UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

AND THE

COMMONWEALTH OF VIRGINIA

AND THE

UNITED STATES DEPARTMENT OF THE ARMY

IN THE MATTER OF:

U.S. Department of the Army
U.S. Army Transportation Center
Fort Eustis, Virginia

FEDERAL FACILITY AGREEMENT
under CERCLA Section 120

Administrative
Docket Number: CERC-03-2008-0063FF

TABLE OF CONTENTS

I. JURISDICTION 1
II. DEFINITIONS 2
III. PARTIES BOUND 6
IV. PURPOSE 7
V. SCOPE OF AGREEMENT 8
VI. FINDINGS OF FACT 9
VII. EPA DETERMINATIONS 15
VIII. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION 16
IX. WORK TO BE PERFORMED 17
X. CONSULTATION 25
XI. DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN 31
XII. BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN 32
XIII. EXTENSIONS 37
XIV. PROJECT MANAGERS 38
XV. EXEMPTIONS 41
XVI. ACCESS 42
XVII. PERMITS 43
XVIII. REMOVAL AND EMERGENCY ACTIONS 44
XIX. PERIODIC REVIEW 46
XX. DISPUTE RESOLUTION 47
XXI. STIPULATED PENALTIES 49
XXII. FORCE MAJEURE 50
XXIII. ENFORCEABILITY 51
XXIV. OTHER CLAIMS 52
XXV. RESERVATION OF RIGHTS 53
XXVI. PROPERTY TRANSFER 54
XXVII. FUNDING 54
XXVIII. REIMBURSEMENT OF COMMONWEALTH SERVICES 55
XXIX. RECOVERY OF EPA EXPENSES 55
XXX. QUALITY ASSURANCE 55
XXXI. RECORD PRESERVATION 56
XXXII. SAMPLING AND DATA/DOCUMENT AVAILABILITY 56
XXXIII. PROTECTED INFORMATION 56
XXXIV. COMMUNITY RELATIONS 57
XXXV. PUBLIC COMMENT ON THIS AGREEMENT 59
XXXVI. EFFECTIVE DATE 60
XXXVII. AMENDMENT OF AGREEMENT 61
XXXVIII. COMMONWEALTH OF VIRGINIA RESERVATION OF RIGHTS 61
XXXIX. SEVERABILITY 62
XL. TERMINATION AND SATISFACTION 62
Appendix A – Initial List of Operable Units Requiring RI/FS 68
Appendix B – Operable Units with Proposed Plan, Record of Decision or Completed Remedial Action 68
Appendix C – Sites Being Addressed under Other Regulatory Programs 69

Appendix D – No Further Action Sites 70
Appendix E – Initial Information on Sites Suspected to Contain UXO, DMM or MCs 71
Appendix F – Initial Site Management Plan 73

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

I. JURISDICTION

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

1.1 The U.S. Environmental Protection Agency (EPA) Region III 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), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. No. 99-499 (hereinafter jointly referred to as CERCLA), and Sections 6001, 3008(h) and 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v) as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA), and Executive Order 12580.

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

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

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

1.5 The Virginia Department of Environmental Quality (VDEQ) enters into this Agreement pursuant to CERCLA Sections 120(f) and 121(f), 42 U.S.C. Sections 9620(f) and 9621(f), Section 3006 of RCRA, 42 U.S.C. Sections 6926, and the Virginia Waste Management Act, Virginia Code Sections 10.1-1400 *et seq.*

II. DEFINITIONS

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

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

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

2.3 "Applicable Commonwealth law" shall mean all Commonwealth of Virginia laws administered by the VDEQ determined to be applicable under this Agreement. The term shall include all Commonwealth laws determined to be Applicable or Relevant and Appropriate Requirements (ARARs).

2.4 "Army" shall mean the United States Department of the Army, including Fort Eustis, their employees, members, successors and authorized representatives, and assigns. The Army shall also include the United States Department of Defense (DoD) to the extent necessary to

effectuate the terms of the Agreement, including, but not limited to, appropriations and Congressional reporting requirements.

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

2.6 "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, (SARA) Public Law No. 99-499, and any amendments thereto.

2.7 "Commonwealth" shall mean the Commonwealth of Virginia, including all departments, offices and agencies thereof, as represented by the Virginia Department of Environmental Quality (VDEQ).

2.8 "Community Relations" shall mean the program to inform and involve the public in the installation restoration, CERCLA and RCRA processes and to respond to community concerns.

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

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

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

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

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

2.14 "Facility" shall mean that property owned by the United States and operated by the U.S. Department of the Army, including that portion known as Fort Eustis, Virginia, and including all areas identified in Appendices A through E. This definition is for the purpose of describing a geographical area and not a governmental entity.

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

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

2.17 "Fort Eustis" shall mean Fort Eustis located in Virginia.

2.18 "Guidance" shall mean any requirements or policy directives issued by EPA or the Commonwealth of Virginia that are of general application to environmental matters and which are otherwise applicable to the Army's work under this Agreement.

2.19 "Interim Remedial Action" shall mean all discrete Remedial Actions, including, but not limited to, Accelerated Operable Units (AOUs), implemented prior to a final Remedial Action that are taken to prevent or minimize the release of hazardous substances, pollutants, or contaminants.

2.20 "Land Use Controls" or "LUCs" shall mean any restriction or administrative action, including engineering and institutional controls, arising from the need to reduce risk to human health and the environment.

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

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

2.23 "Near Term Milestones" shall mean the Milestones within the current fiscal year (FY), the next fiscal year or "budget year" (FY+1), and the year for which the budget is being developed or "planning year" (FY+2).

2.24 "On-site" shall have the meaning as defined in the NCP.

2.25 "Operable Unit" or "OU" shall mean a discrete action that comprises an incremental step toward comprehensively remediating the Site. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of release, or pathway of exposure related to the Site. Operable Units may address geographical portions of the Site, specific Site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of the Site. The cleanup of the Site can be divided into a number of Operable Units, depending on the complexity of the problems associated with the Site. The term "Operable Unit" is not intended to refer to the term

"operating unit" as used in RCRA. All Operable Units shall be addressed in accordance with the NCP, EPA Guidance and the requirements of CERCLA.

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

2.27 "Parties" shall mean the Army, the VDEQ and EPA.

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

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

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

2.31 "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984, (HSWA), Public Law No. 98-616, and any amendments thereto.

2.32 "Record(s) of Decision" or "ROD(s)" shall be the public document(s) that select(s) and explain(s) which cleanup alternative(s) will be implemented at the Site, and includes the basis for the selection of such remedy(ies). The bases include, but are not limited to, information and technical analyses generated during the RI/FS and consideration of public comments and community concerns.

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

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

2.35 "Site Management Plan" or "SMP" shall mean a planning document entitled "Fort Eustis, Virginia Site Management Plan," prepared specifically under Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN, which contains timetables, plans, or Schedules that indicate the times and sequences of events. The Site Management Plan will be used as a management tool in planning, reviewing and setting priorities for all response activities at the

facility. Milestones developed under the terms of this Agreement are listed in the SMP. Deadlines listed in the SMP are subject to stipulated penalties in accordance with Section XXI – STIPULATED PENALTIES.

2.36 "Solid Waste Management Unit" or "SWMU", as defined pursuant to RCRA, shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid and/or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

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

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

2.39 "U.S. Army Transportation Center, Fort Eustis" is the prior name for "Fort Eustis" and shall mean Fort Eustis located in Virginia.

2.40 "VDEQ" shall mean the Commonwealth of Virginia Department of Environmental Quality and its authorized employees and authorized representatives.

2.41 "Work" shall mean all activities the Army is required to perform under this Agreement, except those required by Section XXXI – RECORD PRESERVATION.

III. PARTIES BOUND

3.1 This Agreement shall apply to and be binding upon EPA and the Army. Under this Agreement, the Commonwealth of Virginia is acting pursuant to its power and duties under Section 120(f) and 121(f) of CERCLA, 42 U.S.C. Sections 9620(f) and 9621(f). The Commonwealth intends to voluntarily comply with all the terms of this Agreement and it is committed to full participation in the remediation efforts to be conducted pursuant to this Agreement. The Commonwealth does not consider this Agreement to be a contract and as to the Commonwealth, this Agreement does not create a third party beneficiary. The Army agrees to include the notices required by Section 120(h) of CERCLA in any contract for the sale or transfer of real property affected by this Agreement. Transfer or conveyance of any interest in real property affected by this Subsection 3.1 shall not relieve the Army of its applicable obligations under this Agreement.

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

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

IV. PURPOSE

4.1 The general purposes of this Agreement are to:

4.1.1 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;

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

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

4.2 Specifically, the purposes of this Agreement are to:

4.2.1 Identify interim remedial action (IRA) alternatives, which are appropriate at the Site prior to the implementation of final remedial actions(s) for the Site. The IRA alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of IRAs to EPA and the Commonwealth pursuant to CERCLA and applicable Commonwealth law. This process is designed to promote cooperation among the Parties in identifying IRA alternatives prior to selection of final IRAs.

4.2.2 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 and applicable Commonwealth law.

4.2.3 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 and applicable Commonwealth law;

4.2.4 Implement the selected interim remedial and final remedial action(s) in accordance with CERCLA and applicable Commonwealth law and meet the requirements of CERCLA Section 120(e)(2) for an interagency agreement among the Parties.

4.2.5 Ensure compliance, through this Agreement, with RCRA and other Federal and Commonwealth hazardous waste laws and regulations for matters covered herein.

4.2.6 Coordinate response actions at the Site with the mission and support activities at Fort Eustis.

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

4.2.8 Provide for Commonwealth involvement in the initiation, development, selection, and enforcement of remedial actions to be undertaken at Fort Eustis, including the review of all applicable data as it becomes available, and the development of studies, reports, and action plans; and to identify and integrate Commonwealth ARARs into the remedial action process.

4.2.9 Provide for operation and maintenance of any remedial action selected and implemented pursuant to this Agreement.

V. SCOPE OF AGREEMENT

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

5.2 This Agreement is intended to cover the investigation, development, selection, and implementation of response actions for releases or threatened releases of hazardous substances, contaminants, hazardous wastes, hazardous constituents, or pollutants at or from the Site. This Agreement covers all phases of remediation for these releases, bringing together into one agreement the requirements for remediation as well as the system the Parties will use to determine and accomplish remediation, ensuring the necessary and proper level of participation by each Party. Although all such releases at the Site are not currently known, the Agreement establishes the system for dealing with those undiscovered releases. To accomplish remediation of those undiscovered releases, the Parties will establish Schedules and Deadlines as necessary and as information becomes available and, if required, amend this Agreement as needed.

5.3 This Agreement is intended to address and satisfy any of Fort Eustis' RCRA corrective action obligations, which relate to the release(s) of hazardous substances, hazardous wastes, hazardous constituents, pollutants, or contaminants at or from all areas addressed under future corrective action permits. This Agreement is not intended to limit any requirements under RCRA or any other law or regulation to obtain permits, and is not intended to affect the

treatment, storage, or disposal by Fort Eustis of hazardous wastes. This Agreement is not intended to encompass response to spills of hazardous substances from ongoing operations unless those spills occur in conjunction with CERCLA removal actions or remedial actions pursuant to this Agreement.

5.4 The scope of this Agreement extends to the entire Site, as listed in the Federal Register proposing the Site for the National Priorities List (NPL) and as provided for in this Agreement. A release at the Site cannot be deleted from the NPL unless it is determined, in accordance with CERCLA, the NCP, and this Agreement, that the Army has implemented all appropriate response actions for such release, and that the release at the Site no longer poses a threat to human health or the environment. All response actions at the Site shall occur in discrete locations termed MRP Sites or Operable Units (OUs) identified at the Site pursuant to this Agreement.

5.5 Any response action in progress on the Effective Date of this Agreement shall be subject to the obligations and procedures of this Agreement.

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

VI. FINDINGS OF FACT

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

6.2 Contamination assessments at Fort Eustis started in 1977 when the U.S. Army Environmental Hygiene Agency (USAEHA) conducted a landfill study to evaluate the leachate problems from two Fort Eustis landfills: Inactive Landfill #15 (FTEUST-02) and Area 3300 Landfill #7 (FTEUST-04). The study detected hazardous substances, including cadmium, lead, manganese, mercury and zinc, in the water and sediment of Bailey Creek and the Warwick River; and arsenic and cadmium in groundwater beneath the landfills. Hazardous substances known as polychorinated biphenyls (PCBs) were detected at concentrations up to 14.94 parts per million in the sediment of Bailey Creek near the Area 3300 Landfill #7.

6.3 An Installation Assessment report for Fort Eustis was completed in March 1982 and an Update to the Installation Assessment was completed in March 1988. Their purpose was to determine the existence of toxic and hazardous materials, and related contamination, emphasizing those posing a potential for migration to off-post areas. The studies addressed 21

sites including the sewage treatment plant, various landfills, holding ponds, dredge spoils areas, and a fire training area. Among other things, they noted storage and handling of pesticides at Fort Eustis; disposal of waste oil, mineral spirits, trichloroethylene (a hazardous substance), pesticides, paints, solvents, and asbestos and hospital waste; and releases of hazardous substances (iron, arsenic, cadmium, manganese, mercury and zinc) from landfills. The reports concluded that there was a potential for migration of contaminants via the surface streams and the upper water table to the James River.

6.4 Between 1983 and 1988, USAEHA and the U.S. Army Corps of Engineers-Norfolk District conducted a series of landfill studies. They evaluated the impact of three Fort Eustis landfills (FTEUST-01, FTEUST-02, and FTEUST-04) on groundwater and nearby receiving waters. In 1990, the Army completed a feasibility study (FS) to evaluate remedial alternatives to close FTEUST-02 (Inactive Landfill #15) and FTEUST-04 (Area 3300 Landfill #7). From 1990 to 1997, the Army collected groundwater samples from monitoring wells at FTEUST-01 (Officers Club Landfill 1) to monitor for potential migration of hazardous substances to groundwater.

6.5 In 1989, Fort Eustis initiated a Preliminary Assessment/Site Inspection (PA/SI) study for 10 sites that was completed in January 1992. The following sites were evaluated: Site 5-Goose Island Dredge Spoil Area (FTEUST-11), Site 12-Mulberry Island Dredge Spoil (FTEUST-12), Site 13-Mulberry Island Dredge Spoil (FTEUST-13), Site 14-Mulberry Island Dredge Spoil (FTEUST-14), Oil/Sludge Holding Pond (FTEUST-19), Central Heat Plant Building 801 (FTEUST-21), Waste Oil Storage Tank (FTEUST-28), Past Pesticide Storage Area (FTEUST-31) and two off-post NIKE facilities. The PA/SI activities at Fort Eustis were designed to confirm the presence or absence of hazardous substances in site soils, sediments, groundwater, and surface waters, to assess the potential for hazardous substance migration into the surrounding wetland areas, and to define future investigations or other actions required. The following recommendations were made: FTEUST-11, 12, 13, and 14, no further action; FTEUST-28 and 31, further confirmatory investigation (PA/SI Phase II); FTEUST-19 and 21, RI/FS were recommended. The PA/SI Phase II for FTEUST-28 and 31 were conducted and a final report issued in January 1996. The report recommended no further action for both sites.

6.6 In January 1990, Fort Eustis initiated a Remedial Investigation/Public Health and Environmental Assessment (RI/PHEA) for four sites: Fire Training Area (FTEUST-06), Milstead Island Creek (FTEUST-27), Brown's Lake (FTEUST-29) and Bailey Creek (FTEUST-30). This evaluation involved several phases of activity, such as collecting additional environmental data to characterize site conditions, determining the nature and extent of contamination at the site, and assessing the baseline human health and environmental risks posed by constituents detected in site media. In order to complete the RI/PHEA report, additional field data was collected in May 1993 and June 1994. As part of the 1994 work, an Environmental Risk Assessment was conducted to address the potential for hazardous substances, pollutants or contaminants associated with the sites reaching adjacent streams, wetlands, or marine environments and whether the presence of these chemicals posed significant risks to fresh water, marine, wetland and terrestrial biota. A Five-Site Draft RI report, which included these four sites and the Oil/Sludge Holding Pond (FTEUST-19) was distributed to EPA and the VDEQ in January 1995. Their comments were addressed and a Final RI report was distributed in February

1997. In October 1998, a meeting was held with EPA and the VDEQ to address the outstanding comments on the Final RI report. In December 1998, EPA sent Fort Eustis a letter outlining their concerns and recommending a FS be conducted at all of the sites with additional sampling at some of the sites. The FSs were awarded in 1998 for Brown's Lake and in 2000 for Bailey Creek, the Fire Training Area and the Oil/Sludge Holding Pond. In 2001, the FS was awarded for Milstead Island Creek.

6.7 On November 6, 1992, EPA completed, pursuant to CERCLA, a Hazard Ranking System (HRS) evaluation of Fort Eustis that resulted in a score of 50. Based on the HRS evaluation, and in accordance with EPA policy, on January 18, 1994, the U.S. Army Transportation Center, Fort Eustis was proposed for inclusion on the National Priorities List (NPL). On December 16, 1994, Fort Eustis was finalized on the NPL. The notice was published in the Federal Register at 59 FR 65206. During the HRS scoring process, thirty-two (32) potential source areas were identified.

6.8 The Department of Health and Human Service's Agency for Toxic Substances and Disease Registry (ATSDR) conducted its initial site visit to Fort Eustis in February 1995. ATSDR's visit is a requirement of Fort Eustis being placed on EPA's NPL. In April 1995, ATSDR provided Fort Eustis a site summary and site ranking, which was a "C" ranking because Bailey Creek and Eustis Lake were noted as possible points of exposure to PCB contamination. In January 1996, ATSDR sent Fort Eustis a pre-public Public Health Assessment (PHA) for review and comments. The PHA indicated contamination of the soil, groundwater and sediment did not represent hazards to public health. The principle exposure pathway of concern was the consumption of PCB-contaminated fish from Bailey Creek and Eustis Lake. On May 8, 1996, ATSDR released their PHA to the public for comments. The final PHA was released on July 19, 1996.

6.9 A Community Relations Plan for Fort Eustis was developed in 1995. The plan identified issues of community concern and described the community relations program to be implemented throughout the cleanup process at Fort Eustis. Community residents, elected officials and local environmental groups were interviewed to document their concerns on restorations issues. The plan is a living document and has since been updated.

6.10 The Fort Eustis Administrative Record (AR) and Information Repositories (IR) were established April 1996. The AR has all the Guidance, correspondence and documents that were used to make a remedial decision at an Installation Restoration Program (IRP) site. The AR is maintained at the Fort Eustis Environmental Office and three local libraries. In the fall of 2000, the files were converted to a PDF file format and put on CD-ROM disks. This conversion was part of a project to put the AR on a web site server to allow the public access to the files. The AR was put on the Fort Eustis web site in 2001; however, due to the Army's security and web access restrictions, the AR was removed after September 11, 2001. The AR may be put back on the web site at a later date. Guidance, correspondence, and new documents continue to be scanned to a PDF file and put on CD-ROM disks.

6.11 In 1996, as part of the Corrective Action Work Share Program between the VDEQ and EPA, the VDEQ assisted EPA Region III with the National Corrective Action Prioritization System (NCAPS) scoring initiative at Fort Eustis. The assessment is used to rank the facility

under the RCRA NCAPS. The VDEQ summarized the assessment and ranking in a report, entitled "National Corrective Action Prioritization System (NCAPS) Assessment and Ranking for Fort Eustis, Newport News, Virginia," dated July 25, 1996. During the NCAPS scoring and assessment initiative, forty-nine (49) potential RCRA sites were identified at Fort Eustis.

6.12 The Army has identified thirteen sites for RI/FS activities. These sites form the initial list of Operable Units, as that term is defined in Section II – DEFINITIONS, for this Agreement. These sites are:

6.12.1 *Operable Unit 1 (FTEUST-30)—Bailey Creek.* Hazardous substances, including PCBs, lead, and pesticides, have been released into Bailey Creek. PCBs were found in fish and sediment samples. In addition, surface water sampling revealed elevated levels of lead and PCBs in the creek. Sampling conducted during the summer of 1999 showed PCB concentrations over 2,200 parts per million (ppm) in sediment. An Interim Removal Action (IRA) addressing PCB hot spot contamination was completed in June 2000. Over 6,600 tons of PCB contaminated sediments were removed and disposed off-site. The site was back filled to its original elevations with clean fill and re-vegetated with wetland plants. Since the IRA did not remove all of the contaminated sediments, a revised risk assessment will be part of the ongoing feasibility study (FS). In the spring of 2001, 41 sediment samples were collected and analyzed. Clams and mummichogs were also collected and analyzed from four locations within Bailey Creek;

6.12.2 *Operable Unit 2 (FTEUST-29)—Brown's Lake.* During a 1982 water quality study, the U.S. Army Environmental Hygiene Agency (USAEHA) observed fish with lesions in Brown's Lake. USAEHA recommended that the lake be off-limits to fishing. It has remained off-limits to fishing since that time. During subsequent investigations of Brown's Lake, sediment and water samples were collected and the biota of the Lake was examined. Pesticides, PCBs, and fuel hydrocarbons have been detected in the lake's sediments. An Interim Removal Action (IRA) was conducted in 1999 to address the contamination at Brown's Lake. The IRA involved draining the entire lake, excavating sediments from the upper drainage ditch, placing sediments in the deeper portion of the lake, capping the bottom of the entire lake with two feet of clean fill, restoring the lake and re-stocking it with fish. Post-IRA monitoring and a feasibility study were completed in 2005. A Proposed Plan was released for public review and comment in August 2005. The Record of Decision was finalized in September 2007. The selected remedy calls for dredging or excavation of the Lake's upper ditch, disposal of contaminated sediment off-site, construction of a storm water control system, long-term monitoring of various media (including surface water, sediment, benthic and aquatic organisms), and restrictions on land use;

6.12.3 *Operable Unit 3 (FTEUST-27)—Milstead Island Creek.* During investigations of Milstead Island Creek conducted since 1989, sediment and water samples have been collected and the biota of the creek have been examined. Hazardous substances, including pesticides, heavy metals, and fuel-related hydrocarbons, were detected in the sediments of the creek. The Army completed the RI/FS for this site and, in 2006, issued a Proposed Plan;

6.12.4 *Operable Unit 4 (FTEUST-36)—Eustis Lake.* Results from a Remedial Investigation (RI) of Eustis Lake showed unacceptable levels of PCBs in fish tissue samples, as well as PCBs and other hazardous substances (pesticides and heavy metals) in sediment. As a result, a catch and

release fishing restriction is currently imposed at the lake. A Feasibility Study (FS) to evaluate the remedial alternatives for Eustis Lake is currently being conducted;

6.12.5 *Operable Unit 5 (FTEUST-34)—The DOL Storage Yard.* Hazardous substances, including pesticides and polyaromatic hydrocarbons (PAHs), have been released into soil and sediment directly under and surrounding the yard, and into the adjacent wetland and drainage swale areas. A Record of Decision (ROD) was issued for the DOL Storage Yard in 2001 to address these releases. The on-site remedial action work for this site was completed in 2003. EPA approved a Remedial Action Completion Report (RACR) for this site in June 2006;

6.12.6 *Operable Unit 6 (FTEUST-06)—The Fire Training Area.* A remedial investigation of the Fire Training Area identified hazardous substances, such as chlorinated volatile organic compounds (VOCs) and fuel-related compounds, in the groundwater down-gradient of the former fire pit area. These substances included tetrachloroethene (PCE), 1,1,1-trichloroethane (TCA), 1,1-dichloroethene (DCE) and dichlorobenzene, as well as benzene, toluene, ethylbenzene and xylenes (BTEX). Due to the presence of high levels of chlorinated VOCs, treatment to address the groundwater contamination will be necessary. A Feasibility Study (FS) to evaluate remedial alternatives for the Fire Training Area is currently being conducted;

6.12.7 *Operable Unit 7 (FTEUST-19)—The Oil/Sludge Holding Pond.* Hazardous substances, including petroleum-related substances and heavy metals, have been released into sludge and soil at this site. In 2002, a ROD was issued for excavation and disposal of the contaminated sludge and soil. On-site remedial action was completed in 2004. EPA approved a RACR for this site in September 2006; and

6.12.8 *Operable Unit 8 (FTEUST-32)—Felker Army Airfield.* The Felker Airfield Tank Farm supports all aviation fueling activities for Felker Army Airfield. Analytical results from a 1992 preliminary assessment screening (PAS) indicated that hazardous substances, including BTEX and fuel-related hydrocarbons, have been released into the soil. An Interim Removal Action (IRA) was completed in 1994, during which 3,800 cubic yards of petroleum-contaminated soil were removed and treated at a bioremediation cell on Fort Eustis. Subsequent sampling events have detected BTEX, PCE and TCA in groundwater samples. BTEX-related compounds have been detected in several soil and sediment samples. A Remedial Investigation and Feasibility Study (RI/FS) for Felker Army Airfield is currently being conducted.

6.12.9 *Operable Unit 9 (FTEUST-04) —Landfill #7, also known as South Landfill.* Landfill #7 is a non-permitted landfill, because it ceased operation prior to VDEQ's issuance of regulations requiring solid waste landfill permits. It was reported to have received waste (municipal solid waste, construction debris, paints, oils, pesticide and herbicide containers, and infectious/pathological waste) from 1951 to 1972 and contains two specific areas. Open burning was also conducted in the landfill. Sampling in 1977 showed degradation of groundwater due to landfill actives. Contaminants found at elevated levels include benzene, 1,1,2,2-tetrachloroethane, PCBs and metals. Groundwater studies in 1985, 1987, and 1988 showed low levels of metals, chlorobenzene, naphthalene, and 2-4-dinitrotoluene. A groundwater monitoring program was initiated in 1990. The landfill was capped in 1994. During a 1995 monitoring event, methane gas was detected at points outside the boundary of the landfill and near several

on-post warehouses. To protect the safety and health of the occupants, a soil vapor extraction (SVE) system was installed and started operating in February 1998. The SVE system was designed to eliminate the migration of methane between the landfill and the warehouses. Methane gas monitors with alarms were installed in the five (5) nearby warehouses. Unsafe levels of methane gas have not been detected in the warehouses since SVE system operation began in February 1998.

6.12.10 *Operable Unit 10 (FTEUST-01)—Officers' Club Landfill #1.* Landfill #1 is a non-permitted landfill, because it ceased operation prior to VDEQ's issuance of regulations requiring solid waste landfill permits. Trash, construction debris, waste oil, paint and garbage were reportedly disposed of using open trench and ramp methods. The landfill operated between 1937 and 1953. Open burning was conducted here and an incinerator was constructed during the late 1940s and early 1950s. Currently, an earth cap is covering Landfill #1 and the area is maintained as recreational. Four (4) monitoring wells encompass the landfill. A quarterly groundwater-sampling program was performed in 1990 and 1991. Sulfates, iron, and manganese in excess of background levels and coliform bacteria were consistently detected in three (3) out of four (4) monitoring wells.

6.12.11 *Operable Unit 11 (FTEUST-37), Former Skeet and Trap Range — Upland Area and Operable Unit 12 (FTEUST-38), Former Skeet and Trap Range — Wetland Area.* The Former Skeet and Trap Range is located in the northern portion of the main post and are bounded by Bailey Creek on the north, a wooded area on the east and west, and Lee Boulevard on the south. The range operated from the 1960s to May 1998. Shotgun shells with lead pellets were used at the range. The pellets were shot into the upper end of Bailey Creek and the adjacent tree line and soils. In addition, the clay targets contain varying levels of PAHs. For ease in managing response actions at the site, the Former Skeet and Trap Range has been divided into two operable units: OU 11, the Upland Area, and OU 12, the Wetland Area. Due to skeet range activity, elevated levels of lead and PAHs have been detected in OU 11, the Upland Area, and elevated levels of lead have been detected in OU 12, the Wetland Area.

6.12.12 *Operable Unit 13 (FTEUS-012-R-01), 1000" Rifle Range.* The 1000" Rifle Range was a former small arms training range, including 0.22-, 0.30-, and 0.45-caliber munitions, from 1920 to 1945. The range, located south of Wilson Avenue, northeast of OU 9 – Landfill 7, and north of the Warwick River, originally consisted of three firing ranges of different lengths. The Northern and Southern Berms are still present, and a concrete wall forms the back of the Northern Berm. Mounded soil, believed to be the remnants of soil from the Central Berm, is also present. The Central Berm may have been destroyed during the construction or capping of OU 9 - Landfill 7, located south of the site. The total area of this site is 18.5 acres. Lead was detected in excess of screening criteria during the site inspection.

6.13 Appendix A to this Agreement is an initial list of Operable Units for which a RI/FS must be completed in accordance with this Agreement. Appendix B is an initial list of Operable Units for which the RI/FS is complete and a Proposed Plan and/or a Record of Decision has been submitted in draft or issued. In addition, as discussed above, remedial action is complete at two of these Operable Units, the DOL Storage Yard (OU5) and the Oil/Sludge Holding Pond (OU7).

6.14 The Parties reviewed the 1996 "National Corrective Action Prioritization System (NCAPS) Assessment and Ranking for Fort Eustis, Newport News, Virginia" as well as the list of thirty-two (32) potential source areas identified during the HRS process. Because of overlap between the NCAPS sites and the potential source areas identified during the HRS process, the total number of sites evaluated was 61. The Parties documented their review in two March 2007 memoranda, entitled "Desktop Audit and No Further Action Decision Document for Thirty-One Sites National Corrective Action Prioritization System Sites, U.S. Army Transportation Center, Fort Eustis, Virginia" and "Desktop Audit and No Further Action Decision Document for Sixteen Sites, Hazard Ranking System Potential Source Areas, U.S. Army Transportation Center, Fort Eustis, Virginia." In these memoranda, which are part of the Administrative Record for Fort Eustis, the Project Managers for the Parties agreed that seven sites, listed in Appendix C, are being addressed under other environmental regulatory programs, and forty (40) sites, listed in Appendix D, do not pose a threat or potential threat to public health, welfare, or the environment and require no further action under CERCLA. These sites will not be investigated further, unless new information leads the Parties to believe that the sites have released hazardous substances, hazardous waste, or hazardous constituents into the environment and therefore pose a threat or potential threat to human health or the environment.

6.15 The Department of Defense established the Military Munitions Response Program (MRP) under the Defense Environmental Restoration Program (DERP) to address sites with unexploded ordnance (UXO), discarded military munitions (DMM), and munitions constituents (MC) located on non-operational (e.g., closed, transferred or transferring) range lands. Appendix E lists initial sites at Fort Eustis suspected to contain UXO, DMM, or MCs, at which the Army Corps of Engineers is currently conducting or has conducted site inspections. Any Party to this Agreement may, after site inspection is complete at an MRP site, propose the site as an Operable Unit under this Agreement, using the procedures in Subsection 9.2.2.

VII. EPA DETERMINATIONS

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

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

7.3 Fort Eustis is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9), and 10 U.S.C. Section 2701 *et seq.*, and is subject to the Defense Environmental Restoration Program.

7.4 The United States is the owner and operator of Fort Eustis as defined in Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. Sections 9601(20) and 9607(a)(1). The Army is the DoD component charged with fulfilling the obligations of the owner/operator under CERCLA at Fort Eustis. With respect to Fort Eustis, the Secretary of Defense has delegated to the Army the

CERCLA authority vested in him by Executive Order 12580. The Army is also the "lead agency," as defined in 40 C.F.R. § 300.5, for planning and implementing response actions under CERCLA at Fort Eustis.

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

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

7.7 The actions provided for in this Agreement are necessary to protect the public health, welfare, and the environment.

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

VIII. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

8.1 The Parties intend to integrate the Army's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will be deemed to achieve compliance with CERCLA, 42 U.S.C. Section 9601 *et seq.*; to satisfy the corrective action requirements of RCRA Sections 3004(u) and (v), 42 U.S.C. Sections 6924(u) and (v), for a RCRA permit, and RCRA Section 3008(h), 42 U.S.C. Section 6928(h), for interim status facilities; and to meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations, to the extent required by CERCLA Section 121, 42 U.S.C. Section 9621 and applicable Commonwealth law.

8.2 Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement will be deemed by the Parties to be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA (i.e., no further corrective action shall be required). The Parties agree that, with respect to releases of hazardous waste covered by this Agreement, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to CERCLA Section 121, 42 U.S.C. Section 9621.

8.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at Fort Eustis may require the issuance of permits under Federal and Commonwealth laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to Fort Eustis for ongoing hazardous waste management activities at the Site, U.S. EPA and or the Commonwealth shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such

permit. With respect to those portions of this Agreement incorporated by reference into permits, the Parties intend that judicial review of the incorporated portions shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

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

IX. WORK TO BE PERFORMED

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

9.2 Operable Units

9.2.1 The Army shall develop, implement and report on Remedial Investigations and Feasibility Studies (RI/FSs) for the Operable Units listed in Appendix A and new Operable Units established under Subsection 9.2.2. If an Operable Unit is modified under Subsection 9.2.3, and RI/FS work is appropriate for the modified Operable Unit, then the Army shall develop, implement and report on a RI/FS for the modified Operable Unit.

9.2.2 Any Party may propose that a new site within the facility be designated as an Operable Unit. The proposal must be in writing to the other Parties and must state the reasons for designating a new Operable Unit. The proposal shall be discussed by all Project Managers within forty-five (45) days of the written notice. Dispute Resolution may be invoked if the Parties are not in agreement on the proposal of a specific Operable Unit. If Dispute Resolution is not invoked by the Parties within thirty (30) days after completion of the Project Managers' discussion concerning the proposal, or if the need for an Operable Unit is established through Dispute Resolution, the proposed new site shall be an Operable Unit, as that term is defined in Section II – DEFINITIONS of this Agreement.

9.2.3 A Party may propose that an established Operable Unit be modified. The proposal must be in writing to the other Parties, and must state the reasons for the modification. The proposal shall be discussed by the Project Managers within forty-five (45) days of the written notice. Dispute Resolution may be invoked if the Parties are not in agreement on the proposal to modify a specific Operable Unit. If Dispute Resolution is not invoked within thirty (30) days after the Project Managers' discussion concerning the modification, or if the need for modifying an Operable Unit is established through Dispute Resolution, the Operable Unit, as defined in Section II – DEFINITIONS, shall be modified.

9.2.4 In the Site Management Plan, the Army shall include a Schedule and Milestone(s) for submitting RI/FS Work Plan(s) for the Operable Units in Appendix A, except for those Operable Units for which RI/FS Work Plans have already been submitted. When a new Operable Unit is established under Subsection 9.2.2, the Army shall, in the next draft amendment to the Site Management Plan, propose a Milestone for submitting of a RI/FS Work Plan for the new Operable Unit. When an Operable Unit is modified under Subsection 9.2.3, and RI/FS work is appropriate for the modified Operable Unit, the Army shall, in the next draft amendment to the Site Management Plan, propose a Milestone for submitting a RI/FS Work Plan for the modified Operable Unit. The RI/FS Work Plan(s) shall contain proposed Schedules and Milestone(s) for the submittal of the RI/FS Report(s). The Schedule(s) and Milestone(s) included in the Final RI/FS Work Plan(s) shall be incorporated into the Site Management Plan in accordance with Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement. The development of the FS(s) will proceed in accordance with Subsection 9.2.7 of this Agreement.

9.2.5 For those Sites that the Parties determine represent a negligible or minimal risk and are strong candidates for no action, the Army shall submit a concise FS statement indicating negligible or minimal risks were found and no action is warranted. If the Parties determine that no action is required, a no-action Proposed Plan will be prepared. A Schedule for completing a no-action Proposed Plan will be developed in accordance with Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

9.2.6 RIs shall be conducted in accordance with the requirements and Schedules set forth in the approved RI/FS Work Plan(s) and Site Management Plan. RIs shall meet the purposes set forth in Section IV – PURPOSE, of this Agreement. A Baseline Risk Assessment shall be a component of the RIs. Final Site clean-up level criteria will only be determined following completion of the Baseline Risk Assessment.

9.2.7 The Army agrees it shall develop, implement and report upon a FS for areas subject to a RI. The FS shall be conducted in accordance with the requirements and Schedules set forth in the Site Management Plan. The FS shall meet the purposes set forth in Section IV – PURPOSE of this Agreement.

9.3 Procedures for Interim Remedial Actions

9.3.1 The Army shall implement those Interim Remedial Actions (IRA) necessary to prevent, minimize, or eliminate risks to human health and the environment caused by the release of hazardous substances, pollutants, or contaminants. An Interim Remedial Action is identified, proposed, and implemented prior to a final Remedial Action. An IRA shall attain ARARs to the extent required by CERCLA or the NCP and be consistent with, and contribute to, the efficient performance of a final Remedial Action(s) taken at an area or Operable Unit. An IRA must be protective of human health and the environment, and comply with CERCLA, the NCP, and Commonwealth laws to the extent that they are legally applicable, or relevant and appropriate requirements in accordance with Section 121 of CERCLA, and this Agreement.

9.3.2 When a Party to this Agreement determines that an Interim Remedial Action is necessary for any area(s) within the Facility, such Party shall notify, in writing, the other Parties, of the proposal. The Proposal Notification to the other Parties under this Subsection 9.3.2 shall at a minimum include the location(s) of such area(s) within the Facility and the reason(s) the Party believes an Interim Remedial Action is required. Any Party may propose an IRA for those Operable Unit(s) most suitable for an Interim Remedial Action.

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

9.3.4 After the determination that an Interim Remedial Action is required under this Agreement, the Army shall, in the next draft amended Site Management Plan, submit to EPA and the VDEQ proposed Milestone(s) for the submission of Work Plan(s) for the performance of a Focused Feasibility Study (FFS) for the identified area(s). The Milestone(s) will be finalized in accordance with Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN. The Schedule and Milestone(s) included in the approved, final FFS Work Plan will immediately be incorporated in the Site Management Plan. The FFS shall include a limited number of proposed Interim Remedial Action alternatives. To the extent possible, the FFS shall provide an assessment of the degree to which these alternatives were analyzed during their development and screening. The Army shall develop, implement, and report upon each FFS in accordance with the requirements set forth in the final FFS Work Plan. The Army shall follow the steps outlined in Subsections 9.4.2 through 9.7.4 below.

9.4 Records of Decision and Plans for Remedial Action

9.4.1 This Subsection 9.4 shall apply to selection of remedial actions and any disputes relating thereto.

9.4.2 Within forty-five (45) days after finalization of a RI/FS or FFS, the Army shall submit a draft Proposed Plan to EPA and the VDEQ for review and comment as described in Section X – CONSULTATION. Within fourteen (14) days after receiving EPA's acceptance and the VDEQ's comments on the Proposed Plan, the Army shall publish its Proposed Plan for thirty (30) days of public review and comment. During the public comment period, the Army shall make the Proposed Plan and supporting analysis and information available to the public in the Administrative Record. The Army shall hold a public information meeting during the public comment period to discuss the preferred alternative for each Remedial Action. Copies of all written and oral public comments received will be provided to the Parties. Public review and comment shall be conducted in accordance with Section 117(a) of CERCLA, 42 U.S.C. Section 9617(a), and applicable EPA and Commonwealth Guidance.

9.4.3 Following public comment, the Army, in consultation with EPA and the VDEQ, will determine if the Proposed Plan should be modified based on the comments received. These modifications will be made by the Army and the modified documents will be provided to EPA

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

9.4.4 The Army shall submit its draft ROD to EPA and the VDEQ within forty-five (45) days following the close of the public comment period, including any extensions, on the Proposed Plan. The draft ROD will include a Responsiveness Summary, in accordance with applicable EPA Guidance. Pursuant to CERCLA Section 120(e)(4)(A), 42 U.S.C. Section 9620(e)(4)(A), EPA and the Army, in consultation with the Commonwealth, shall make the final selection of the remedial action(s).

9.4.5 The selection of a remedy that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria or limitation is one basis on which the Commonwealth may determine not to concur with a final remedial action plan. In accordance with CERCLA Section 121(f)(3)(A), 42 U.S.C. Section 9621(f)(3)(A), at least thirty (30) days prior to the publication of the Army's final remedial action plan, if the Army proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria or limitation, the Army shall provide an opportunity for the Commonwealth to concur or not concur in the selection of such plan. If the Commonwealth concurs or does not act within thirty (30) days of receipt of notification by the Army of pending publication of the final remedial action plan, the remedial action may proceed. If the Commonwealth does not concur, it may act pursuant to Section 121(f)(3)(B) of CERCLA, 42 U.S.C. Section 9621(f)(3)(B).

9.4.6 If EPA and the Army are unable to reach agreement on the selection of the remedy, after exhausting the Dispute Resolution process set forth in Section XX – DISPUTE RESOLUTION, then the Administrator shall select the remedy in accordance with all applicable laws and procedures.

9.4.7 Notice of the final ROD shall be published by the Party preparing it and shall be made available to the public prior to commencement of the remedial action, in accordance with Section 117(b) of CERCLA, 42 U.S.C. Section 9617(b). The final ROD shall include a statement that the Commonwealth has concurred or not concurred with the selection of the remedy.

9.5 Remedial Design and Remedial Action

9.5.1 The Site Management Plan shall include a Target Date for submission of a preliminary/conceptual Remedial Design (RD) (30 percent design report); a Target Date for submission of the 90 percent or pre-final Remedial Design; and a Deadline for the final Remedial Design. All design documents shall be prepared in accordance with this Agreement and applicable Guidance issued by EPA including *Principles and Procedures for Specifying Monitoring and Enforcement of Land Use Controls and Other Post-ROD Actions (as amended).*

9.5.1.1 The RD shall provide the appropriate plans and specifications describing the intended remedial construction and shall include provisions necessary to ensure that the remedial action will achieve ARARs and performance standards identified in the ROD.

9.5.1.2 The RD shall describe short and long-term implementation actions, and responsibilities for the actions, to ensure long-term viability of the remedy, which may include both Land Use Controls and an engineered portion (e.g., landfill caps, treatment systems) of the remedy. The term "implementation actions" includes all actions to implement, operate, maintain, and enforce the remedy.

9.5.2 The Remedial Action (RA) Work Plan(s) shall at a minimum contain a Schedule for the completion of the Remedial Action, a Health and Safety Plan, a Sampling and Analysis Plan, and a Quality Assurance Project Plan, Remedial Action Specifications, Erosion Control and Sedimentation Plan, Decontamination Plan, Remedial Action Contingency Plan, and provisions for operation and maintenance, if necessary. The Schedule contained in the final RA Work Plan(s) will be immediately incorporated in the Site Management Plan.

9.5.3 After the final design document is approved, pursuant to Section X – CONSULTATION, the Army shall begin performance of the Remedial Action in accordance with the ROD, final Remedial Design and the RA Work Plan. The Remedial Action shall be completed in accordance with the ROD, approved final Remedial Design and RA Work Plan and all applicable EPA and Commonwealth Guidance.

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

9.6 Accelerated Operable Unit

9.6.1 Accelerated Operable Units (AOUs), as defined in Section II – DEFINITIONS, will follow a streamlined remedial process as set forth below. Any Party may propose in writing that an Operable Unit (OU) be conducted as an AOU. The Party proposing an AOU shall be responsible for drafting an AOU proposal, which shall clearly define the purpose, scope and goals of the AOU. The Army shall evaluate all proposed AOUs.

9.6.2 Within thirty (30) days of notification, any Party may request a meeting of the Parties to assist in expediting selection of an AOU. If dispute resolution is not invoked within thirty (30)

days following receipt of a proposal for an AOU by the Parties, or thirty (30) days after the meeting, or if the need for an AOU is established through Section XX – DISPUTE RESOLUTION, the proposed AOU shall be incorporated into the Site Management Plan as an AOU. The Army agrees to pursue additional funding within ten (10) days of establishment of the AOU in order to initiate the AOU.

9.6.3 Within fifteen (15) days after the determination that an AOU is required under this Agreement, the Army shall submit to EPA and the VDEQ proposed Deadlines for the submission of Work Plan(s) for the performance of an AOU Focused Feasibility Study (FFS) for the identified AOU(s). Each AOU FFS Work Plan shall contain a proposed Deadline for submittal of the AOU FFS and Proposed Plan, which will be incorporated in the next Site Management Plan. The Army shall develop, implement and report upon each AOU FFS in accordance with the requirements set forth in the final AOU FFS Work Plan. The Army shall follow the steps outlined in Subsections 9.4.2 through 9.5.4.

9.7 Supplemental Response Action

9.7.1 The Parties recognize that subsequent to finalization of a ROD, a need may arise for one or more supplemental response actions to remedy continuing or additional releases or threats of releases of hazardous substances, pollutants, or contaminants at or from the Site. If such release or threat of release may present an immediate threat to public health or welfare or the environment, it shall be addressed pursuant to Section XVIII – REMOVAL AND EMERGENCY ACTIONS. If such release or threat of release does not present an immediate threat to public health or welfare or the environment, it shall be addressed pursuant to Subsections 9.7.2 through 9.8.2.

9.7.2 A supplemental response action shall be undertaken only when:

9.7.2.1 A determination is made that:

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

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

9.7.2.2 Either of the following conditions is met for any determination made pursuant to Subsection 9.7.2.1, above:

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

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

9.7.3 If, subsequent to ROD signature, any Party concludes that a supplemental response action is necessary, based on the criteria set forth in Subsection 9.7.2, such Party shall promptly notify the others of its conclusion in writing. The notification shall specify the nature of the modification needed and the new information on which it is based. The Project Managers shall confer and attempt to reach consensus on the need for such an action within thirty (30) days of receiving such notification. If the Project Managers fail to reach consensus, any Party may notify the other Parties in writing within ten (10) days thereafter that it intends to invoke dispute resolution. If the Project Managers are still unable to reach consensus within fourteen (14) days of the issuance of notice invoking dispute resolution, the question of the need for the supplemental response action shall be resolved through dispute resolution.

9.7.4 If the Project Managers agree, or if it is determined through dispute resolution, that a supplemental response action is needed based on the criteria set forth in Subsection 9.7.2, the Army shall propose a Deadline for submittal of the Supplemental Work Plan(s) and a Schedule for performance of the Work there under to EPA and the VDEQ in the next draft amended SMP.

9.7.5 After finalization of a Supplemental Work Plan, the Army shall conduct a Supplemental Response Action RI/FS. Following finalization of the Supplemental Response Action RI/FS, the procedures described in Subsections 9.4 and 9.5 shall be followed.

9.8 Construction Completion and Site Completion.

9.8.1 Construction Completion. The Army agrees that it shall provide written notice to EPA and the VDEQ when physical construction of all remedial actions for all Operable Units is complete and will incorporate in the notice reference to the supporting RACRs.

9.8.2 Site Completion. Following completion of remedial action at the last Operable Unit and in accordance with the Schedule in the Site Management Plan, the Army shall prepare and submit to EPA and VDEQ a Remedial Action Completion Report (RACR) to show that remedial action objectives for all OUs have been achieved. The RACR shall provide an explanation for any activities that were not conducted in accordance with the final Remedial Design and/or RA Work Plan(s). The information provided therein shall document compliance with statutory requirements and provide a consolidated record of all remedial activities for all OUs at the Site in accordance with the DoD and EPA Joint Guidance, Recommended Streamlined Site Closeout and NPL Deletion Process for DoD Facilities. In order for a Site to be eligible for completion, the following criteria must be met:

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

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

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

9.8.2.4 Land use controls are in place as appropriate; and

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

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

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

9.8.3.2 Deny the Army's request for certification of Site completion, stating the basis of its denial from the standards identified in 9.8.2 and detailing the additional Work needed for completion and certification.

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

9.8.3.4 If dispute resolution is not invoked, or if a denial of certification is upheld through dispute resolution, the Army shall, in the next draft amended Site Management Plan submitted after receipt of the written denial of certification or dispute resolution finding, propose a Deadline for the submittal of a draft Supplemental Work Plan. The draft Supplemental Work Plan shall contain a Schedule for completion of the additional Work required. This Schedule, once approved, will be incorporated in the Site Management Plan. After performing the additional Work, the Army may resubmit a request for certification to EPA as outlined in this Subsection 9.8.3. EPA, in consultation with the VDEQ, shall then grant or deny certification pursuant to the process set forth in this Subsection 9.8.3.

X. CONSULTATION

10.1 Review and Comment Process for Draft and Final Documents, Applicability

10.1.1 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 CERCLA Section 120 and 10 U.S.C. 2705, the Army will normally be responsible for issuing Primary and Secondary Documents to EPA and the VDEQ. 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 10.2 through 10.10 below.

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

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

10.2.1 Primary Documents include those documents that are major, discrete portions of RI/FS or RD/RA activities. Primary Documents are initially issued by the Army in draft subject to review and comment by EPA and the VDEQ. Following receipt of comments on a particular draft Primary Document, the Army 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 upon the earlier of (i) issuance of a "no additional comment letter" by EPA and the VDEQ, (ii) thirty days after the period established for review of a draft final primary document if dispute resolution is not invoked, or (iii) modification by decision of the dispute resolution process. No additional comment letters shall state the document is ready for inclusion in the Administrative Record.

10.2.2 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 Army in draft, subject to review and comment by EPA and the VDEQ. Although the Army will respond to comments received, the draft Secondary Documents may be finalized in the context of the corresponding Primary Documents. A Secondary Document may be disputed at the time the corresponding draft final Primary Document is issued.

10.3 Primary Documents

10.3.1 The Army shall complete and transmit draft reports for the following Primary Documents to EPA and the VDEQ for review and comment in accordance with the provisions of this Section, except that the Site Management Plan shall be reviewed and commented on in accordance with Sections XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT

PLAN and XII – BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN:

(1) RI/FS and FFS Work Plans including Sampling and Analysis Plan and Quality Assurance Project Plan (QAPP)

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

(3) FS and FFS Reports

(4) Proposed Plans

(5) Records of Decision

(6) Final Remedial Designs

(7) Remedial Action Work Plans

(8) Remedial Action Completion Reports

(9) the Site Management Plan and each annual amendment

10.3.2 Only the draft final Primary Documents identified above (and their amendments) shall be subject to dispute resolution. The Army shall complete and transmit draft Primary Documents in accordance with the Schedule and Deadlines established in Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN.

10.3.3 Prior to the Effective Date of this Agreement, the Army has completed and transmitted the following draft Primary Documents listed below to EPA and the VDEQ for review and comment:

Remedial Investigations and Feasibility Studies for:

FTEUST-30	Bailey Creek
FTEUST-29	Brown's Lake
FTEUST-06	Fire Training Area
FTEUST-27	Milstead Island Creek
FTEUST-36	Eustis Lake
FTEUST-34	DOL Storage Yard
FTEUST-19	Oil/Sludge Holding Pond
FTEUST-32	Felker Army Airfield

Proposed Plans for:

FTEUST-29	Brown's Lake
FTEUST-27	Milstead Island Creek
FTEUST-34	DOL Storage Yard

FTEUST-19 Oil/Sludge Holding Pond
FTEUST-04 Landfill #7/South Landfill
FTEUST-01 Officers' Club Landfill #1

Records of Decision for:
FTEUST-29 Brown's Lake
FTEUST-34 DOL Storage Yard
FTEUST-19 Oil/Sludge Holding Pond
FTEUST-27 Milstead Island Creek

10.4 Secondary Documents

10.4.1 All Secondary Documents shall be prepared in accordance with the NCP and applicable EPA Guidance. The Army shall complete and transmit drafts of the following Secondary Documents to EPA and the VDEQ for review and comment in accordance with the provisions of this Section:

(1) Initial Remedial Action / Data Quality Objectives

(2) Non-Time-Critical Removal Action Plans (40 C.F.R. Section 300.415(b)(4)(ii))

(3) Pilot/Treatability Study Work Plans

(4) Pilot/Treatability Study Reports

(5) Engineering Evaluation/Cost Analysis Reports

(6) Preliminary/Conceptual Remedial Designs

(7) Prefinal Remedial Designs

(8) Well Closure Methods and Procedures

(9) Removal Action Memoranda

10.4.2 Although EPA and the VDEQ 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 10.2 hereof. Target Dates shall be established for the completion and transmission of draft Secondary Documents pursuant to Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN.

10.5 Meetings of the Project Managers on Development of Documents

10.5.1 The Project Managers shall meet approximately every ninety (90) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at

the site and on the Primary and Secondary Documents. Prior to preparing any draft report specified in Subsections 10.3 and 10.4 above, the Project Managers shall meet or confer by telephone to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft report.

10.6 Identification and Determination of Potential ARARs

10.6.1 For those Primary Documents or Secondary Documents that consist of or include ARAR determinations, the Project Managers shall meet prior to the issuance of a draft report, to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. The VDEQ shall identify all potential Commonwealth ARARs as early in the remedial process as possible consistent with the requirements of CERCLA Section 121 and the NCP.

10.6.2 The Army shall consider any written interpretations of ARARs provided by the VDEQ. Draft ARAR determinations shall be prepared by the Army in accordance with CERCLA Section 121(d)(2), the NCP, and pertinent Guidance issued by EPA, that is not inconsistent with CERCLA and the NCP.

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

10.7 Review and Comment on Draft Documents

10.7.1 The Army shall complete and transmit each draft Primary Document to EPA and the VDEQ on or before the corresponding Deadline established for the issuance of the document. The Army shall complete and transmit the draft Secondary Document in accordance with the Target Dates established for the issuance of such reports established pursuant to Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

10.7.2 Unless the Parties mutually agree to another time period, all draft documents, except the Site Management Plan, the prefinal Remedial Design and the final Remedial Design, shall be subject to a sixty (60) day period for review and comment. The Site Management Plan shall be reviewed and commented on in accordance with Section XII – BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN or as agreed to by the Parties. The Parties recognize that time periods for review and comment on the draft Remedial Design and Remedial Action Work Plans may need to be expedited in order for the Army to satisfy the requirement of Section 120(e)(2) of CERCLA, 42 U.S.C. Section 9620(e)(2). The prefinal Remedial Design shall be subject to a forty-five (45) day period for review and comment. The final Remedial Design will be subject to a two (2) week period for review and comment by the Parties. If the final Remedial Design differs substantially from the prefinal Remedial Design, EPA or the VDEQ may extend the two (2) week review and comment period for an additional

two (2) weeks by providing written notice to the Army prior to the end of the initial two (2) week comment period. Review of any document by EPA and the VDEQ may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, and any pertinent Guidance or policy promulgated by EPA, and with applicable Commonwealth law. Comments by EPA and the VDEQ shall be provided with adequate specificity so that the Army may respond to the comment and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Army, EPA or the Commonwealth shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, EPA or the VDEQ may extend the sixty (60) day comment period for an additional twenty (20) days by written notice to the Army prior to the end of the sixty (60) day period. On or before the close of any comment period, EPA and the VDEQ shall transmit their written comments to the Army.

10.7.3 The review period for documents shall not begin until the submission date specified in the Site Management Plan.

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

10.7.5 In commenting on a draft document that contains a proposed ARAR determination, EPA or the VDEQ shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that EPA or the VDEQ objects, it shall explain the basis for its objection in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

10.7.6 Following the close of the comment period for a draft document, the Army shall give full consideration to all written comments on the draft document submitted during the comment period. Within sixty (60) days of the close of the comment period on a draft Secondary Document, the Army shall transmit to EPA and the VDEQ 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 Document, the Army shall transmit to EPA and the VDEQ a Draft Final Primary Document, which shall include the Army's response to all written comments received within the comment period. While the resulting draft final document shall be the responsibility of the Army, it shall be the product of consensus to the maximum extent possible.

10.7.7 The Army may extend the 60-day period for either responding to comments on a draft document or for issuing the draft final Primary Document for an additional twenty (20) days by providing timely notice to EPA and the VDEQ. In appropriate circumstances, this time period may be further extended in accordance with Section XIII – EXTENSIONS.

10.8 Availability of Dispute Resolution for draft final Primary Documents:

10.8.1 Dispute resolution shall be available to the Parties for draft final Primary Documents as set forth in Section XX – DISPUTE RESOLUTION.

10.8.2 When dispute resolution is invoked on a draft final Primary Document, Work may be stopped in accordance with the procedures set forth in Section XX – DISPUTE RESOLUTION.

10.9 Finalization of Documents. The draft final Primary Document shall serve as the final Primary Document if no Party invokes dispute resolution regarding the document or, if invoked, at the completion of the dispute resolution process should the Army's position be sustained. If the Army's determination is not sustained in the dispute resolution process, the Army shall prepare, within not more than thirty-five (35) days, a revision of the draft final document, which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section XIII – EXTENSIONS.

10.10 Subsequent Modification of Final Document

10.10.1 Following finalization of any Primary Document pursuant to Subsection 10.9 above, any Party to this Agreement may seek to modify the document, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Subsections 10.10.2 and 10.10.3 below.

10.10.2 A Party may seek to modify a document after finalization if it determines, based on new information (i.e., information that became available, or conditions that became known, after the document was finalized) that the requested modification is necessary. A 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.

10.10.3 In the event that a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke dispute resolution to determine if such modification shall be conducted. Modification of a document shall be required only upon a showing that:

10.10.3.1 The requested modification is based on significant new information; and

10.10.3.2 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.

10.10.4 Nothing in this Subsection 10.10 shall alter EPA's or the VDEQ's ability to request the performance of additional work that was not contemplated by this Agreement. The Army's obligation to perform such work must be established by either a modification of a report or document or by amendment to this Agreement.

XI. DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN

11.1 This Agreement establishes a process for creating and amending the Site Management Plan (SMP). An initial SMP is attached as Appendix F to this Agreement. The SMP and each annual amendment to the SMP shall be Primary Documents. Milestones established in a SMP or established in a final amendment to a SMP remain unchanged unless otherwise agreed to by the Parties or unless directed to be changed pursuant to the agreed dispute resolution process set out in Subsections 12.5 or 12.6. In addition, if an activity is fully funded in the current Fiscal Year, Milestones associated with the performance of Work and submittal of Primary Documents associated with such activity (even if they extend beyond the current Fiscal Year) shall be enforceable.

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

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

11.4 The SMP and its annual amendments include:

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

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

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

11.4.3.1 Identification of any Primary Actions;

11.4.3.2 All Deadlines;

11.4.3.3 All Near Term Milestones;

11.4.3.4 All Out Year Milestones;

11.4.3.5 All Target dates;

11.4.3.6 Schedule for initiation of Remedial Designs, Interim Response Actions, Non-Time-Critical Removal Actions, AOUs, and any initiation of other planned response action(s) covered by this Agreement; and

11.4.3.7 All Project End Dates.

11.5 The Army shall submit amendments to the SMP on an annual basis as provided in Section XII – BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN. All amendments to the SMP shall meet all of the requirements set forth in this Section.

11.6 The Milestones established in accordance with this Section and Section XII – BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN remain the same unless otherwise agreed by the Parties, or unless changed in accordance with the dispute resolution procedures set out in Subsections 12.5 and 12.6. The Parties recognize that possible bases for requests for changes or extensions of the Milestones include but are not limited to: (i) the identification of significant new Site conditions at this installation; (ii) reprioritization of activities under this Agreement caused by changing priorities or new site conditions elsewhere in the Army; (iii) reprioritization of activities under this Agreement caused by budget adjustments (e.g., rescissions, inflation adjustments, and reduced Congressional appropriations); (iv) an event of Force Majeure; (v) a delay caused by another Party's failure to meet any requirement of this Agreement; (vi) a delay caused by the good faith invocation of dispute resolution or the initiation of judicial action; (vii) a delay caused, or that is likely to be caused, by the grant of an extension in regard to another timetable and Deadline or Schedule; and (viii) any other event or series of events mutually agreed to by the Parties as constituting good cause.

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

XII. BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN

12.1 The Army, as a Federal agency, is subject to fiscal controls, hereinafter referred to as the Future Years Defense Plan (FYDP). The planning, programming, and budgeting process, hereinafter referred to as the Program Objectives Memorandum (POM) process, is used to review total requirements for DoD programs and make appropriate adjustments within the FYDP for each program while adhering to the overall FYDP control. The Parties recognize that the

POM process is a multi-year process. The Parties also agree that all Parties should be involved in the full cycle of POM activities as specified in this Agreement. Further, the Parties agree that each Party should consider the factors listed in Subsection 11.3, including Federal fiscal constraints as well as each of the other factors, in their priority-setting decisions. Initial efforts to close any gap between cleanup needs and funding availability shall be focused on the identification and implementation of cost savings.

Facility-Specific Budget Building

12.2 In order to promote effective involvement by the Parties in the POM process, the Parties will meet at the Project Manager level for the purpose of (1) reviewing the FYDP controls; (2) developing a list of requirements/Work to be performed at the Site for inclusion in the Army POM process; and, (3) participating in development of the Army submission to the proposed President's budget, based on POM decisions for the year currently under consideration. Unless the Parties agree to a different time frame, the Army agrees to notify the other Parties within ten (10) days of receipt, at the Project Manager level, that budget controls have been received. Unless the Parties agree to a different time frame or agree that a meeting is not necessary, the Parties will meet, at the Project Manager level, within thirty (30) days of receiving such notification to discuss the budget controls. However, this consultation must occur at least ten (10) days prior to the Army's initial budget submission to the Army Installation Management Command (IMCOM). In the event that the Project Managers cannot agree on funding levels required to perform all Work outlined in the SMP, the Parties agree to make reasonable efforts to informally resolve these disagreements, either at the immediate or secondary supervisor level; this would also include discussions, as necessary, with IMCOM. If agreement cannot be reached informally within a reasonable period of time, the Army shall resolve the disagreement, if possible with the concurrence of all Parties, and notify each Party. If all Parties do not concur in the resolution, the Army will forward through IMCOM to the Army Headquarters its budget request with the views of the Parties not in agreement and also inform Army Headquarters of the possibility of future enforcement action should the money requested not be sufficient to perform the Work subject to disagreement. In addition, if the Army's budget submission to IMCOM relating to the terms and conditions of this Agreement does not include sufficient funds to complete all Work in the existing SMP, such budget submission shall include supplemental reports that fully disclose the Work required by the existing SMP, but not included in the budget request due to fiscal controls (e.g., a projected budget shortfall). These supplemental reports shall accompany the cleanup budget that the Army submits through its higher Headquarters levels until the budget shortfall has been satisfied. If the budget shortfall is not satisfied, the supplemental reports shall be included in the Army's budget submission to the DoD Comptroller. The Deputy Under Secretary of Defense (Installations and Environment) shall receive information copies of any supplemental reports submitted to the DoD Comptroller.

Army Budget for Clean Up Activities

12.3 The Army shall forward to the other Parties documentation of the budget requests (and any supplemental reports) for the Site, as submitted by the Army to IMCOM, and by IMCOM to the Army Headquarters, within 14 days after the submittal of such documentation to the Army Headquarters by IMCOM. If the Army proposes a budget request relating to the terms and

conditions of this Agreement that impacts other installations, discussions with other affected EPA Regions and states regarding the proposed budget request need to take place.

Amended SMP

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

12.5.1 The Parties shall meet as necessary to discuss the draft amendment to the SMP. The Parties shall use the consultation process contained in Section X – CONSULTATION, except that none of the Parties will have the right to use the extension provisions provided therein and comments on the draft amendment will be due to the Army no later than 30 days after receipt by EPA and the Commonwealth of the draft amendment. If either EPA or the Commonwealth provide comments and are not satisfied with the draft amendment during this comment period, the Parties shall meet to discuss the comments within 15 days of the Army's receipt of comments on the draft amendment. The draft final amendment to the SMP will be due from the Army no later than 30 days after the end of the EPA and Commonwealth comment period. During this second 30-day time period, the Army will, as appropriate, make revisions and re-issue a revised draft herein referred to as the draft final amendment. To the extent that Section X – CONSULTATION contains time periods differing from these 30 day periods, this provision will control for consultation on the amendment to the SMP.

12.5.2.1 If the Army proposes, in the draft final amendment to the SMP, modifications of Milestones to which either EPA or the Commonwealth have not agreed, those proposed modifications shall be treated as a request by the Army for an extension. Milestones may be extended during the SMP review process by following Subsections 12.4 through 12.7. All other extensions will be governed by Section XIII – EXTENSIONS. The time period for EPA to respond to the request for extension will begin on the date EPA receives the draft final amendment to the SMP, and EPA and the Commonwealth shall advise the Army in writing of their respective positions on the request within thirty days. If EPA and the Commonwealth approve of the Army's draft final amendment, the document shall then await finalization in accordance with Subsections 12.5.3 and 12.6. If EPA denies the request for extension, then the Army may amend the SMP in conformance with EPA and Commonwealth comments or seek and obtain a determination through the dispute resolution process established in Section XX –

DISPUTE RESOLUTION within 21 days of receipt of notice of denial. Within 21 days of the conclusion of the dispute resolution process, the Army shall revise and reissue, as necessary, the draft final amendment to the SMP. If EPA or the Commonwealth initiates a formal request for a modification to the SMP to which the Army does not agree, EPA or the Commonwealth may initiate dispute resolution as provided in Section XX – DISPUTE RESOLUTION with respect to such proposed modification. In resolving a dispute, the persons or person resolving the dispute shall give full consideration to the bases for changes or extensions of the Milestones referred to in Subsection 11.6 asserted to be present, and the facts and arguments of each of the Parties.

12.5.2.2 Notwithstanding Subsection 12.5.2.1, if the Army proposes, in the draft final amendment to the SMP, modifications of Project End Dates which are intended to reflect the time needed for implementing the remedy selected in the Record of Decision but to which either EPA or the Commonwealth have not agreed, those proposed modifications shall not be treated as a request by the Army for an extension, but consistent with Section XX – DISPUTE RESOLUTION, EPA or the Commonwealth may initiate dispute resolution with respect to such Project End Date.

12.5.2.3 In any dispute under this Section, the time periods for the standard dispute resolution process contained in Subsections 20.2, 20.5, and 20.6 of Section XX – DISPUTE RESOLUTION shall be reduced by half in regard to such dispute, unless the Parties agree to dispute directly to the SEC level.

12.5.3 The Army shall finalize the draft final amendment as a final amendment to the SMP consistent with the mutual consent of the Parties, or in the absence of mutual consent, in accordance with the final decision of the dispute resolution process. The draft final amendment to the SMP shall not become final until 21 days after the Army receives official notification of Congress's authorization and appropriation of funds if funding is sufficient to complete Work in the draft final SMP or, in the event of a funding shortfall, following the procedures in Subsection 12.6. However, upon approval of the draft final amendment or conclusion of the dispute resolution process, the Parties shall implement the SMP while awaiting official notification of Congress's authorization and appropriation.

Resolving Appropriations Shortfalls

12.6 After authorization and appropriation of funds by Congress and within 21 days after the Army has received official notification of the Army's allocation based on the current year's Environmental Restoration, Army (ER,A) Account, the Army shall determine if planned Work (as outlined in the draft final amendment to the SMP) can be accomplished with the allocated funds. (1) If the allocated funds are sufficient to complete all planned Work for that fiscal year and there are no changes required to the draft final amendment to the SMP, the Army shall immediately forward a letter to the other Parties indicating that the draft final amendment to the SMP has become the final amendment to the SMP. (2) If the Army determines within the 21-day period specified above that the allocated funds are not sufficient to accomplish the planned Work for the Site (an appropriations shortfall), the Army shall immediately notify the Parties. The Project Managers shall meet within thirty (30) days to determine if planned Work (as outlined in the draft final amendment to the SMP) can be accomplished through: 1) rescoping or

rescheduling activities in a manner that does not cause previously agreed upon Near Term Milestones and Out Year Milestones to be missed; or 2) developing and implementing new cost-saving measures. If, during this thirty (30) day discussion period, the Parties determine that rescoping or implementing cost-saving measures are not sufficient to offset the appropriations shortfall such that Near Term Milestones, Out Year Milestones, and Project End Dates should be modified, the Parties shall discuss these changes and develop modified Milestones. Such modifications shall be based on the "Risk Plus Other Factors" prioritization process discussed in Subsection 11.3, and shall be specifically identified by the Army. The Army shall submit a new draft final amendment to the SMP to the other Parties within 30 days of the end of the 30 day discussion period. In preparing the revised draft final amendment to the SMP, the Army shall give full consideration to EPA and Commonwealth input during the 30-day discussion period. If the EPA and Commonwealth concur with the modifications made to the draft final amendment to the SMP, EPA and the Commonwealth shall notify the Army and the revised draft final amendment shall become the final amendment. In the case of modifications of Milestones due to appropriations shortfalls, those proposed modifications shall, for purposes of dispute resolution, be treated as a request by the Army for an extension, which request is treated as having been made on the date that EPA receives the new draft final SMP or draft final amendment to the SMP. EPA and the Commonwealth shall advise the Army in writing of their respective positions on the request within 21 days. The Army may seek and obtain a determination through the dispute resolution process established in Section XX – DISPUTE RESOLUTION. The Army may invoke dispute resolution within fourteen days of receipt of a statement of nonconcurrence with the requested extension. In any dispute concerning modifications under this Section, the Parties will submit the dispute directly to the SEC level, unless the Parties agree to utilize the standard dispute resolution process, in which case the time periods for the dispute resolution process contained in Subsections 20.2, 20.5, and 20.6 of Section XX – DISPUTE RESOLUTION shall be reduced by half in regard to such dispute. Within 21 days after the conclusion of the dispute resolution process, the Army shall revise and reissue, as necessary, the final amendment to the SMP.

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

Public Participation

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

12.8.1 The Parties will meet, after seeking the views of the general public, and determine the most effective means to provide for participation by members of the public interested in this action in the POM process and the development of the SMP and its annual amendments. The

"members of the public interested in this action" may be represented by inclusion of a restoration advisory board or technical review committee, if they exist for Fort Eustis, or by other appropriate means.

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

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

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

XIII. EXTENSIONS

13.1 A Schedule, Deadline or Milestone shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by the Army shall be submitted in writing and shall specify:

13.1.1 The Deadline or Milestone that is sought to be extended;

13.1.2 The length of the extension sought;

13.1.3 The good cause(s) for the extension; and

13.1.4 Any related Deadline or Milestone that would be affected if the extension were granted.

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

13.2.1 An event of Force Majeure;

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

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

13.2.4 A delay caused, or which is likely to be caused, by the grant of an extension in regard to another Deadline or Milestone; and

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

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

13.4 Within seven (7) days of receipt of a request for an extension of a Deadline or a Milestone, the other Parties shall advise the requesting Party in writing of their positions on the request. Any failure by the other Parties to respond within the seven (7) day period shall be deemed to constitute concurrence in the request for extension. If a Party does not concur in the requested extension, it shall include in its statement of non-concurrence an explanation of the basis for its position.

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

13.6 Within seven (7) days of receipt of a statement of non-concurrence with the requested extension, the Army may invoke dispute resolution.

13.7 A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected Deadline or Milestone until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and the requested extension is denied, stipulated penalties may be assessed and may accrue from the date of the original Deadline or Milestone. 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 Deadline or Milestone as most recently extended.

XIV. PROJECT MANAGERS

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

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

14.3 The Parties' Project Managers shall meet or confer informally as necessary as provided in Section X – CONSULTATION. Although the Army has ultimate responsibility for meeting its

respective Deadlines, EPA and the VDEQ Project Managers shall endeavor to assist in this effort by scheduling meetings to review documents and reports, overseeing the performance of environmental monitoring at the Site, reviewing RI/FS or RD/RA progress, and attempting to resolve disputes informally. At least seven (7) days prior to each scheduled ninety (90) day meeting, the Army will provide to EPA and the VDEQ Project Managers a draft agenda and summary of the status of the Work.

14.3.1 These status reports shall include, when applicable:

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

14.3.1.2 All activities completed pursuant to this Agreement since the last Project Manager meeting as well as such actions and plans that are scheduled for the upcoming ninety (90) days; and

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

14.3.2 The minutes of each Project Manager meeting will be prepared by the Army and will be sent to all Project Managers within twenty-one (21) days after the meeting. Any documents requested during the meeting will be provided in a timely manner, except for those documents for which express notification is required.

14.4 Necessary and appropriate adjustments to a Deadline, Target Date or Milestone may be proposed by any Party. The Party that requested the modification shall prepare a written memorandum detailing the modification and the reasons therefore and shall provide a transmittal in a timely manner prior to the Deadline, Target Date or Milestone to the other Parties for signature and return.

14.5 A Project Manager may also recommend and request minor field modifications to the Work performed pursuant to this Agreement, or in techniques, procedures or designs used in carrying out this Agreement. The minor field modifications proposed under this Part must be approved orally by all the Parties' Project Managers to be effective. No such Work modifications can be so implemented if an increase in contract cost will result without the authorization of the Army Contracting Officer. If agreement cannot be reached on the proposed additional work or modification to Work, dispute resolution as set forth in Section XX – DISPUTE RESOLUTION, shall be invoked by the Army, by submitting a written statement to the other Parties in accordance with Section XX – DISPUTE RESOLUTION. If all Parties agree to the modification, within five (5) business days following a modification made pursuant to this Section, the Project Manager who requested the modification shall prepare a written transmittal detailing the modification and the reasons therefore and shall provide the transmittal to the Project Managers of the other Parties for signature and return.

14.6 Modifications of Work not provided for in Subsections 14.4 and 14.5 of this Section must be approved orally by all the Parties' Project Managers to be effective. No such Work modifications can be so implemented if an increase in contract cost will result without the authorization of the Army Contracting Officer. If agreement cannot be reached on the proposed modification to Work, dispute resolution as set forth in Section XX – DISPUTE RESOLUTION, shall be used. If the Parties agree to the modification, within five (5) business days following a modification made pursuant to this Section, the Project Manager who requested the modification shall prepare a transmittal detailing the modification and the reasons therefore and shall provide the transmittal to the Project Managers of the other Parties for signature and return.

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

14.8 The Parties shall transmit Primary and Secondary Documents and all notices required herein by next day mail, hand delivery, electronic transmittal or certified letter to the persons specified in Subsection 14.9 below by the Deadline established under Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN. Time limitations shall commence upon receipt. The Army shall provide to EPA a maximum of two (2) hard-copies and to the VDEQ a maximum of two (2) copies of each Primary and Secondary Document, in addition to a CD-ROM disk version of each document for all Parties.

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

14.9.1 For the Army:	Fort Eustis IMNE-EUS-PW-E 1407 Washington Blvd. Fort Eustis, VA 23604-5306
14.9.2 For EPA:	U. S. Environmental Protection Agency Attn: Fort Eustis Project Manager NPL/BRAC Federal Facilities Branch 1650 Arch Street (3HS11) Philadelphia, PA 19103-2029
14.9.3 For the VDEQ:	Virginia Department of Environmental Quality Attn: Fort Eustis Project Manager Federal Facilities Program 629 East Main Street Richmond, VA 23219

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

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

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

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

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

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

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

14.13 If any event occurs or has occurred that may delay or prevent the performance of any obligation under this Agreement, whether or not caused by a Force Majeure event, any Party shall notify by telephone the other Parties' Project Manager within three (3) business days of when the Party first became aware that the event might cause a delay. If the Party intends to seek an extension of a Deadline or Schedule because of the event, the procedures of Section XIII – EXTENSIONS, shall apply.

XV. EXEMPTIONS

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

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

XVI. ACCESS

16.1 EPA and the VDEQ and/or their representatives shall have the authority to enter the Site at all reasonable times for the purposes consistent with provisions of this Agreement. Such authority shall include, but not be limited to: inspecting records, logs, contracts, and other documents relevant to implementation of this Agreement; reviewing and monitoring the progress of the Army, and its contractors, in carrying out the activities under this Agreement; conducting, with prior notice to the Army, tests that EPA or the VDEQ deem necessary; assessing the need for planning additional remedial response actions at the Site; and verifying data or information submitted to EPA and the VDEQ. The Army shall honor all reasonable requests for access to the Site made by EPA or the VDEQ, upon presentation of credentials showing the bearer's identification and that he/she is an employee or agent of EPA or the VDEQ. The Army Project Manager or his/her designee will provide briefing information, coordinate access and escort to restricted or controlled-access areas, arrange for installation passes, and coordinate any other access requests, which arise. The Army shall use its best efforts to ensure that conformance with the requirements of this Subsection 16.1 do not delay access.

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

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

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

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

16.6 The Army shall ensure that all response measures, ground water rehabilitation measures and remedial actions of any kind that are undertaken pursuant to this Agreement on any areas that: a) are presently owned by the United States and which are occupied by the Army or leased

by the Army to any other entity; or b) are in any manner under the control of the Army or any lessees or agents of the Army, shall not be impeded or impaired in any manner by any transfer of title or change in occupancy or any other change in circumstances of such areas.

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

XVII. PERMITS

17.1 The Army shall be responsible for obtaining all Federal, Commonwealth and local permits, which are necessary for the performance of all Work under this Agreement.

17.2 The Parties recognize that under Sections 121(d) and 121(e)(1) of CERCLA, 42 U.S.C. Sections 9621(d) and 9621(e)(1), and the NCP, portions of the response actions called for by this Agreement and conducted entirely onsite, where such response actions are selected and carried out in accordance with CERCLA, are exempt from the procedural requirement to obtain Federal, Commonwealth, or local permits. All activities must, however, comply with all the applicable or relevant and appropriate Federal and Commonwealth standards, requirements, criteria, or limitations, which would have been included in any such permit.

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

17.3.1 Identification of each permit that would otherwise be required;

17.3.2 Identification of the standards, requirements, criteria, or limitations that would need to be met to obtain each such permit; and

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

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

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

17.6 The Army agrees to notify EPA and the VDEQ of its intention to propose modifications to this Agreement to obtain conformance with the permit, or lack thereof if a permit or other authorization that is necessary for implementation of this Agreement is not issued, or is issued or renewed in a manner that is materially inconsistent with the requirements of this Agreement. Notification by the Army of its intent to propose modifications shall be submitted within sixty (60) days of receipt by the Army of notification that: (1) a permit will not be issued; (2) a permit has been issued or reissued; or (3) a final determination with respect to any appeal related to the issuance of a permit has been entered. Within sixty (60) days from the date it submits its notice of intention to propose modifications to this Agreement, the Army shall submit to EPA and the VDEQ its proposed modifications to this Agreement with an explanation of its reasons in support thereof.

17.7 EPA and the VDEQ shall review the Army's proposed modifications to this Agreement in accordance with Section XXXVII – AMENDMENT OF AGREEMENT. If the Army submits proposed modifications prior to a final determination of any appeal taken on a permit needed to implement this Agreement, EPA and the VDEQ may elect to delay review of the proposed modifications until after such final determination is entered.

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

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

XVIII. REMOVAL AND EMERGENCY ACTIONS

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

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

18.3 If during the course of performing the activities required under this Agreement, any Party identifies an actual or a substantial threat of a release of any hazardous substance, pollutant, or contaminant at or from the Site, that Party may propose that the Army undertake removal actions to abate the danger and threat that may be posed by such actual or threatened release. All removal actions conducted on Fort Eustis shall be conducted in a manner consistent with this Agreement, CERCLA, Executive Order 12580, DERP, including provisions for timely notification and consultation with EPA and the appropriate VDEQ and local officials, and the NCP and shall, to the extent practicable, contribute to the efficient performance of any long-term

remedial action with respect to the release(s) or threatened release(s) concerned. Prior to determining to undertake such actions, the Army shall submit to EPA and the VDEQ:

18.3.1 Documentation of the actual or threatened release at or from the Site;

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

18.3.3 Documentation that the action is consistent with the NCP, applicable Commonwealth regulations, and, to the extent practicable, contributes to the efficient performance of any long-term remedial action with respect to the release or threatened release concerned;

18.3.4 Prepare an Engineering Evaluation/Cost Analysis (EE/CA), or its equivalent for a removal action whenever a planning period of at least six months exists before on-site activities must be initiated (Non-Time Critical Removal Action). The EE/CA shall contain an analysis of removal alternatives for a site. The screening of alternatives shall be based on criteria as provided in CERCLA and the NCP, such as cost, feasibility, and effectiveness.

18.3.5 A Non-Time-Critical Removal Action Plan and Target Date for the proposed action; and

18.3.6 EPA and the VDEQ shall expedite all reviews of these proposals to the maximum extent practicable.

18.4 The opportunity for review and comment for proposed removal actions, as stated in Subsection 18.3 above, may not apply if the action is in the nature of an emergency removal taken because a release or threatened release may present an imminent and substantial endangerment to human health or the environment. The Army may determine that review and comment, as stated in Subsection 18.3 above, is impractical. However, in the case of an emergency removal action, the Army shall provide EPA and the VDEQ with oral notice as soon as possible. A written notice shall be transmitted to all the Parties within forty-eight (48) hours after the Army determines that an emergency removal is necessary, which will include any deviations from the oral notice. Within seven (7) days after initiating an emergency removal action, the Army shall provide EPA and the VDEQ with the written basis (factual, technical and scientific) for such action and any available documents supporting such action. Upon completion of an emergency removal action, the Army shall state whether, and to what extent, the emergency removal action varied from the description of the action in the written notice provided pursuant to this Section. Within sixty (60) days of completion of an emergency response action, the Army will furnish EPA and the VDEQ with a Removal Action Memorandum addressing the information provided in the written notification, whether and to what extent the action varied from the description previously provided, and any other information required by CERCLA or the NCP, and in accordance with EPA Guidance for such actions. Such actions may be conducted at anytime, either before or after the issuance of a ROD.

18.5 If an imminent health hazard or an activity conducted pursuant to this Agreement that is creating a danger to the public health or welfare or the environment is discovered by any Party, the discovering Party will notify the other Parties and the Army will take immediate action to

promptly notify all appropriate Commonwealth and local agencies, potentially affected persons and officials in accordance with 10 U.S.C. Section 2705(a). The Army will expeditiously take appropriate measures to protect all persons affected.

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

XIX. PERIODIC REVIEW

19.1 Consistent with Section 121(c) of CERCLA, 42 U.S.C. Section 9621(c), Section 300.430(f)(4)(ii) of the NCP, and in accordance with this Agreement, if the selected remedial action results in any hazardous substance, pollutants or contaminants remaining at the Site at levels above that allowing for unlimited use and unrestricted exposure, the Parties shall review the remedial action for each Operable Unit at least every five (5) years after the initiation of the remedial action to assure that human health and the environment are being protected by the remedial action being implemented. As part of this review, the Army shall report the findings of the review to EPA and the VDEQ upon its completion. This report, the Periodic Review Assessment Report, shall be submitted to EPA and the VDEQ for review and comment. Target Dates shall be established for the completion and transmission of the Periodic Review Assessment Report pursuant to Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN.

19.2 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 Sections 104 or 106 of CERCLA, 42 U.S.C. Sections 9604 or 9606, the Army shall implement such additional or modified action in accordance with Section IX – WORK TO BE PERFORMED.

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

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

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

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

19.7 The assessment and selection of any additional response actions determined necessary as a result of a Periodic Review shall be in accordance with Subsection 9.7. Except for emergency response actions, which shall be governed by Section XVIII – REMOVAL AND EMERGENCY

ACTIONS, such response actions shall be implemented as a supplemental response action in accordance with Subsections 9.7.4 and 9.7.5.

XX. DISPUTE RESOLUTION

20.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section shall apply. All Parties to this Agreement shall make reasonable efforts to resolve disputes informally at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Section shall be implemented to resolve a dispute.

20.2 Within thirty (30) days after: (1) issuance of a draft final Primary Document pursuant to Section X – CONSULTATION; or (2) any action that leads to or generates a dispute, the disputing Party shall submit to the 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.

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

20.4 The Dispute Resolution Committee (DRC) will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. EPA's representative on the DRC is the Hazardous Site Cleanup Division Director of EPA Region III. The VDEQ representative on the DRC is the Remediation Programs Office Director. The Army's designated member is the Garrison Commander, Fort Eustis. Written notice of any delegation of authority from the Party's designated representative on the DRC shall be provided to the all other Parties pursuant to the procedures of Section XIV – PROJECT MANAGERS.

20.5 Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to resolve unanimously the dispute and issue a written decision signed by all Parties. If the DRC is unable to resolve unanimously 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 21-day resolution process.

20.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. EPA's representative on the SEC is the Regional Administrator of EPA Region III. The VDEQ's representative on the SEC is the Waste Division Director. The Army's representative on the SEC is the Assistant Secretary of the Army (Installations and

Environment). The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision signed by all Parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days, the EPA Regional Administrator shall issue a written position on the dispute. The Secretary of the Army and the Director of the VDEQ 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 Army or Director of the VDEQ elect not to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, the party shall be deemed to have agreed with Regional Administrator's written position with respect to the dispute.

20.7 Upon elevation of a dispute to the Administrator of EPA pursuant to Subsection 20.6, 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 Secretary of the Army and Director of the VDEQ to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other Parties with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Section shall not be delegated.

20.8 The pendency of any dispute under this Section shall not affect the Army'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 that are not affected by the dispute, shall continue to be completed in accordance with the applicable Schedule.

20.9 When dispute resolution is in progress, Work affected by the dispute will immediately be discontinued if the Hazardous Site Cleanup Division Director for EPA Region III requests, in writing, that Work related to the dispute be stopped because, in EPA's opinion, such Work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. The VDEQ may request the EPA Division Director to order Work stopped for the reasons set out above. To the extent possible, the Party seeking a Work stoppage shall consult with the other Parties prior to initiating a Work stoppage request. After stoppage of Work, if a Party believes that the Work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the Party ordering a Work stoppage to discuss the Work stoppage. Following this meeting, and further consideration of the issues, the EPA Division Director will issue, in writing, a final decision with respect to the Work stoppage. The final written decision of the EPA Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

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

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

20.12 The Commonwealth reserves the right to maintain an action under CERCLA Section 121(f)(3)(B), 42 U.S.C. Section 9621(f)(3)(B), to challenge the selection of a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria or limitation.

XXI. STIPULATED PENALTIES

21.1 In the event that the Army fails to submit a Primary Document, as listed in Section X – CONSULTATION, to EPA and the VDEQ pursuant to the appropriate timetable or Deadlines in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement that relates to an interim or final remedial action, EPA may assess a stipulated penalty against the Army. A stipulated penalty may be assessed in an amount not to exceed $5,000 for the first week (or part thereof), and $10,000 for each additional week (or part thereof) for which a failure set forth in this Subsection occurs. The VDEQ and EPA agree that all stipulated penalties shall be shared equally.

21.2 Upon determining that the Army has failed in a manner set forth in Subsection 21.1, EPA or the VDEQ shall so notify the Army in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Army 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 Army shall not be liable for the stipulated penalty assessed by EPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

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

21.3.1 The facility responsible for the failure;

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

21.3.3 A statement of any administrative or other corrective action taken, or a statement of why such measures were determined to be inappropriate;

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

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

21.4 In the event that stipulated penalties become payable by the Army under this Agreement, the Army will seek Congressional approval and authorization to pay such stipulated penalties in equal amounts to the Federal Hazardous Substances Superfund and to the Virginia Environmental Emergency Response Fund. Stipulated penalties assessed pursuant to this Section shall be payable only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the DoD. Any requirement for the payment of stipulated penalties under this Agreement shall be subject to the availability of funds, and no provision herein shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341.

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

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

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

XXII. FORCE MAJEURE

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

22.1.1 Acts of God;

22.1.2 Fire;

22.1.3 War;

22.1.4 Insurrection;

22.1.5 Civil disturbance;

22.1.6 Explosion;

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

22.1.8 Adverse weather conditions that could not be reasonably anticipated;

22.1.9 Unusual delay in transportation;

22.1.10 Restraint by court order or order of public authority;

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

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

22.1.13 Insufficient availability of appropriated funds, if the Army shall have made a timely request for such funds as a part of the budgetary process as set forth in Section XXVII – FUNDING.

22.2 A Force Majeure shall also include any strike or other labor dispute, whether or not within 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.

XXIII. ENFORCEABILITY

23.1 The Parties agree that:

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

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

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

23.1.4 Any final resolution of a dispute pursuant to Section XX – DISPUTE RESOLUTION that establishes a term, condition, timetable, Deadline or Schedule shall be enforceable by any person pursuant to CERCLA Section 310(c), and any violation of such term, condition, timetable, Deadline or Schedule will be subject to civil penalties under CERCLA Sections 310(c) and 109.

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

23.3 Nothing in this Agreement shall be construed as a restriction or waiver of any rights EPA or the Commonwealth may have under CERCLA, including but not limited to any rights under Sections 113, 120, 121 and 310, 42 U.S.C. Sections 9613, 9620, 9621 and 9659, or any rights, or defenses, including sovereign immunity, the VDEQ may have under Federal or Commonwealth law. The Army does not waive any rights it may have under CERCLA Section 120, SARA Section 211 and Executive Order 12580.

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

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

XXIV. OTHER CLAIMS

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

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

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

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

24.5 The Army shall notify the appropriate Federal and Commonwealth Natural Resource Trustees of potential damages to natural resources resulting from releases or threatened releases under investigation, as required by Section 104(b)(2) of CERCLA, 42 U.S.C. Section 9604(b)(2), and Section 2(e)(2) of Executive Order 12580. Except as provided herein, the Army is not

released from any liability that it may have pursuant to any provisions of Commonwealth and Federal law, including any claim for damages for destruction of, or loss of, natural resources.

24.6 This Agreement does not bar any claim for:

24.6.1 Natural resources damage assessments, or for damage to natural resources; or

24.6.2 Liability for disposal of any hazardous substances or waste material taken from Fort Eustis.

XXV. RESERVATION OF RIGHTS

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

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

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

XXVI. PROPERTY TRANSFER

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

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

XXVII. FUNDING

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

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

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

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

27.5 Funds authorized and appropriated annually by Congress under the Environmental Restoration, Army (ER,A) appropriation in the Department of Defense Appropriations Act will be the source of funds for activities required by this Agreement consistent with 10 U.S.C. Chapter 160. However, should the ER,A appropriation be inadequate in any year to meet the Army's total implementation requirements under this Agreement, the Army will, after consulting

with the other Parties and discussing the inadequacy with the members of the public interested in the action in accordance with Section XII – BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN, prioritize and allocate that year's appropriation.

XXVIII. REIMBURSEMENT OF COMMONWEALTH SERVICES

28.1 The Army and the Commonwealth agree to use the Defense State Memorandum of Agreement (DSMOA), signed on August 31, 1990, in accordance with the Cooperative Agreements, for the reimbursement of services provided in direct support of the Army's environmental restoration activities at the Site pursuant to this Agreement.

XXIX. RECOVERY OF EPA EXPENSES

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

XXX. QUALITY ASSURANCE

30.1 The Army shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. The Army has developed, in accordance with EPA Guidance, and EPA and the VDEQ have approved, a Generic Quality Assurance Project Plan (GQAPP) that shall be used as a component of each RI, FS, RD, and RA Work Plan(s), as appropriate. If additional detail is required, the Army shall develop a site-specific Quality Assurance Project Plan. These work plans will be reviewed as Primary Documents pursuant to Section X – CONSULTATION. QA/QC Plans shall be prepared in accordance with applicable EPA Guidance, including the Uniform Federal Policy for Quality Assurance Project Plans (March 2005).

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

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

XXXI. RECORD PRESERVATION

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

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

XXXII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

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

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

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

XXXIII. PROTECTED INFORMATION

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

33.2 National Security Information:

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

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

33.2.3 Nothing in this Subsection 33.2 is intended to, or should be construed as, superseding any law, regulation, or promulgated Army directive regarding access to, release of, or protection of national security information.

XXXIV. COMMUNITY RELATIONS

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

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

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

34.4 The Parties agree that Work conducted under this Agreement and any subsequent proposed remedial action alternatives and subsequent plans for remedial action at the Site arising out of this Agreement shall comply with all the Administrative Record and public participation requirements of CERCLA, including Sections 113(k) and 117, 42 U.S.C. Sections 9613(k) and

9617, the NCP, and all applicable Guidance developed and provided by EPA. This shall be achieved through implementation of the Community Relations Plan.

34.5 The Army shall establish and maintain an Administrative Record at or near Fort Eustis, in accordance with CERCLA Section 113(k), 42 U.S.C. § 9613(k), Subpart I of the NCP, and applicable EPA Guidance. Before the Effective Date of this Agreement, the Army established and began maintaining copies of an Administrative Record at three locations: 1) Groninger Library, 1313 Washington Blvd, Fort Eustis, VA 23604; 2) Grissom Public Library, 366 DeShazor Drive, Newport News, VA 23608; and 3) Christopher Newport University Library, 1 University Place, Newport News, VA 23606. The Administrative Record developed by the Army shall be periodically updated and a copy of the Index will be provided to EPA and the VDEQ. The Army will provide to EPA on request any document in the Administrative Record.

34.6 Pursuant to 10 U.S.C. Section 2705(c), the Army has established a Technical Review Committee (TRC). The purpose of the TRC is to provide a forum for cooperation between the Parties, local community representatives, and natural resource trustees on actions and proposed actions at the Site. The Parties shall participate in the TRC as follows:

34.6.1 The Director of Public Works, Fort Eustis, who shall chair the TRC;

34.6.2 An EPA representative;

34.6.3 A VDEQ representative; and

34.6.4 The Army Project Manager(s).

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

34.6.5 City of Newport News; and

34.6.6 Local community.

34.7 The chair shall schedule semi-annual meetings of the TRC unless the Parties agree to meet more or less frequently. Fort Eustis will provide semi-annual TRC Status Updates between TRC meetings. If possible, meetings shall be held in conjunction with the meetings of the Project Managers. Meetings and Status Updates of the TRC shall be for the purpose of reviewing progress under the Agreement and for the following purposes:

34.7.1 To facilitate early and continued flow of information between the community, Fort Eustis, and the environmental regulatory agencies in relation to restoration actions taken by Fort Eustis under the Installation Restoration Program;

34.7.2 To provide an opportunity for TRC members and the public to review and comment on actions and proposed actions under the Installation Restoration Program; and

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

34.8 Special meetings of the TRC may be held at the request of the members.

XXXV. PUBLIC COMMENT ON THIS AGREEMENT

35.1 Within fifteen (15) days after the execution of this Agreement (the date by which all Parties have signed the Agreement), EPA shall announce the availability of this Agreement to the public for their review and comment. Such public notices shall include information advising the public as to availability and location of the Administrative Record as discussed in Subsection 34.5. EPA shall accept comments from the public for forty-five (45) days after such announcement. Within twenty-one (21) days of completion of the public comment period, EPA shall transmit copies of all comments received within the comment period to the other Parties. Within thirty (30) days after the transmittal, the Parties shall review the comments and shall decide that either:

35.1.1 The Agreement shall be made effective without any modifications; or

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

35.2 If the Parties agree that the Agreement shall be made effective without any modifications, and if the Parties agree on the Responsiveness Summary, EPA shall transmit a copy of the signed Agreement to the other Parties and shall notify the other Parties in writing that the Agreement is effective. The Effective Date of the Agreement shall be the date of receipt by the Army of the signed Agreement from EPA.

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

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

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

35.5.1 Whether modifications to the Agreement are needed; or

35.5.2 What modifications to the Agreement should be made; or

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

35.5.4 Whether additional public notice and comments are required; or

35.5.5 The contents of the responsiveness summary,

then the matters that are in dispute shall be resolved by the dispute resolution procedures of Section XX – DISPUTE RESOLUTION. For the purposes of this Section, the Agreement shall not be effective while the dispute resolution proceedings are underway. After these proceedings are completed, the Final Written Decision shall be provided to the Parties indicating the results of the dispute resolution proceedings. Each Party reserves the right to withdraw from the Agreement by providing written notice to the other Parties within twenty (20) days after receiving from EPA the Final Written Decision of the resolution of the matters in dispute. If the VDEQ withdraws, and EPA and the Army agree to proceed, the Agreement shall be effective as to EPA and the Army. Failure by a Party to provide such a written notice of withdrawal to EPA within this twenty (20) day period shall act as a waiver of the right of that Party to withdraw from the Agreement, and EPA shall thereafter send a copy of the final Agreement to each Party and shall notify each Party that the Agreement is effective. The Effective Date of the Agreement shall be the date of receipt of that letter from EPA to the Army.

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

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

XXXVI. EFFECTIVE DATE

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

XXXVII. AMENDMENT OF AGREEMENT

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

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

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

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

37.3.2 Applicable policy or Guidance shall be applied as it exists at the time of initiation of the Work in issue; and

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

37.3.4 Changes in ARARs are governed by Section 300.430(f)(1)(ii)(B)(1) of the NCP.

XXXVIII. COMMONWEALTH OF VIRGINIA RESERVATION OF RIGHTS

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

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

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

38.4 In the event that the Army's obligations under this Agreement are not fulfilled for six consecutive months, the Commonwealth shall have the option of terminating all provisions of the Agreement affecting the Commonwealth's rights and responsibilities, and the Commonwealth may thereafter seek any appropriate relief. The Commonwealth, however, expressly agrees to exhaust any applicable remedies provided in Section X – CONSULTATION, and Section XX – DISPUTE RESOLUTION, prior to exercising any such rights. Thereafter, the Commonwealth will provide the other Parties with ten (10) days notice of its intent to terminate. This Section does not create any right that the Commonwealth does not already have under applicable law.

XXXIX. SEVERABILITY

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

XL. TERMINATION AND SATISFACTION

40.1 The provisions of this Agreement shall be deemed satisfied upon a consensus of the Parties that the Army has completed its obligations under the terms of this Agreement. Following EPA Certification of all the response actions at the Site pursuant to Subsection 9.8 of Section IX – WORK TO BE PERFORMED, any Party may propose in writing the termination of this Agreement upon a showing that the requirements of this Agreement have been satisfied. The obligations and objectives of this Agreement shall be deemed satisfied and terminated upon receipt by the Army of written notice from EPA, with concurrence of the VDEQ, that the Army has demonstrated that all the requirements of this Agreement have been satisfied. A Party opposing termination of this Agreement shall provide a written statement of the basis for its denial and describe the actions necessary to grant a termination notice to the proposing Party within ninety (90) days of receipt of the proposal.

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

40.3 Upon termination of this Agreement, the Army shall place a public notice announcing termination in two (2) local newspapers of general circulation.

40.4 This Section shall not affect the Parties' obligations pursuant to Section XIX – PERIODIC REVIEW or Section XXXI – RECORD PRESERVATION of this Agreement. In no event will this Agreement terminate prior to the Army's completion of the Work required by this Agreement.

AUTHORIZED SIGNATURES

The undersigned representative certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement. This Agreement shall apply to and be binding upon EPA and the Army. The Commonwealth intends to voluntarily comply with the terms of this Agreement and is committed to full participation in the remediation efforts to be conducted pursuant to this Agreement.

IT IS SO AGREED:

By

Date 14 MAR 08

Andrew W. Bowes
Colonel, U.S. Army
Garrison Commander
Fort Eustis

AUTHORIZED SIGNATURES

The undersigned representative certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement. This Agreement shall apply to and be binding upon EPA and the Army. The Commonwealth intends to voluntarily comply with the terms of this Agreement and is committed to full participation in the remediation efforts to be conducted pursuant to this Agreement.

IT IS SO AGREED:

By

Date MAR 14 2008

Addison D. Davis, IV
Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)
OASA (I & E)

AUTHORIZED SIGNATURES

The undersigned representative certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement. This Agreement shall apply to and be binding upon EPA and the Army. The Commonwealth intends to voluntarily comply with the terms of this Agreement and is committed to full participation in the remediation efforts to be conducted pursuant to this Agreement.

IT IS SO AGREED:

By

Karen Jackson Sismour

Date 3/19/08

Karen Jackson Sismour
Waste Division Director
Virginia Department of Environmental Quality

Ms. Sismour signs this Agreement only as a statement of the intentions of the Commonwealth. The Commonwealth does not consider this Agreement to be a contract and, as to the Commonwealth, the Agreement creates no third party beneficiaries.

AUTHORIZED SIGNATURES

The undersigned representative certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement. This Agreement shall apply to and be binding upon EPA and the Army. The Commonwealth intends to voluntarily comply with the terms of this Agreement and is committed to full participation in the remediation efforts to be conducted pursuant to this Agreement.

IT IS SO AGREED:

By

Donald S Welsh

Date MAR 25 2008

Donald S. Welsh
Regional Administrator
Environmental Protection Agency, Region III

Appendix A – Initial List of Operable Units Requiring RI/FS

as of November 2007

OU#	AEDB-R#	Site Name
1	FTEUST-30	Bailey Creek
4	FTEUST-36	Eustis Lake
6	FTEUST-06	Fire Training Area
8	FTEUST-32	Felker Army Airfield
11	FTEUST-37	Former Skeet and Trap Range, Upland Area
12	FTEUST-38	Former Skeet and Trap Range, Wetland Area
13	FTEUS-012-R-01	1000" Rifle Range

Appendix B – Operable Units with Proposed Plan, Record of Decision or Completed Remedial Action

as of November 2007

OU#	AEDB-R#	Site Name	Comments
2	FTEUST-29	Brown's Lake	Record of decision issued 2007
3	FTEUST-27	Milstead Island Creek	Proposed plan issued 2006
5	FTEUST-34	DOL Storage Yard	On-site remedial action completed 2003
7	FTEUST-19	Oil/Sludge Holding Pond	On-site remedial action completed 2004
9	FTEUST-04	Landfill #7/South Landfill	Draft proposed plan submitted 2007
10	FTEUST-01	Officers' Club Landfill #1	Draft proposed plan submitted 2007

Appendix C – Sites Being Addressed under Other Regulatory Programs

NCAPS#	HRS Source #	Site Name	Regulatory Program	Applicable Regulations
26	21	Helicopter Maintenance Area	VDEQ's Underground Storage Tank (UST) Program	Virginia USTs: Technical Standards and Corrective Action Requirements
28		AAFES Service Station	Virginia UST Program	Virginia USTs: Technical Standards and Corrective Action Requirements
36	---*	Hospital Incinerator	VDEQ's Office of Air Permitting Program	Virginia Regulations for the Control and Abatement of Air Pollution
48	15	Landfill #15/Site 15 Landfill	VDEQ's Solid Waste Program	Virginia Solid Waste Management Regulations
	---	Jet Engine Test Cell	VDEQ's Office of Air Permitting Program	Virginia Regulations for the Control and Abatement of Air Pollution
	---	Lift Stations	VDEQ's Office of Wastewater Engineering	Virginia Pollution Abatement (VPA) Permit Regulations
	---	Vehicle Wash Racks	Virginia Pollutant Discharge Elimination System (VPDES) Permit Program	VPDES Permit Regulations

*--- means site mentioned, but not numbered, in HRS documents

Appendix D – No Further Action Sites

NCAPS#	HRS Source #	Site Name
2		STP Drying Beds
3		STP Sludge Dumpster
5		Hazmat Storage Shed, TSS
6		Hazardous Waste Storage Shed
7		PCB Contaminated Area, Transformer #529, Bldg. 406
10		PCB Contamination at Transformer #528, Bldg 406
11		Old Sand Blasting Area, Bldg 412
12		Sandblasting Materials Bldgs 446 and 447
13		Petroleum Contamination near port opposite to Bldg 446
14		May 1996 Fuel Spill, middle of pier at 3rd Port
15		TSS 24th Battalion Motor Pool
16		TSS 6th Battalion Hazardous Waste Site
17		6th Battalion Grease Rack behind Bldg 2702
19	---*	TSS Bldg 1637/Hazardous Waste Storage Area
20		Hanks Yard, Rail Renovation Project, Scrap Metal/Tires Pile
22		DPW Yard, Pile of Asphalt Material
23		DPW Yard, Pile of Concrete
25		Contaminated Soil Storage Area
27		Old Photo Processing Site, across from commissary
29		Frontage Road Concrete Tank
31		Hydraulic Fluid Spill, Bldg 2750
32		Hydraulic Fluid Storage Area, Bldg 2750
33		Waste Oil Tank, Bldg 2750
34		TMP Fuel Pumps
35		NWASI Yard, Bead Blast Pile, Black Beauty
37		TSS Site outside of MEDDAC facility
38		AST, Bldg 1538
39	---	Print Plant Bldg/Print Plant
40		TSS, James River Fleet
41	5, 12, 13, 14	Dredge Spoil Areas
42	11A	Waste Oil Storage Tanks
	19A	Butler Farm NIKE Facility
	19B	Marcella Road
	22	Locomotive Yard
	---	Ammunition Storage Areas
	---	Battery Storage Area
	---	Open Burning Incinerator
	---	Photoprocessing Laboratories
	---	Range and Target Area
	---	Transformers

*--- means site mentioned, but not numbered, in HRS documents

Appendix E – Initial Information on Sites Suspected to Contain UXO, DMM or MCs

(Based on Historical Records Review (HRR) Report dated August 2006
and Final Site Inspection Report dated June 2007)

Site #	Site Name	Comments
FTEUS-001-R-01	Engineer's Rifle Range	No Munitions Constituents (MC) detected above screening criteria; therefore, Final SI recommended No Further Action (NFA).
FTEUS-002-R-01	Harrison Road Small Arms Range	No MC detected above screening criteria; therefore, Final SI recommended NFA.
FTEUS-003-R-01	Pistol Range	HRR Report deems site ineligible for further study under the MRP because evidence gathered during the HRR indicated the range never existed.
FTEUS-004-R-01	Langley Field Gunnery Range	No MC detected above screening criteria; therefore, Final SI recommended NFA.
FTEUS-004-R-02	Bombing Target H	Although no MC was detected above screening criteria at location of target, MC may be present in other areas potentially containing Munitions and Explosives of Concern (MEC); therefore, Final SI recommended a Remedial Investigation (RI) be conducted.
FTEUS-005-R-01	Lee Hall Observation Balloon School	No MC detected above screening criteria; therefore, Final SI recommended NFA.
FTEUS-006-R-01	Murphy Field Artillery Range	HRR Report deems site ineligible for further study under the MRP because there is no evidence to suspect that MEC or MC are present at the site. A review of the CTT Range Inventory supporting documentation and subsequent data collected during the HRR indicate that it is unlikely that 8-inch and 155-mm artillery guns were fired from this site. In addition, the HRR data indicate that the site was improperly mapped during the CTT Range Inventory and an area indicated in historical maps as a maneuver ground that covers 57

		acres was used as the basis for the actual site boundary.
FTEUS-007-R-01	Thompson Circle Rifle Range	HRR Report deems site ineligible for further study under the MRP because evidence gathered during the HRR indicates that this range never existed.
FTEUS-008-R-01	Towable Target Range – TD	Potential MC from overlap of Camp Wallace Firing Fan and anti-aircraft small arms training. During Technical Project Planning 2 (TPP2) Meeting, a decision was made to move site forward to the RI phase in absence of SI field work.
FTEUS-009-R-01	Mulberry Island Aerial Gunnery Range	HRR Report deems site ineligible for further study under the MRP because it is located within the operational range footprint.
FTEUS-010-R-01	Towable Target Range	HRR Report deems site ineligible for further study under the MRP because it is located within the operational range footprint.
FTEUS-011-R-01	Camp Wallace Firing Fan	During Technical Project Planning 3 (TPP3) Meeting, a decision was made to move site forward to the RI phase due to potential presence of MEC.
FTEUS-012-R-01	1000" Rifle Range	Lead detected in excess of screening criteria; therefore, Final SI recommended a RI be conducted.
FTEUS-013-R-01	Skeet Range	Lead and polycyclic aromatic hydrocarbons (PAHs) detected above screening criteria; therefore, Final SI recommended a RI be conducted.
FTEUS-014-R-01	Skeet Range – TD	Lead and PAHs detected above screening criteria; therefore, Final SI recommended a RI be conducted.
FTEUS-015-R-01	Western Shore Ranges	Potential MC from overlap of Camp Wallace Firing Fan, small arms firing, and sub-munitions firing. During TPP2 Meeting, a decision was made to move site forward to the RI phase in absence of SI field work.

Appendix F – Initial Site Management Plan

SITE MANAGEMENT PLAN

This Site Management Plan applies to the Operable Units listed in Appendix A of this document. In addition to the background information found in Section VI, a description of each Operable Unit is available in the most current version of the Installation Action Plans for Restoration and Compliance Cleanup.

Near-Term Milestones		
Task	**Primary (P), Secondary (S) or Other (O) Document**	**Due Date**
FY 2008		
Draft Periodic Review Assessment Report (5-Year Review)	O	December 2007
Draft Human Health and Ecological Risk Assessment - ***Bailey Creek Site***	P	February 2008
Draft Installation Action Plans (IRP/MMRP/CC)	O	February 2008
Draft Record of Decision - ***Landfills 1 & 7***	P	February 2008
Draft Feasibility Study - ***Bailey Creek Site***	P	March 2008
Draft Proposed Plan - ***Bailey Creek Site***	P	March 2008
Final Periodic Review Assessment Report (5-Year Review)	S	March 2008
Draft Final Long Term Monitoring (2007) Letter Report - ***DOL Storage Yard***	O	April 2008
Draft Sampling and Analysis Plan - ***1000" Rifle Range***	P	April 2008
Draft Remedial Action Work Plan - ***Brown's Lake***	P	May 2008
Draft Proposed Plan - ***Eustis Lake***	P	May 2008
Revised Draft Remedial Investigation - ***Felker Army Airfield***	P	May 2008
Draft Feasibility Study - ***Fire Training Area***	P	June 2008
Draft Record of Decision - ***Bailey Creek Site***	P	June 2008
Draft Feasibility Study - ***Upland Area - Skeet Range***	P	July 2008
Draft Record of Decision - ***Eustis Lake***	P	August 2008
Draft Proposed Plan - ***Fire Training Area***	P	August 2008
Long Term Monitoring (2008) Letter Report - ***DOL Storage Yard***	O	September 2008
Long Term Monitoring (2008) Letter Report - ***Oil Sludge Holding Pond***	O	September 2008
FY 2009		
Draft Site Closeout Report - ***DOL Storage Yard***	O	November 2008
Draft Proposed Plan - ***Upland Area - Skeet Range***	P	December 2008
Draft Proposed Plan - ***Felker Army Airfield***	P	December 2008
Draft Record of Decision - ***Fire Training Area***	P	January 2009
Draft Remedial Investigation - ***1000" Rifle Range***	P	January 2009
Remedial Action Completion Report (*Draft*) - ***Brown's Lake***	P	February 2009
Draft Feasibility Study - ***1000" Rifle Range***	P	March 2009
Remedial Action Completion Report (*Final*) - ***Brown's Lake***	P	April 2009
Pre-final Remedial Design - ***Fire Training Area***	S	May 2009
Draft Long Term Monitoring Plan - ***Brown's Lake***	O	May 2009
Draft Record of Decision - ***Felker Army Airfield***	P	June 2009
Draft Record of Decision - ***Upland Area - Skeet Range***	P	June 2009
Final Remedial Design - ***Fire Training Area***	P	July 2009
Draft Proposed Plan - ***1000" Rifle Range***	P	July 2009
Draft Remedial Action Work Plan - ***Fire Training Area***	P	September 2009
Draft Long Term Monitoring (2009) Letter Report - ***Oil Sludge Holding Pond***	O	September 2009
FY 2010		
Draft Record of Decision - ***1000" Rifle Range***	P	November 2009
Draft Site Closeout Report - ***Oil Sludge Holding Pond***	O	December 2009

Draft Long Term Monitoring (2009) Letter Report - ***Brown's Lake***	O	December 2009
Pre-final LUC Remedial Design - ***Felker Army Airfield***	S	January 2010
Long Term Monitoring Report - ***Fire Training Area***	O	March 2010
Draft Interim Remedial Action Completion Report - ***Fire Training Area***	P	May 2010
Final LUC Remedial Design - ***Felker Army Airfield***	P	May 2010
Final Interim Remedial Action Completion Report - ***Fire Training Area***	P	July 2010
Draft Long Term Monitoring Plan - ***Fire Training Area***	O	September 2010

Out Year Milestones

Task	Primary (P), Secondary (S) or Other (O) Document	Due Date
Draft Long Term Monitoring (2010) Letter Report - ***Brown's Lake***	O	December 2010
Draft Long Term Monitoring Report - ***Fire Training Area***	O	December 2011
Draft Long Term Monitoring (2011) Letter Report - ***Brown's Lake***	O	December 2011
Draft Long Term Monitoring (2012) Letter Report - ***Brown's Lake***	O	December 2012
Draft Long Term Monitoring (2013) Letter Report - ***Brown's Lake***	O	December 2013