with the terms of these other provisions.

4. Other Provisions Affecting Schedule.

a. Document Review and Revision Time. Section 9.7.2 of the Agreement requires the regulatory agencies to provide comments on draft documents within 60 days, with the right to extend this deadline for 30 days. Under Sections 9.7.5 and 9.7.6 the Navy then has an additional 60 days to incorporate comments, with a unilateral right to extend the period for an additional 30 days. The document does not become final until an additional 30 days after these periods. As a result, seven months pass between the submission of a draft and the finalization of the draft. This period may be further extended under Section 27 of the Agreement for "good cause", a term defined to mean whatever the Parties agree it means.

These lengthy comment and redraft periods interject an unreasonable amount of delay into the investigation and remediation process. Fairchild proposes that the regulatory agencies provide comments within 30 days and that the Navy incorporate comments within 30 days thereafter. Any unilateral extension should be limited to 20 days. These time frames are consistent with periods agreed to by the agencies and the United States Army in the federal facilities agreement for the Sacramento Army Depot and in similar agreements with civilian PRPs. Additional extensions under Section 27 should be limited to 15 days unless a force majeure event occurs.

b. Dispute resolution. The dispute resolution procedures set forth in the Agreement introduce further potential sources for delay into the investigation and remediation process.

First, Section 10.3 gives any Party 30 days to submit a dispute to the Dispute Resolution Committee. In the interim, the Agreement calls for the Parties to attempt to resolve the dispute on an informal basis. Fairchild believes the period for informal dispute resolution should be reduced to 14 days, which is consistent with the period proposed by EPA under the consent decree currently being negotiated for the MEW Area.

In addition, Sections 10.10 and 27.2 provide for automatic extensions of deadlines for work affected by a dispute. Fairchild believes such an extension should be granted only if the Navy prevails in dispute resolution or if the narrow conditions of Section 10.11 (relating to work stoppages ordered by a member of the Dispute Resolution Committee) are met. Sections 10.11 and 10.12

should, in turn, require the Dispute Resolution Committee to reach a resolution of any dispute regarding work stoppage within no more than 7 days.

Finally, Section 10.13 gives the Navy 35 days to implement the decision resulting from dispute resolution. The Navy should be required to implement these decisions within a shorter period, especially if the Navy is not the prevailing party or the decision can be implemented within a shorter period.

C. Other Comments.

1. Definition of Moffett Field (Section 1.9). NAS Moffett Field ("NASMF") should be defined more precisely. Does NASMF, for example, include any facilities now or formerly operated by the National Aeronautics and Space Administration?

2. EPA's Right to Require Additional Work (Sections 8.2 and 9.10.4). Some provisions of the Agreement relating to EPA's right to require further work are unduly restrictive. Section 8.2 provides that the Navy's performance under the Agreement will be "deemed . . . protective of human health and the environment" and that "no further corrective action" under RCRA will be required. This Section seems overbroad given the preliminary stage of the Navy's investigations and should be deleted.

Section 9.10.4 of the Agreement authorizes EPA, DOHS or the RWQCB to require further work through modification of a report or amendment of the Agreement. There may, however, be some cases in which modification of a report issued several months or years previously is not an appropriate method for dealing with new work required because of, for example, the discovery of a new source. On the other hand, Section 24 requires the concurrence of all Parties prior to any amendment of the Agreement. Section 9.10.4 should be amended to provide for a procedure by which the agencies may order additional work without requiring the amendment of a report or the Navy's consent.

On a related issue, the Parties need to clarify the circumstances under which EPA can order a Phase III investigation. The only reference to a Phase III is footnote 9 to Attachment 3, which indicates that "[i]f it is determined that further investigative work is required, Phase III tasks will be initiated." The Agreement should be clarified to ensure that EPA has the right to require this investigation if potential releases not covered by

Phase II are discovered, as well as the right to require the expeditious investigation and remediation required by Section 120(e) of CERCLA. (As currently contemplated, the Phase III RI/FS would not be complete until 1996 and construction of a remedial system would not begin until July 1998.)

3. Covenant Not to Sue (Section 25). A provision should be added to this Section clarifying that nothing in this Agreement affects the rights of any third party to bring an action against the Navy seeking reimbursement for response costs incurred by such third party with respect to releases originating at Moffett Field.

D. Conclusion

Fairchild and other MEW companies have requested on numerous occasions that the Navy and EPA accelerate the pace of investigations at Moffett Field and coordinate the RI/FS and RD/RA processes with the MEW PRPs. In support of these requests, Fairchild has presented ample evidence showing the problems created by the go-slow approach adopted by the Agreement. In spite of these requests, the regulatory agencies and the Navy appear determined to proceed with an agreement whose only effect will be to further institutionalize the ongoing delays in investigating and cleaning up Moffett Field. Because of the delays, the Agreement threatens to make cleanup of areas north of 101 more expensive and time consuming unless Navy agrees to implement a program of immediate source control and investigation.

Fairchild requests that the Agreement be modified (1) to require an expeditious completion of an RI/FS and commencement of remedial action in accordance with established and enforceable deadlines complying with Section 120 of CERCLA, (2) to require the Navy to negotiate and enter into a comprehensive settlement with the MEW PRPs within 30 days and (3) to make the other changes described in Part C above.

Sincerely,
Schlumberger Technology Corporation

C. R. Bostic

C. R. Bostic

cc: See Attached List

cc: Via Hand Delivery:

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RA/DRA
Action
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raytheon

October 4, 1989

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Captain S.T. Quigley, Jr.
Commanding Officer
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Moffett Field, CA 94035-5000

Re: Comments on Naval Air Station Moffett Field Federal Facility Agreement

Gentlemen and Ms. Stehle:

I am writing to submit comments on behalf of Raytheon Company regarding the proposed Federal Facilities Agreement for Naval Air Station Moffett Field entered into on August 8, 1989 by the Department of the Navy, the U.S. Environmental Protection Agency, the California Department of Health Services and the California Regional Water Quality Control Board - San Francisco Bay Region.

Raytheon recognizes the efforts made by all parties to the Agreement to investigate the environmental problems on Moffett Field and subsequently to remediate chemicals in the soils and groundwater there. We are concerned, however, that without coordination with the remedial activities that are now underway in the Middlefield-Ellis-Whisman (MEW) Area south of U.S. Highway 101 and those that are anticipated to begin in the area north of U.S. Highway 101 in the area of the merged Moffett-MEW plume, the Navy's current schedules for investigation and remediation on Moffett Field may

prevent the regional clean-up on Moffett from going forward in an environmentally sound manner and may instead risk the spreading of chemicals into clean and relatively low concentration areas within Moffett Field.

The Environmental Protection Agency has requested that Raytheon Company, Fairchild Semiconductor Corporation and Intel Corporation (the "Companies"), among others, begin remediation of the merged plume on Moffett Field as expeditiously as possible. Although Raytheon does not believe that the chemicals in the merged plume pose a serious or immediate threat to either human health or the environment, we are endeavoring to comply with EPA's request for an expeditious clean-up. To this end, Raytheon, in conjunction with the other Companies, is prepared to begin a regionwide remediation, including those chemical residues within the merged Moffett-MEW plume within a year. In order to accomplish efficient and effective remediation of the Moffett Field area, however, there must be substantial coordination between the Navy and the Companies. Such coordination must be based on acceleration of the Navy's current schedule for investigation and control of Navy sources of chemical residues in the area of the merged plume.

Under the proposed Federal Facilities Agreement, the Navy is not scheduled to begin remediation on Moffett Field until July 1995, nearly five years after the Companies plan to begin remediation. Such a lag is neither technically nor practically desirable. At this time, there is very little data regarding the sources of chemicals in the area of Moffett Field where the plumes have merged. If area-wide pumping and treatment on Moffett Field were to beging without further information regarding the Navy sources, such attempts at remediation would cause chemicals to migrate within and possibly between the shallow aquifer zones across the Moffett area from areas of relatively high chemical concentrations to clean areas or areas of relatively low chemical concentrations. Such a "spreading" of chemical residues will create a much larger area of contamination and will increase the time, difficulty, and expense of overall remediation. In addition, regional remediation before identification and control of Navy sources will make it more difficult for the Navy to later identify its own sources of chemical residues and to implement appropriate source controls.

Therefore, before any area wide remediation is to begin on Moffett Field, the Navy must identify and control Navy sources of chemical residues on a schedule coordinated with regional MEW remedial activities. To accomplish this end, Raytheon proposes an amendment to section 7.7 of the proposed Federal Facilities Agreement. Section 7.7, in its present form, recognizes that chemical plumes originating in the MEW area south of U.S. Highway 101 have merged with chemical releases resulting from Navy operations and indicates that these releases "may be addressed" by a separate agreement between the regulatory agencies and the potentially responsible parties in the MEW Area (the "MEW PRPs"), a group that includes Raytheon. Section 7 should be amended to provide that the Navy "shall" enter into an agreement with the regulatory agencies and the MEW PRPs to accomplish remediation of the merged plume on a coordinated basis.

Both the existing and the proposed versions of the National Contingency Plan require federal agencies to coordinate response actions with private parties. 40 CFR § 300.22(b) (existing NCP); § 300.105(a)(3) (proposed NCP). The Federal Facilities Agreement should, therefore, be modified to include provisions that require (1) coordination of the Navy's remedial investigation with remedial activities undertaken by the MEW PRPs, (2) joint remedial design/remedial action by the Navy and the MEW PRPs to address merged plumes, (3) cost allocation and dispute resolution between the Navy and the MEW PRPs, (4) access by the MEW PRPs to Moffett Field, (5) determination of ARARs, remediation technologies and remediation goals that are consistent with EPA's Record of Decision for the MEW Area, and (6) coordination of termination rights and obligations. In addition, Section 34.2 of the Agreement, which addresses judicial review of actions taken under the Agreement, should be modified to clarify that it does not apply to the exercise of the rights of the MEW PRPs to seek judicial review under any consent decree for the MEW Area if an issue arises under that decree (assuming one is executed) that relates to actions taken by EPA or the Navy under the Agreement.

Finally, a provision should be added to section 25 (covenant not to sue) clarifying that nothing in the Agreement affects the rights of any third party to bring an action against the Navy seeking reimbursement for response

costs incurred by such third party with respect to releases originating at Moffett Field.

In addition to the objections previously expressed regarding the lack of coordination between the Navy's investigative and remedial activities and those of the private PRPs, Raytheon is concerned that the scheduled deadlines and anticipated extensions established for submission of the Navy RI/FS, commencement of remedial actions, dispute resolution and document review and revision time may extend the initiation of remedial measures, and contribute to further delays regarding implementation of remediation on a regional scale. To the extent that these deadlines and extensions cause or contribute to such delay, they should be shortened appropriately to provide for a coordinated remedial effort.

Sincerely,

George A. Gullage (gca)

George A. Gullage
Raytheon Company

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October 6, 1989

Public Affairs Office
Building 23
Naval Air Station
Moffett Field, CA 94035

Re: Comment on Interagency Agreement

This letter is in response to the notice circulated by your office indicating the opportunity for public comment on the interagency agreement for "Superfund" environmental cleanup activities at the Naval Air Station at Moffett Field.

Sunnyvale City staff has reviewed the agreement between the Navy, the Environmental Protection Agency, and the State of California. We believe that the Naval Air Station at Moffett Field is making a praiseworthy effort to address the concerns of the local communities with regard to the 17 identified contamination sites on the base. We recognize, however, that the work undertaken by the Navy to identify the contamination began much later than the work conducted by companies that are sources of contamination and contributing to a common plume.

It is also acknowledged that the Navy is faced with more regulations regarding cleanup than its counterparts in the private sector, because it must also comply with Federal regulations that apply only to Federal facilities. The net effect of these two factors puts Moffett Field in an unenviable position, complicating their cleanup alternatives. The report review process and dispute resolution procedure will be more complex than for the private sector and may well tend to delay cleanup progress.

Although it is unrealistic to expect that Moffett Field can accelerate their plume definition phase to a point where work can occur simultaneously with companies that have been working on their remediation phases for several years, we encourage and would strongly support cooperative and coordinated efforts with Fairchild, Intel, and Ratheon in their more advanced cleanup efforts. We also encourage the Department of Health Services, the Regional Water Quality Control Board, and the Environmental Protection Agency to exercise diligent

oversight of these coordinated cleanup efforts to ensure minimal delay in on-going cleanup efforts, efficient use of private and governmental resources, and maximum protection of the environment.

Of particular concern to the City of Sunnyvale is the definition of the plume which may be of impact to the City or to companies within the City of Sunnyvale. Also, as remediation begins, the treatment and discharge of effluent to storm sewers, or to the Bay must be sufficiently monitored so as not to be comingled or impact the treatment efforts of our own water pollution control plant. Of vital importance is the protection of the waters of the Bay.

In conclusion, we urge that all involved parties work together to bring about a rational solution to these very complex issues. Cooperation and mutual understanding are key to ensuring that a solution based on the concerns of the affected communities will be achieved with scientifically accurate information.

Sincerely,

Lawrence E. Stone
Mayor