DEPARTMENT OF THE NAVY
SOUTHWEST DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
1220 PACIFIC HIGHWAY
SAN DIEGO, CA 92132-5190

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Ser 3EN.WS/001
October 9, 2003

Mr. Anthony J. Landis, P.E.
California Environmental Protection Agency
Dept. of Toxic Substances Control – Region 1
Office of Military Facilities
8800 Cal Center Drive
Sacramento, CA 95826

Dear ~~Mr. Landis~~ TONY -:

SUBJECT: FEDERAL FACILITY SITE REMEDIATION AGREEMENT FOR NAVAL AIR WEAPONS STATION CHINA LAKE

Enclosed please find the Federal Facility Site Remediation Agreement (FFSRA) for NAWS China Lake, signed by the Navy. Please add your signature to the document and forward it to the Regional Water Quality Control Board – Lahontan Region (RWQCB) for signature. Please provide us, or have the Water Board provide us, a copy of the agreement once all parties have signed it.

Negotiation of the FFSRA consent agreement has involved extensive coordination between the State and Navy legal counsel and the respective staffs of the DTSC, RWQCB, and the Navy. The Navy looks forward to continuing our commitment to working with the California Environmental Protection Agency in advancement of the Navy's Environmental Programs to ensure protection of human health and the environment.

If you would like any additional information, please call me at (619) 532-1234.

Sincerely,

WALTER F. SANDZA, P.E.
Installation Restoration Program Manager
By Direction of the Commander

Enclosure: 1. Federal Facility Site Remediation Agreement

OFFICE OF
OCT 1 2003

TABLE OF CONTENTS

Section	Title	Page
1	Jurisdiction	1
2	Findings of Fact	1
3	Determinations	4
4	Purpose	5
5	Scope of Agreement	5
6	RCRA-CERCLA Coordination	6
7	Definitions	6
8	Work to be Performed	6
9	Project Managers	8
10	Document Review and Approval	10
11	Emergencies and Removal Actions	14
12	Deadlines and Contents of Site Management Plan	17
13	Budget Development and Amendment of Site Management Plan	20
14	Submittals	24
15	Proposed Contractor/Consultant	26
16	Quality Assurance	26
17	Sampling and Data/Document Availability	27
18	State Certification	27
19	Extensions	28
20	Force Majeure	30
21	Dispute Resolution	31
22	Other Claims	33
23	Reservation of Rights	34
24	Real Property Transfer	35
25	California Environmental Quality Act	36
26	Permits	36
27	Compliance with Applicable Laws	38
28	Access	38
29	Enforceability	39
30	Record Preservation	39
31	Notice to Contractors and Successors	40
32	Modification	40
33	Termination	41
34	Effective Date	41
35	Notification	41
36	Release of Records	42
37	Public Participation	43
38	State Support Services and State Oversight Costs	43
39	Severability	44

TABLE OF CONTENTS (continued)

Section	Title	Page
40	Integration	44
41	Section Headings	44
42	Attachments	45
43	Representative Authority	45

STATE OF CALIFORNIA
AND THE
UNITED STATES DEPARTMENT OF THE NAVY

IN THE MATTER OF:	)	
	)	
The U.S. Department of the Navy	)	Federal Facility Site Remediation Agreement Under California Health and Safety Code §§ 25200.10, 25187, and 25355.5
Naval Air Weapons Station	)	
China Lake, California	)	
Cal-EPA ID No. CA2170023152	)	
_____	)	

The parties to this Federal Facility Site Remediation Agreement ("Agreement") are the U.S. Department of the Navy ("Navy"), the Department of Toxic Substances Control ("DTSC"), and the Regional Water Quality Control Board, Lahontan Region ("RWQCB"). The Navy and the State are collectively referred to as the Parties. DTSC is acting as lead regulatory agency and the RWQCB as support agency (collectively the "State"). The responsibilities of the lead and support regulatory agencies are set forth in this Agreement and the Memorandum of Understanding between DTSC, the State Water Resources Control Board, and the Regional Water Quality Control Boards for Cleanup of Hazardous Waste Sites, dated August 1, 1990, including any amendments or revisions thereto. Based on the information available to the Parties on the effective date of this Agreement, and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

1. JURISDICTION

1.1. Each Party enters into this Agreement pursuant to the following authorities:

a. DTSC enters into this Agreement pursuant to the Resource Conservation and Recovery Act ("RCRA") sections 3006 and 6001 (42 U.S.C. sections 6926 and 6961), and chapters 6.5 and 6.8 of division 20 of the California Health and Safety Code ("H&SC").

b. The RWQCB enters into this Agreement pursuant to and in furtherance of Division 7 of the California Water Code and the Clean Water Act (33 U.S.C. 1251 et seq.; "CWA") and the regulations, plans and policies adopted under each of the above-identified statutes.

c. The Navy enters into this Agreement pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") sections 120(a)(4), 120(f) and 121 (42 U.S.C. section 9620(a)(4), 9620(f), and 9621), the National Environmental Policy Act, 42 U.S.C. sections 4321 *et seq.*, the Defense Environmental Restoration Program ("DERP"), 10 U.S.C. sections 2701 *et seq.,* and Executive Order 12580, as amended by Executive Order 13016.

2. FINDINGS OF FACT

The following constitutes a summary of the initial findings of fact relied upon by the Parties to commence work under this Agreement. None of these findings shall be considered final stipulations of fact or law or admissions of liability by any person, related or unrelated to this Agreement:

2.1. The Navy is the owner and operator of a hazardous waste management facility located at Naval Air Weapons Station ("NAWS") China Lake, Ridgecrest, California.

2.2. On February 15, 1984, the DTSC's predecessor agency issued a State Hazardous Waste Facility Permit to the Navy. The Navy's authorization to operate a hazardous waste facility expired February 1, 1989. The Navy continued to operate in accordance with the requirements and conditions of the permit under the authority of section 66270.51 of Title 22 of the California Code of Regulations until the permit was reissued in 1991.

2.3. On May 13, 1991, the U.S. Environmental Protection Agency ("U.S. EPA") issued a RCRA Permit for Hazardous Waste Management to the Navy. On December 18, 1991, U.S. EPA issued a RCRA Permit Modification. Under its federally authorized RCRA program authority, the DTSC subsequently issued a permit renewal, which became effective on August 8, 2001 ("Permit"). This Permit remains in effect, including necessary provisions for closure and corrective actions pursuant to RCRA.

2.4. Hazardous waste and/or hazardous waste constituents have been released into the environment from the Facility. Current information confirms that no contaminants have migrated off base.

2.5. There are Solid Waste Management Units ("SWMUs"), Installation Restoration Program ("IRP") sites, and Areas of Concern ("AOCs"), at the Facility. The IRP sites and AOCs are included as Attachment A to this Agreement.

2.6. The investigation and remediation, if applicable, of the sites listed in Attachment A will be detailed in the Site Management Plan. There is work in progress on some of the sites and some sites may ultimately be added to or removed from the lists in Attachment A.

2.7. In 1983, the Navy developed the Navy Assessment and Control of Installation Pollutants ("NACIP") program to identify and control contamination resulting from past storage, handling and disposal of hazardous materials. Under the NACIP program, the Navy conducted an Initial Assessment Study ("IAS") at the Facility in 1984. The IAS identified 42 sites which required additional investigation. The DTSC accepted the IAS results to fulfill the RCRA Facility Assessment ("RFA") requirement of the Facility's Hazardous Waste Management permit.

2.8. The NACIP program was converted into the IRP, in 1987, to conform to the Superfund Amendments and Reauthorization Act ("SARA") of 1986. The NACIP program originally identified 42 sites (listed on Attachment A, incorporated herein by reference), which were then transferred into the IRP and designated Sites 1-42.

2.9. Between 1983 and 1993, the Navy identified seven additional sites, numbered 43-49, for inclusion in the IRP.

2.10. In 1993, the Navy performed a Preliminary Assessment ("PA") that identified over 200 Points of Interest ("POIs") at China Lake. As a result of the findings of the PA, an additional 29 sites were added to the IRP. The information on those 29 sites was presented in the June 1996 Preliminary Assessment Report. This brought the total number of sites in the IRP to 78.

2.11. In 1995, the Navy included one of its depleted uranium sites, the K-2 Gunnery Range, in the IRP. This brought the total number of sites in the IR program to 79.

2.12. In 1997, as the result of the analysis of background soil samples in relation to the Transformer Pit (Site 68), low-levels of polychlorinated biphenyls ("PCBs") were identified in active and inactive housing areas. The Navy conducted additional sampling of these housing areas to evaluate potential risks to human health and the environment. This investigation was conducted under the newly created IRP Site 80. Site 80 represents a placeholder to facilitate funding for future evaluation of sites elevated to CERCLA AOCs.

2.13. In April 1998, DTSC requested that the Facility complete a questionnaire to supplement the 1984 RFA. The Facility completed the first step in this process by submitting a Visual Site Inspection ("VSI") work plan in August 2001. The VSI work plan identifies additional sites that are also under consideration in the supplemental RCRA Facility Assessment. As appropriate, sites identified through the supplemental RFA may be transferred to the IRP or appropriate program.

2.14. Starting in 1998, the Navy conducted further evaluations at the POIs identified during the 1993 PA. The results of these evaluations are presented in nine separate phased reports (dated September 1998 through July 2001). The Navy is continuing additional evaluations on the POIs to determine how they should be handled. Of the

242 POI's, the Navy has currently identified 59 AOCs requiring further consideration in the IRP. Sites elevated to AOCs or IRP sites will be added to the list in Attachment A. Results for the remaining 180 POI's will be documented under the supplemental RFA process.

2.15. The hazardous waste and hazardous waste constituents of concern at the Facility include VOCs, semi-VOCs, metals, pesticides radionuclides, propellants, explosives, and pyrotechnics (PEP), cyanide and PCBs.

2.16. Groundwater sampling has occurred throughout the investigative process at sites found to have a groundwater impact of COCs. The intermittent monitoring that has been conducted is primarily within the Indian Wells Valley, and to a lesser extent within Salt Wells Valley and Randsburg Wash. Pollutants detected include metals, VOCs, SVOCs, cyanide, and other compounds.

2.17. Based upon current information State has concluded that further investigation is needed to determine the nature and extent of contamination for some of the sites listed on Attachment A. Further investigation may also be required at any sites not yet identified.

2.18. The Navy is continuing to evaluate areas where releases of hazardous wastes or substances have occurred or are suspected to have occurred. The current list of these areas is identified, as Attachment A. This list will be modified as additional areas are found or evaluated.

2.19. The Navy has deferred Site 5 from the IRP. The site is the Burro Canyon Open Burn/Open Detonation unit under RCRA interim status. RCRA corrective action will be initiated for this site if necessary.

2.20. Although ineligible for Environmental Restoration, Navy (ER,N) funding, Site 68 is being handled under the CERCLA program to satisfy RCRA corrective action requirements and is listed on Attachment A.

2.21. The Navy has deferred Site 79 from the IRP. Further action will be taken under the Navy Master Materials License.

2.22. The Office of the Secretary of Defense has mandated the DoN to comply with the Defense Planning Guidance ("DPG") Goals and objectives established for the IR program. Naval Facilities Engineering Command - Headquarters Division has required the following IRP site designations be made in order to quantify the progress reached on the DPG goals:

a. The Remedy in Place ("RIP") designation represents a point when the remedy is in place and operating.

b. The Response Complete ("RC") designation represents a point when all necessary response actions at the site are completed.

To date, pursuant to its own internal policy, the Navy has designated 32 IRP sites as reaching RIP or RC. The Navy currently intends to document these sites in a No Further Response Action Planned ("NFRAP") Record of Decision.

2.23. In 2000, DTSC concurred with No Further Action ("NFA") for IRP sites 57 and 60.

2.24. The Facility encompasses approximately 1.1 million acres, and includes a number of significant geological features, industrial complexes, residences, aquifers, surface water bodies, wells, and fragile environments:

a. Soils: soils within the Indian Wells Valley consist of interbedded gravels, sands, silts, and clays. Information on soils outside of the Indian Wells Valley is limited;

b. Topography: topography varies from gentle slopes within the various valleys and playas at the Facility, to steep slopes within the mountains. Elevations vary from 2,150 feet above mean sea level ("msl"), to over 8,000 feet above msl;

c. Groundwater: the water table in Indian Wells Valley ("IWV") ranges from less than ten feet below ground surface near China Lake Playa to over 100 feet below ground surface near some production wells. All water in the IWV is identified by the Regional Water Quality Control Board, Lahonton Region as having municipal and domestic supply beneficial uses. However, ground water pumped from some areas within the basin has elevated concentrations of total dissolved solids ("TDS") and would require treatment or blending for some uses. Ground water in Indian Wells Valley has been extensively developed and is pumped by several main users. Ground water in Salt Wells Valley ("SWV") and Randsburg Wash has not been investigated or developed for production as it has in Indian Wells Valley. In SWV, the depth to ground water varies from about 20 to 160 feet below ground surface where wells have been constructed and may discharge to the ground surface at mud flats located in the eastern part of the valley. In Randsburg Wash, the depth to water in four Navy production wells is about 250 feet;

d. Surface water: there are a number of intermittent streams within the Facility, and several playas contain water following storms. The G-1 and Lark Seeps located near the China Lake Playa support the Mojave Tui Chub, and there are a number of springs within the mountains which support wildlife;

e. Biological resources: NAWS China Lake encompasses a vast amount of land, encompassing 1.1 million acres in the upper Mojave Desert that ranges from 2,100-8,900 feet elevation, lending to a rich biodiversity. Biological communities vary from flat dry lake beds to mountainous pinyon-juniper pine woodlands. Several types of desert scrub, riparian and marsh habitats, sand dunes, and Joshua tree woodland also

occur. The biological communities at NAWS China Lake are known to support 650 plant taxa and 340 wildlife species. Of these, sixty-six species are considered to be special-status species, including 52 vertebrates, 1 invertebrate, and 13 plant species. Special-status species include the state and federally listed threatened desert tortoise; a state and federally listed endangered fish, the Mohave tui chub; the state listed threatened Mohave ground squirrel; and the Inyo California towhee, a bird which is listed as endangered by the state and as threatened by the federal government.

3. DETERMINATIONS

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

a. The Navy is a "person" as defined in RCRA section 1004(15) (42 U.S.C. section 6903(15)), CERCLA section 101(21), (42 U.S.C. section 9601(21)) and is a person subject to H&SC sections 25118, 25187, 25270.2, and 25281 and Division 7 of the California Water Code.

b. The NAWS China Lake is a "Facility" as defined by CERCLA section 101(9) (42 U.S.C. section 9601(9)), 10 U.S.C. section 2701 *et seq.*, and H&SC sections 25200.10 and 25281 and section 66260.10 of Title 22, California Code of Regulations. Maps of the Facility are included in the Site Management Plan.

c. The Navy is the owner of the Facility as defined in CERCLA sections 101(20) and 107(a)(1) (42 U.S.C. sections 9601(20) and 9607(a)(1)), and the owner or operator of a facility that has operated or is operating subject to RCRA section 3005(c) (42 U.S.C. section 6925(c)) and H&SC sections 25200.10 and 25201. The Navy is the Department of Defense component charged with fulfilling the obligations of the owner under RCRA at the Facility.

d. There are or have been releases or substantial threats of releases of hazardous substances, pollutants, contaminants, hazardous wastes or constituents at or from the Facility.

e. Further investigation is needed to determine the nature and extent of releases of hazardous waste or constituents from the AOCs, SWMUs, and IRP sites at the Facility.

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

4. PURPOSE

4.1. The purposes of this Agreement are to:

a. satisfy the Navy's corrective action obligations required by the Permit.

b. ensure that any releases of hazardous substances, pollutants, contaminants, hazardous wastes or constituents associated with the past and present activities at the Facility are thoroughly investigated and the appropriate corrective, removal and/or remedial actions are taken as necessary to protect the public health, welfare, and the environment.

c. provide for operation and maintenance of any remedial action selected and implemented pursuant to this Agreement.

d. coordinate the Navy's satisfaction of its corrective action obligations under RCRA, California Water Code Division 7, and H&SC section 25200.10 with its response action responsibilities under CERCLA sections 120(a) and 120(i), Executive Order 12580, the Defense Environmental Restoration Program (10 U.S.C. §2701, *et seq.*), and the NCP (40 CFR Part 300).

5. SCOPE OF AGREEMENT

5.1. This Agreement is to enable the Navy to implement RCRA corrective action obligations that relate to the releases of hazardous substances, hazardous wastes, hazardous constituents, pollutants, or contaminants at or from the Facility. This Agreement is not intended to limit or expand any requirements under RCRA or any other law or regulation to obtain permits, and is not intended to affect the Navy's treatment, storage, or disposal of hazardous wastes at the Facility.

5.2. The scope of this Agreement extends to the entire Facility and, where necessary, shall extend beyond Facility boundaries, as set forth in H&SC section 25200.10 and Division 7 of the California Water Code, as necessary to effectuate the purposes of this Agreement.

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

5.4. Releases or other hazardous waste activities not covered by this Agreement remain subject to all applicable California and federal environmental requirements.

6. RCRA-CERCLA COORDINATION

6.1. The Navy may discharge some or all of its RCRA corrective action obligations which relate to the releases or threatened releases of hazardous waste or constituents through CERCLA response actions that meet all the requirements of this Agreement. To the extent the State certifies that a site is remediated pursuant to this Agreement, the Navy will be deemed to have undertaken and completed all necessary RCRA corrective action for that site. The Permit remains in effect, including provisions for closure, post-closure, and corrective actions pursuant to RCRA.

6.2. DTSC will coordinate its oversight of the Navy's RCRA corrective action obligations with the California Regional Water Quality Control Board, and will coordinate identification of state and local Applicable or Relevant and Appropriate Requirements ("ARARs") with all other participating state agencies.

7. DEFINITIONS

7.1. Except as noted below or otherwise explicitly stated, the definitions provided in Chapters 6.5 and 6.8 of Division 20 of the H&SC, Division 7 of the California Water Code, Title 27 California Code of Regulations ("CCR"), Chapter 15 Division 3 Title 23 CCR, Division 4.5 of Title 22 CCR, and the Clean Water Act, shall control the meaning of terms used in this Agreement.

7.2 "Days" means calendar days except as otherwise specified.

8. WORK TO BE PERFORMED

8.1. General

a. The Navy will complete DTSC's RFA questionnaire for the entire Facility. The Navy shall provide a work plan and schedule for review of the entire Facility in a step-wise fashion. All work shall be consistent with State guidance. Where there is no State guidance available U.S. EPA guidance shall be used. If there are differing standards, requirements or protocols, the more stringent standards shall apply. The State shall determine which standards, requirements or protocols are more stringent. Any corrective actions at SWMUs identified during the RFA and the supplemental RFA will be managed according to section 6 (RCRA-CERCLA Coordination), added to Attachment A and incorporated into the Site Management Plan. The RFA Reports will provide specific recommendations on the disposition of each site.

b. The Navy shall prepare a revised Site Management Plan to replace the Site Management Plan ("SMP") dated July 1998. The draft version of the revised SMP will be completed as of the effective date of this Agreement. The final version of the revised SMP shall be provided to the State within 90 days after the effective date of this Agreement. Until such time as the SMP is final, the draft SMP will be subject to the dispute resolution process in Section 21. For each of the SWMUs and AOCs listed on

Attachment A or as otherwise directed by the State, the Navy shall perform the work required by this Agreement in a manner and by the due dates specified in the revised SMP. All work undertaken pursuant to this Agreement shall be performed to the satisfaction of the State and, at a minimum, shall be consistent with: the DTSC-approved Interim Measures workplan(s) (if any), the DTSC-approved RCRA Facility Investigation workplan(s), Corrective Measures Study workplan(s), Corrective Measures Implementation workplan(s), and any other DTSC-approved workplans or equivalent documents approved in writing by DTSC; H&SC and other applicable state and federal laws and their implementing regulations; and applicable State or U.S. EPA guidance documents. Applicable guidance includes, but is not limited to, the "RCRA Facility Investigation (RFI) Guidance" (Interim Final, May 1989, EPA 530/SW-89-031), "RCRA Groundwater Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950.1, September 1986), "Test Methods For Evaluating Solid Waste" (SW-846), and "Construction Quality Assurance for Hazardous Waste Land Disposal Facilities" (EPA 530/SW-85-031, July 1986), Department of Navy Guidance, DTSC Public Participation Manual (October 2001), State Water Resource Control Board Resolution 92-49, Water Quality Control Plan for the Lahontan Region (as approved, dated March 31, 1995), other State Water Resource Control Board plans and policies; and U.S. EPA RCRA Public Participation Manual EPA 530-R-96-007 (September 1996). If there are differing standards, requirements or protocols, the more stringent standards shall apply. The State shall determine which standards, requirements or protocols are more stringent.

c. To the extent that work has already been completed to the State's satisfaction on any of the SWMUs or AOCs listed in Attachments A, the State may waive some or all of the requirements set forth herein. Such determinations shall be made by the State in writing upon the Navy's application setting forth a detailed description of the work that has been done and listing documents or other deliverables previously submitted to the State that the Navy maintains will satisfy the requirements of this Agreement.

d. To the extent that there is any conflict between the terms of this Agreement and the terms of any attachment to this Agreement or any State-approved workplan or equivalent document(s), the terms of this Agreement shall control.

e. Any request for revision of an approved workplan requirement must be in writing. Such request must be timely and provide justification for any proposed workplan revision. The State has no obligation to approve such requests, but if it does so, such approval will be in writing and signed by the lead state regulatory agency. Any approved workplan modification shall be incorporated by reference into this Agreement.

8.2. If the Navy chooses to discharge any of its corrective action obligations through CERCLA response actions, it may submit CERCLA documents equivalent to those required by this section to the State for its review and approval.

9. PROJECT MANAGERS

9.1. Within fourteen (14) days of the effective date of this Agreement, the State and the Navy shall each designate a project manager(s) and shall notify each other in writing of the project manager(s) selected. Each project manager shall be responsible for overseeing the implementation of this Agreement and for designating a person to act in his/her absence. A contractor may not serve as a project manager.

9.2. All communications between the Navy and the State, and all documents, report approvals, and other correspondence concerning the activities performed pursuant to this Agreement shall be directed through the project managers. Each Party may change its project manager with at least seven (7) days prior written notice.

9.3. The Parties' project managers shall meet or confer informally as necessary. At least one week prior to each project manager meeting, the Navy will provide a draft agenda and applicable supporting documentation if any to the State. At least one week prior to each scheduled project manager meeting, the Navy will provide a draft agenda and summary of the status of the work subject to this Agreement to the State. These project managers meetings will occur at least quarterly. These status reports shall include, when applicable:

a. identification of all data received and not previously provided by the Navy during the reporting period;

b. all activities completed pursuant to this Agreement since the last project manager meeting, as well as such actions and plans which are scheduled for the upcoming ninety (90) days; and

c. a written 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 workplan during the quarter and any steps that were or will be taken to alleviate the delays or problems.

9.4. The Navy's project manager shall be responsible for preparation of minutes of all meetings. The State will have five (5) business days to submit comments to the Navy. The minutes of each project manager meeting shall be prepared by the Navy and, with the meeting agenda, will be sent to the State's project manager within fourteen (14) days after the meeting. If the State disagrees with the minutes, the Navy will revise the minutes to include the State's position. Any documents requested during the meeting will be provided with the draft minutes unless other agreements are reached for submission of the documents in a timely manner.

9.5. The authority of the project managers includes, but is not limited to:

a. taking samples and ensuring that sampling and other field work is performed in accordance with the terms of any final work plan and with applicable state and U.S. EPA guidance;

b. observing, and taking photographs and making such other reports on the progress of the work as the project managers deem appropriate, subject to the limitations set forth in section 28 (Access);

c. reviewing records, files and documents relevant to the work performed, subject to the limitations set forth in section 36 (Release of Records).

d. determining the form and specific content of the project manager meetings and of progress reports based on such meetings; and

e. recommending and requesting minor field modifications to the work to be performed pursuant to a final work plan, or in techniques, procedures, or design utilized in carrying out such workplan.

9.6. The Navy's project manager shall be responsible for day-to-day field activities at the Facility. The Navy's project manager or other designated Facility representative shall be present at the Facility or reasonably available to supervise work during all hours of work performed at the Facility pursuant to this Agreement. For all times that such work is being performed, the Navy's project manager shall inform the Public Works Department at the Facility of the name and telephone number of the designated representative responsible for supervising the work.

9.7. 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, the Navy shall notify the State's project manager by telephone within two (2) working days of when the Navy first became aware that the event might cause a delay. If the Navy intends to seek an extension of a deadline or schedule because of the event, it shall do so in accordance with section 19 (Extensions).

10. DOCUMENT REVIEW AND APPROVAL

10.1. This section establishes the procedures that the Parties will use to provide technical support, notice, review, comment, approval, and response to comments regarding remedial and removal action documents the Navy submits to the State. The Navy will normally be responsible for preparing and distributing documents to the State. As of the effective date of this Agreement, all draft, draft final, and final deliverable documents identified herein shall be prepared, distributed and, with respect to draft final documents, subject to dispute resolution in accordance with this Agreement.

10.2. The State may determine that the Navy may merge, delete, or combine multiple documents if deemed appropriate and, if so, may adjust deadlines accordingly. The State may also determine that a document already completed for one SWMU (or CERCLA Operable Unit or "OU") is sufficient to cover the same topic for another SWMU (or CERCLA OU).

10.3. The Navy shall complete and transmit drafts of the following documents (or the CERCLA equivalents) for each SWMU (or CERCLA OU) and for the final remedy to the State for its review, comment, and approval in accordance with this section:

(1) Visual Site Inspection ("VSI") Workplan and amendments thereto (see section 2.13, above)

(2) RCRA Facility Assessment Reports (Preliminary Assessment/Site Investigation Report)

(3) RCRA Facility Investigation ("RFI") Workplans (Remedial Investigation ("RI") Workplan)

(4) RFI Reports (Remedial Investigation Report)

(5) Corrective Measures Study ("CMS") Workplans (Feasibility Study ("FS") Workplan)

(6) CMS Reports (FS Report)

(7) Corrective Measures Implementation ("CMI") Workplans (Remedial Action or Corrective Action Decision Document)

(8) Public Participation Plan

(9) Operation and Maintenance Plans

(10) Draft CMI Plans and Specifications (Remedial Design and Development)

(11) CMI Construction Workplans

(12) CMI Construction Completion Reports

(13) Health & Safety Plans

(14) Site Management Plan

(15) Current Conditions Report

(16) Interim Measures Assessment

(17) Interim Measures Workplans (including Plans and Specifications, and O&M Plan)

b. The Navy shall complete and transmit draft documents in accordance with the schedule established in section 12 (Deadlines and Contents of Site Management Plan) of this Agreement.

10.4. The Navy shall revise any workplan, report, specification, or schedule to address the State's written comments. Revised submittals are subject to the State's approval or disapproval.

10.5. Review and Comment on Draft Documents.

a. The Navy shall complete and transmit each draft document to the State on or before the corresponding deadline established for the issuance of the document.

b. Except as provided in section 11.3(d) for time critical removal action documents, all draft documents shall be subject to a sixty (60) day period for review, comment, and approval by the State. At or before the close of the 60-day review period, the State shall transmit its written comments to the Navy.

c. The Navy shall make itself readily available to the State during the review period for purposes of responding informally to questions and comments on draft documents. Oral comments made during such discussions need not be the subject of a written response by the Navy at the close of the comment period.

d. Following the close of the review period for a draft document, the Navy shall give full consideration to all written comments. If any Party requests, within fifteen (15) days following the close of the comment period on a draft document, the Parties shall hold a meeting to discuss all comments received.

e. With respect to a draft document, the Navy shall, within sixty (60) days of the close of the review period, transmit a draft final document, which shall include the Navy's response to all written comments received within the review period, to the State.

f. The Parties may agree to time periods other than as set forth in this section. In appropriate circumstances, this time period may be further extended in accordance with section 19 (Extensions).

10.6. Document Approval.

a. The State has approval authority over all draft final documents. The State shall approve or disapprove a draft final document within thirty (30) days after it receives the draft final document.

b. Upon receipt of the State's written approval, the Navy shall commence work and implement any approved workplan in accordance with the schedule and provisions contained therein.

c. Any State approved workplan, report, specification, or schedule required under this Agreement shall be deemed incorporated into this Agreement.

d. Verbal advice, suggestions, or comments given by the State's representatives will not constitute an official approval or decision.

e. If the State does not approve a draft final document, the Navy may invoke dispute resolution pursuant to section 21 (Dispute Resolution).

f. When the Navy invokes dispute resolution on a draft final document, work may be stopped in accordance with the procedures set forth in section 11.2 (Work Stoppage).

10.7. Finalization of Documents.

The draft final document shall serve as the final document if the State approves the draft final document. If the Navy invokes dispute resolution, the final document will be as determined through the dispute resolution process.

10.8. Subsequent Modification of Final Documents.

a. Following finalization of any document pursuant to section 10.7 above, the Navy may seek to modify the document or the State may require modification of the document, including seeking additional field work, pilot studies, computer modeling or other supporting technical work.

b. The Navy may seek to modify a document after finalization by submitting a concise written request to the State's project manager. The request shall specify the nature of the requested modification and shall demonstrate that

(1) the requested modification is based on information that became available or conditions that became known, after the document was finalized; or

(2) the requested modification could be of significant assistance: in evaluating impacts on the public health or the environment, in providing an equally protective but less expensive technology, in evaluating the selection of response alternatives, or in protecting human health and the environment.

c. The State may determine or the Navy may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications are necessary in addition to, or in lieu of, the tasks and deliverables included in any part of State approved workplans. The State shall request in writing that the Navy perform the additional work and shall specify the basis and reasons for the State's determination that the additional work is necessary. Within fourteen (14) days after the receipt of such determination, the Navy may confer with the State to discuss the additional work the State has requested. If required by the State, the Navy shall submit a workplan to the State for the additional work. Such workplan shall be submitted to the State within thirty (30) days of receipt of the State's determination or according to an alternate schedule established by the State. Upon approval of a workplan, the Navy shall implement it in accordance with the provisions and schedule contained therein. The Navy may dispute the State's decisions regarding additional work in accordance with section 21 (Dispute Resolution) of this Agreement.

d. Nothing in this section shall alter the State's ability to request the performance of additional work which was not contemplated by this Agreement. The Navy's obligation to perform such work must be established by either a modification of a document or by amendment to this Agreement.

11. EMERGENCIES AND REMOVAL ACTIONS

11.1. Discovery and Notification.

a. For purposes of this Agreement, "emergency removal action" is defined as a situation that poses a risk of fire or explosion or that needs immediate attention, i.e., within hours or days of discovering the situation.

b. If any Party discovers or becomes aware of an emergency or other situation that may present an endangerment to public health, welfare or the environment at or near the Facility, which is pertinent to or may affect the work performed under this Agreement, that Party shall notify the other Party orally within twenty-four (24) hours and will forward written notification within seven (7) days.

c. For emergency removal actions, the Parties will consult to the extent practical before commencement of fieldwork and the Navy shall notify the State in accordance with subsection 11.1.b. Such oral notification shall, except in such a case where the urgency of the situation does not allow, include adequate information concerning the site background, threat to the public health and welfare or the environment (including the need for response), proposed actions and costs (including a comparison of possible alternatives, means of transportation of any hazardous substances off the premises at the Facility and the proposed manner of disposal), and expected change in the situation should no action be taken or should action be delayed

(including associated environmental impacts). If the Navy believes it must commence emergency activities without delay, the Navy shall attempt to contact the State's project manager or, if the project manager is unavailable, his/her supervisor, prior to commencing such activities. Within sixty (60) days after initiation of the fieldwork, the Navy will furnish the State with an Action Memorandum addressing the information provided in the oral notification, and any other information required pursuant to applicable State law for such actions.

d. If the emergency arises from activities conducted pursuant to this Agreement, the Navy shall then take immediate action to notify the appropriate State and local agencies and affected members of the public.

e. If any Party determines that there may be an endangerment to the public health or welfare or the environment because of an actual or threatened release of hazardous substances, hazardous wastes, hazardous constituents at or from the Facility, the State may request that the Navy take such response actions as may be necessary to abate such danger or threat and to protect the public health or welfare or the environment.

11.2. Work Stoppage.

a. In the event that any Party determines that activities conducted pursuant to this Agreement will cause or otherwise be threatened by a situation that may present an endangerment to public health, welfare or the environment at or near the Facility, that Party may propose the suspension of such activities, and activities may be stopped as per the Parties' agreement. If the Parties do not agree, the activities shall be stopped in accordance with the proposal and the matter shall be immediately referred to the lead state regulatory agency. The Navy may dispute the State's determination in accordance with section 21.11 (Expedited Dispute Resolution).

b. In the event that the State determines that a removal action being managed by the Navy as an emergency removal action should be managed as a time critical removal action, a non-time critical removal action or a remedial action, the State may propose the suspension or alteration of the action, and the action shall be stopped as per the Parties' agreement. If the Parties do not agree, the activities shall be stopped in accordance with the proposal and the matter shall be immediately referred to the lead state regulatory agency for a work stoppage determination. The Navy may dispute the State's determination in accordance with section 21.11 (Expedited Dispute Resolution).

11.3. Removal Actions

a. All removal actions conducted at the Facility shall be subject to applicable State and federal law.

b. Nothing in this Agreement shall alter the State's authority with respect to removal actions conducted at the Facility.

c. The Navy shall provide the State with timely notice and opportunity to review, comment, and approve all proposed removal actions.

d. Time Critical Removal Actions (TCRAs). For purposes of this Agreement, "time critical removal action" means a physical condition as to which a response action needs to be initiated within six months after the Parties' agreement that the action should be undertaken as a TCRA. To the extent consistent with the National Contingency Plan, the Navy shall submit time critical removal action documents to the State for its review and approval as follows.

(1) The Navy shall submit a draft Action Memorandum and Workplan, so that it is received by the State within forty-five (45) days of the Parties' decision that a removal action should be implemented.

(2) The State shall review the draft Action Memorandum and workplan and transmit written comments, so they are received by the Navy within seventy-five (75) days of the Parties' decision that a removal action should be implemented.

(3) The Navy shall revise and submit a revised draft Action Memorandum and workplan so that it is received by the State within ninety (90) days of the Parties' decision that a removal action should be implemented.

(4) The State shall review and transmit comments on the revised draft Action Memorandum and workplan so they are received by the Navy within one hundred-twenty (120) days of the Parties' decision that a removal action should be implemented. All comments will be discussed and addressed prior to commencement of the public comment period.

(5) The State's comments during the thirty (30) day review period may be transmitted orally, by meeting or telephone, and the State will provide written confirmation of comments.

(6) A 30-day public comment period will be initiated for the revised draft Action Memorandum and workplan and the CEQA document no later than one hundred thirty (130) days of the Parties' decision that a removal action should be implemented.

(7) No later than the scheduled commencement of fieldwork, the Parties shall respond jointly to comments received on the revised draft Action Memorandum and workplan during the public comment period.

(8) The State shall respond to comments on CEQA documents.

(9) The State will advise the Navy of any comments received during the CEQA public comment period and the Parties will work together to revise the revised draft final Action Memorandum and workplan, where appropriate, to account for comments received during the public comment period during the ten days following the conclusion of the public comment period. The Navy will submit this revision as a draft final Action Memorandum and workplan to the State at the conclusion of the ten day period.

(10) Where appropriate, a public meeting may be held during the public comment period.

(11) The State will notify the Navy of its approval or disapproval within ten (10) days after the State receives the draft final Action Memorandum and workplan.

(12) The State's determination is subject to the expedited dispute resolution process set out in section 21.11.

e. Non time critical removal actions. Non time critical removal actions are all removal actions that are neither emergency removal actions nor time critical removal actions. The Navy will submit non-time critical removal action documents to the State for its review and approval in accordance with section 10 (Document Review and Approval).

f. All activities related to ongoing interim measures/removal actions shall be reported by the Navy in status reports as described in section 9 (Project Managers).

12. DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN

12.1. In order to ensure that the work to be performed under this Agreement is accomplished in a timely manner, the Parties have agreed to establish deadlines consisting of (i) near term milestones for the current federal fiscal year (FY), the budget year (FY+1) and the planning year (FY+2); (ii) out year milestones for the years occurring after the planning year until the completion of the cleanup or phase of the cleanup (FY+3 and beyond); and (iii) project end dates for the completion of major portions of the cleanup or for the cleanup as a whole.

12.2. Near term milestones for performance of work and submittal of documents within the current fiscal year (FY) are enforceable. Near term milestones, out year milestones and project end dates will not change without the Parties' agreement, unless in accordance with the procedures outlined in section 19 (Extensions). Out year milestones and project end dates shall not be enforceable until they become near term milestones for the current FY in accordance with the terms of section 13.4; provided, however, if an activity is fully funded in the current FY, milestones associated with

performance of work and submittal of documents associated with such activity (even if they extend beyond the current FY) shall be enforceable. For the purposes of this Agreement, a fiscal year is the yearly time frame used by the United States Government that commences on October 1 and ends September 30th of the following calendar year.

12.3. The Site Management Plan ("SMP") establishes deadlines out to the project end date for the submittal of documents pursuant to this Agreement. Pursuant to section 6 (RCRA-CERCLA Coordination) the SMP outlines all activities and associated documentation to be undertaken at the Facility for CERCLA response actions, including those which would otherwise be handled as RCRA corrective actions. The SMP incorporates all deadlines and target dates contained in approved workplans. All schedules approved in future workplans immediately become incorporated in the SMP.

12.4. Deadlines in the SMP reflect the priorities agreed to by the Parties, in consultation with stakeholders. Site activities have been prioritized by weighing and balancing a variety of factors including, but not limited to:

a. the relative risk considerations for the Facility,

b. potential or future use of the Facility,

c. ecological impacts,

d. intrinsic and future value of affected resources,

e. cost effectiveness of the proposed activities,

f. regulatory requirements,

g. environmental justice considerations, and

h. actual and anticipated funding levels.

While deadlines should not be driven by budget targets, such targets should be considered. In setting and modifying deadlines, the Parties will make good faith efforts to accommodate federal fiscal constraints, which include budget targets established by the Navy.

12.5. The SMP includes (and shall be amended annually to include):

a. Actions necessary to mitigate any immediate threat to human health or the environment;

b. A listing of all currently identified SWMUs (which may be grouped into Operable Units for RCRA-CERCLA Coordination purposes) covered or identified pursuant to this Agreement;

c. Activities and schedules for corrective actions covered by the SMP. Activities included, at a minimum, are:

(1) Near term milestones for the performance of work and submittal of all documents in the three-year SMP period,

(2) Out year milestones for all documents covered in the SMP for the years FY+3 through the project end date,

(3) Schedule for initiation of interim measures, removal actions, corrective measures and any initiation of other planned corrective action(s) covered by this Agreement, and

(4) Project end dates for the completion of any planned corrective action(s) covered by this Agreement.

d. If the development of a document is fully funded in the first year of the three-year period covered by the SMP, enforceable deadlines for submittal of that draft document may extend beyond the current fiscal year as reflected in the SMP.

e. Maps showing the location of sites identified in Attachment A.

12.6. The SMP shall be amended on a yearly basis as provided in section 13 (Budget Development and Amendment of Site Management Plan). All subsequent Amendments to the SMP shall meet all of the requirements set forth in this section.

12.7. The enforceable deadlines established pursuant to this section and section 13 (Budget Development and Amendment of Site Management Plan) shall be incorporated into the draft SMP attached to this Agreement.

12.8. The deadlines established in accordance with this section and section 13 (Budget Development and Amendment of Site Management Plan) may be extended during the SMP review process using the criteria outlined in sections 12.4 - 12.7. All other extensions shall be governed pursuant to section 19 (Extensions) of this Agreement. Possible bases for extension of the deadlines, as determined by the Parties' agreement, include but are not limited to the identification of significant new site conditions at this installation, reprioritization of activities under the Agreement that are caused by changing priorities or new site conditions elsewhere in the Navy, and reprioritization of activities under this Agreement caused by budget adjustments (e.g., rescissions, inflations adjustments, and reduced Congressional appropriations).

13. BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN

13.1. Definitions:

a. "Deadline" or "milestone" shall mean a time limitation specifically established or provided for under the terms of the Agreement or the SMP for performance of work and submittal of documents and shall not include target dates. Deadlines shall include "near term milestones," "out year milestones" and "project end dates," as such terms are defined below.

b. "Near term milestones" shall mean the dates established by the Parties in the SMP for the submittal of documents and performance of work 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). The Parties recognize that milestones in the current fiscal year are enforceable.

c. "Out year milestones" shall mean the dates established by the Parties in the SMP in consultation with public stakeholders, for the submittal of documents 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, as defined below).

d. "Project end dates" shall mean the dates established by the Parties in the SMP in consultation with public stakeholders, for the completion of major portions of the cleanup or completion of the cleanup of the entire Facility.

13.2. Funding Sources.

a. The Parties intend that all the Navy's obligations arising under this Agreement will be fully funded. The Navy agrees to seek sufficient funding through the Department of the Navy budgetary process to fulfill its obligations under this Agreement.

b. The Navy believes that funds authorized and appropriated annually by Congress under the ER,N appropriation in the Department of Defense Appropriation Act to the Navy will be the exclusive source of funds for Environmental Restoration, Navy (ER,N)-eligible activities required by this Agreement consistent with SARA section 211, 10 U.S.C, Chapter 160. In the event that any activities are ER, N-ineligible, the Navy believes Navy Operation & Maintenance (O&MN) or Major Range Test Facility Base (MRTFB) funds, as appropriate, will be the exclusive source of funds for such activities.

c. In accordance with CERCLA section 120(e)(5) (42 U.S.C. section 9620(e)(5)) and 10 U.S.C. section 2706, the Navy shall submit the specific cost

estimates and budgetary proposals associated with the implementation of this Agreement to DoD for inclusion in its annual report to Congress.

d. Any requirement for the payment or obligation of funds by the Navy established by the terms of this Agreement shall be subject to the availability of appropriated funds and, for ER, N-eligible activities, the provisions of 10 U.S.C. section 2703. No provision of this Agreement 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.

e. During any year in which the ER,N appropriation is inadequate to meet the total Navy CERCLA/RCRA implementation requirements, the Navy will, in consultation with DTSC, prioritize and allocate that year's appropriation consistent with section 12 (Deadlines and Contents of Site Management Plan). With respect to O&MN and MRTFB-funded activities, the Parties acknowledge that these appropriations have multiple purposes, including those unrelated to environmental compliance and which relate to military readiness and mission essential operations. While it is not practical for the Facility to open these budgets to the same prioritization process as for ER,N-eligible activities, the Facility agrees to engage in dialogue with the State on the Facility's current budget priorities for these appropriations and to discuss prioritization of that portion of the funds designated for environmental compliance projects, in order to attempt to arrive at mutually satisfactory methods for addressing shortfalls for projects under this Agreement.

13.3. The Department of the Navy, a federal agency, is subject to fiscal controls, hereinafter referred to as the Future Year Defense Plan (FYDP). The FYDP is a budgetary plan which covers a set six-year period (e.g., the next FYDP covers FY00 through FY05) and which feeds into the President's Executive Branch budget. The process for reviewing and adjusting the FYDP to (I) meet program requirements and (ii) conform to OMB fiscal plans, is called the Program Objective Memorandum (POM) process. Although the POM process technically occurs at two-year intervals, for purposes of this Agreement one may assume that the FYDP undergoes an annual POM-like review. To prepare for the development of the FYDP, the POM process is undergone in advance of the first year of the FYDP, such that POM 00 is started in FY 97, to prepare for the development of the FYDP running from FY00 through 05.

13.4. The Parties acknowledge that planning, programming and budgeting is a multi-year process. The Parties agree that they should be involved in the full cycle of planning, programming, and budgeting activities, although DTSC is under no obligation to be so involved.

13.5. Funding Levels.

a. The Navy agrees to meet with the State's project manager or designee to review the future year defense plan (FYDP) controls, develop a list of requirements/work to be performed at the Site for inclusion in the Navy's program objective memorandum (POM) process, and participate in developing the Navy's Southwest Division (SWDIV) or, for ER,N-ineligible activities, the Facility's, submission to the President's proposed budget, based on POM decisions for the year currently under consideration. When developing the President's proposed budget, the Navy agrees to notify the State that SWDIV's/Facility's budget controls have been received within ten working days of receiving those controls. Within 5 days of such notification, the Navy also agrees to consult with the State on the President's proposed budget. This consultation shall occur prior to SWDIV's initial budget submission to the Naval Facilities Engineering Command (NAVFAC) headquarters or, if there are non-ER,N funded CERCLA/RCRA activities, the Facility's initial budget submission to the headquarters of the appropriate Navy claimant.

b. In the event that the Parties cannot agree on funding levels required to perform all work outlined in the SMP, the Parties agree to make reasonable efforts to resolve these disputes informally. If the Parties cannot reach agreement, SWDIV, through NAVFAC or, if applicable, the Facility through the appropriate Navy claimant, agrees to elevate the budget request to the Office of the Chief of Naval Operations (OCNO) Navy Headquarters (after incorporating as much input from the Parties as possible) and inform OCNO of the possibility that the State will initiate enforcement action if the requested funds are insufficient to perform the work in dispute. In addition, if SWDIV's/Facility's budget submissions to NAVFAC or the appropriate Navy claimant do not include sufficient funds to complete all work in the existing SMP, after any agreed-upon modifications, the Navy's budget submission shall also include supplemental reports that fully disclose the work required by the SMP, but not included in the original budget request. These supplemental reports shall accompany the cleanup budget that the Navy submits from SWDIV/Facility through successive levels of the Navy to OCNO and to the DoD Comptroller.

13.6. SWDIV/Facility Budgets.

a. The Navy shall forward to the State documentation of the budget requests (and any supplemental reports as outlined in section 13.2(b) above) for actions under this agreement, as submitted by SWDIV to NAVFAC, by Facility to the appropriate Navy claimant if applicable, and by NAVFAC or the appropriate Navy claimant to OCNO, within fourteen (14) days after the submittal of such documentation to OCNO.

b. For ER,N-eligible activities, SWDIV will coordinate the development of its budget with representatives of the U.S. EPA regional offices and the States that are in the geographical area administered by SWDIV. For O&MN and MRTFB-funded activities, the multiple purposes of these appropriations do not lend themselves to the same budget development process as for ER,N-eligible activities. Nevertheless, the Facility agrees to coordinate with the State in the development of its budget for these

appropriations in a manner that optimizes its environmental compliance obligations while meeting its mission requirements.

13.7. Amended Site Management Plan.

a. No later than June 15 of each year after the development of the SMP, the Navy shall submit a draft Amended SMP which will propose deadlines to take effect in the next FY to the State. Unless the Parties agree to modify the deadlines as provided below, the draft Amended SMP should carry forward all near term milestones, out year milestones and project end dates included in the existing SMP. Therefore, in most cases, near term milestones in the existing SMP for FY+1 and FY+2 shall be proposed as the near term milestones for FY and FY+1 in the draft Amended SMP. In addition, the Navy shall examine the newly proposed FY and FY+1 milestones, funding circumstances (including OMB targets/guidance), and the factors outlined in section 12.4 to evaluate whether the previously agreed upon project end dates and out year milestones for FY+3 (i.e., what is FY+3 under the existing SMP and will become FY+2 under the Amended SMP) should become near term milestones.

b. Any proposed changes to milestones must be explained in a cover letter to the draft Amended SMP. Moreover, any changes to near term milestones, out year milestones or project end dates require the Parties' agreement. The draft Amended SMP should reflect any decisions made by the Parties during the planning, programming, and budgeting consultation process outlined in sections 12 and 13, and shall be based upon the assumption that all remedial requirements for the Facility submitted during the development of the President's budget for the upcoming fiscal year will be fully funded. Any disagreement over adjustment of deadlines pursuant to this section shall be resolved in the context of the draft final amendment to the SMP. Additionally, the yearly Amended SMP shall contain revised target dates for the submission of documents during the upcoming three fiscal years. The yearly Amendment to the SMP will incorporate any SWMUs or operable units newly identified pursuant to this Agreement.

c. The Parties shall meet as necessary to discuss the draft Amended SMP. Within thirty (30) days of receipt of the draft Amended SMP, the State shall review the draft Amended SMP and provide comments to the Navy. If the State submits comments and is not satisfied with the draft Amended SMP, the Parties will meet within fifteen (15) days of Navy's receipt of comments on the draft Amended SMP to discuss the draft Amended SMP.

d. Within thirty (30) days of receipt of the State's comments on the draft Amended SMP, the Navy shall make revisions and issue a revised draft ("draft final SMP"). The State shall approve or disapprove the draft final SMP within 30 days after it receives it.

e. The Navy will work with the State to reach consensus on the reprioritization of work made necessary by any yearly appropriation shortfalls or other circumstances described in paragraph 12.8. This may include working with representatives of the U.S. EPA regional offices and the States located within the geographical area administered by SWDIV to reach consensus on the reprioritization of work made necessary by any yearly appropriation shortfalls or other circumstances described in paragraph 12.8.

f. Within thirty (30) days after SWDIV has received official notification of SWDIV's allocation based on the current year's "Environmental Restoration, Navy" (ER,N) appropriation, and, if applicable, the Facility has received official notification of its allocation of the current year's O&MN and MRTFB appropriations, the Navy shall determine if planned work (as outlined in the draft final SMP) can be accomplished with the allocated funds. If the allocated funds are sufficient to complete all planned work for that fiscal year and no changes to the draft final SMP are required, the Navy shall immediately forward a letter to the State indicating that the draft final SMP has become the final SMP.

g. In the event that the Navy determines within the 30-day period specified above or receives mid-year notification of a Congressionally mandated rescission or reprogramming of funding such that the allocated funds are not sufficient to accomplish the planned work for the Site (an appropriation shortfall), the Navy shall immediately notify the State and the project managers shall meet within thirty (30) days to determine if planned work (as outlined in the draft final SMP) can be accomplished through 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 through developing and implementing new cost-saving measures. If, during this thirty (30) day consultation period, the Parties determine that rescoping or implementing cost-saving measures are not sufficient to offset the appropriation shortfall and the Parties agree that near term milestones, out year milestones and project end dates should be modified, the Parties shall discuss these changes and develop modified deadlines, based on the prioritization process in section 12.4. If the Parties do not agree on appropriate modifications, the State retains its authority not to concur with a request to modify or extend existing schedules and deadlines.

h. The Navy shall submit a revised draft final SMP within thirty (30) days of the end of the consultation period. The revised draft final SMP shall reflect the State's input. The State shall have thirty (30) days to review the revised draft final SMP, and will notify the Navy in writing whether it approves or disapproves the revised draft final SMP. If the State approves the revised draft final SMP, it shall become the final SMP.

i. If the State disapproves the revised draft final SMP, the Navy may submit the issue to expedited dispute resolution as set forth in section 21.11. Within fifteen (15) days after the conclusion of dispute resolution, the Navy shall revise and reissue the final SMP as necessary. Any dispute under this section shall not affect the timely

adherence to the terms of this Agreement, including schedules, except as specifically provided herein.

14. SUBMITTALS

14.1. Beginning with the fourth full month following the effective date of this Agreement, until suspended by the State in writing, the Navy shall provide the State with quarterly progress reports of corrective action, removal action and remedial action activities completed, in progress and to be conducted pursuant to this Agreement. Progress reports are due on the tenth day of the month following the end of the previous quarter. The progress reports shall conform to the Scope of Work for Progress Reports or Status reports as identified in section 9.3. The State may adjust the frequency of progress reporting to be consistent with site-specific activities.

14.2. Any report or other document submitted by the Navy pursuant to this Agreement shall be signed and certified by the Navy's project manager or other duly authorized Navy representative.

14.3. The certification required above shall be in the following form:

> "I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those portions of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared at my direction in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: _____

Name: _____

Title: _____

Date: _____

14.4. The Navy shall provide three (3) copies of all documents to DTSC and two (2) copies of all documents to the RWQCB, including but not limited to, workplans, reports, and correspondence of fifteen (15) pages or longer. Submittals specifically exempted from this copy requirement are all progress reports and correspondence of less than 15 pages, of which one copy is required.

14.5. Unless otherwise specified, all reports, correspondence, approvals, disapprovals, notices, or other submissions relating to this Agreement shall be in writing and shall be sent to the respective project managers.

15. PROPOSED CONTRACTOR/CONSULTANT

15.1. All work performed pursuant to this Agreement shall be under the direction and supervision of a professional engineer or registered geologist, registered in California, with expertise in hazardous waste site cleanup. Additionally, all geophysical reports or documents shall be prepared by a registered geophysicist in accordance with Sections 7835.1 and 7839.1 of the California Geologist and Geophysicist Act. Any Navy contractor or consultant shall have the technical expertise sufficient to fulfill his or her responsibilities.

16. QUALITY ASSURANCE

16.1. All sampling and analyses performed by the Navy under this Agreement shall follow applicable state and U.S. EPA guidance for sampling and analysis. Workplans shall contain quality assurance/quality control and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the approved workplans must be approved by the State prior to implementation, must be documented, including reasons for the deviations, and must be reported in the applicable report. The Navy may secure telephone approval from the lead State project manager for field work changes.

16.2. The Navy must use California state certified analytical laboratories for all laboratory work performed pursuant to this Agreement. Upon the State's approval, the Navy may use non-California certified analytical laboratories in those cases where no California state approval laboratory is available or able to conduct chemical analyses for work required under this Agreement.

16.3. All workplans required under this Agreement shall include data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended uses.

16.4. The Navy shall monitor to ensure that high quality data are obtained by its consultant or contract laboratories. The Navy shall ensure that laboratories it used or uses for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste, (SW-846)", or other methods deemed satisfactory to the State. If methods other than U.S. EPA methods are to be used, the Navy shall specify all such protocols in the applicable workplan. The State may reject any data that do not meet the requirements of the approved workplan, U.S. EPA analytical methods, or quality assurance/quality control procedures, and may require resampling and analysis.

16.5. The Navy shall ensure that the California State-certified laboratories it used or uses for analyses have a quality assurance/quality control program. The State may conduct a performance and quality assurance/quality control audit of the laboratories chosen by the Navy before, during, or after sample analyses. Upon the State's request, the Navy shall have its selected laboratory perform analyses of samples provided by the State to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory's performance or quality assurance/quality control procedures, resampling and analysis may be required by the State.

17. SAMPLING AND DATA/DOCUMENT AVAILABILITY

17.1. The Navy shall submit to the State the results of all sampling and/or tests or other data generated by its employees, agents, consultants, or contractors pursuant to this Agreement, upon the State's request.

17.2. The Navy shall notify the State in writing at least seven (7) days prior to beginning each separate phase of field work approved under any document required by this Agreement.

17.3. At the State's request, the Navy shall provide or allow the State or its authorized representative to take split or duplicate samples of all samples collected by the Navy pursuant to this Agreement. Similarly, at the Navy's request, the State shall allow the Navy or its authorized representative to take split or duplicate samples of all samples collected by the State under this Agreement.

18. CERTIFICATION

18.1. When the Navy believes that the final corrective action(s) under the Permit for a given SWMU or AOC have been completed in accordance with the requirements of this Agreement, it shall so advise the State in writing, and shall schedule and conduct a close-out inspection to be attended by the Navy and the State. Within thirty (30) days of each close-out inspection, the Navy shall submit a Corrective Measures Completion Report, signed by the Navy's signatory authority or designee, certifying that the corrective action(s) has been completed in full satisfaction of the requirements of this Agreement. The Navy shall submit a request to the State for certification of the completion of corrective action.

18.2. The Corrective Measures Completion Report shall contain a summary of the SWMU or AOC, the corrective action(s) undertaken for this SWMU or AOC, the post-remedial activities planned for the SWMU or AOC, and any noteworthy observations made during the close-out inspection. Within ninety (90) days of receipt of the Navy's request for certification, the State shall advise the Navy in writing that it:

a. certifies that the corrective action has been completed in accordance with this Agreement, based on conditions known at the time of certification; or

b. denies the Navy's request for certification, stating in full the basis of its denial and detailing the additional work needed for remedial or corrective action completion and certification.

18.3. If the State denies the Navy's request for certification that a corrective action has been completed in accordance with this Agreement, the Navy may invoke dispute resolution within twenty (20) days of receipt of the State's written denial to review DTSC's determination on certification or additional work needed. If the States's denial of certification is upheld in Dispute Resolution, the Navy will perform the requested additional work.

18.4. If dispute resolution is not invoked, or if the State's denial of certification is upheld in dispute resolution, the Navy shall 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 required work. After performing the additional work, the Navy may resubmit a request for certification to the State. The State shall then grant or deny certification pursuant to the process set forth in this section.

19. EXTENSIONS

19.1. The Navy may request an extension of any deadline for good cause. The request shall be made at least 7 days prior to the deadline, if practicable, and shall specify:

a. the timetable, deadline or schedule that is sought to be extended;

b. the length of the extension sought;

c. the good cause for the extension; and

d. the extent to which any related timetable and deadline or schedule would be affected if the extension were granted.

19.2. Good cause means:

a. an event of force majeure (as defined in section 20, *infra*)

b. a delay caused by the State's failure to meet any requirement of this Agreement provided that the delay is directly related to the matter that is the subject of the proposed extension;

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

d. a delay caused, or likely to be caused, by an extension of another timetable and deadline or schedule;

e. a delay in the State's review of a permit application or issuance of a permit or other forms of authorization required to perform activities undertaken pursuant to this Agreement;

f. a stop-work order issued by the State;

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

h. unusual delay in transportation;

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

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

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

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

19.4. Within seven (7) days of receipt of a request for an extension of a timetable, deadline or schedule, the State shall advise the Navy in writing of its position on the request. If the State does not concur in the requested extension, it shall include in its statement of non-concurrence an explanation of the basis for its position.

19.5. If the State grants the extension, the Navy shall extend the affected timetable and deadline or schedule accordingly. If the State disapproves the requested extension, the timetable and deadline or schedule shall not be extended. The Navy may submit the State's decision to dispute resolution in accordance with section 21 (Dispute Resolution).

19.6. If the State becomes aware that it will not meet a review deadline, the State shall notify the Navy in writing of:

a. the specific document;

b. the length of the extension; and

c. the reason for the extension.

19.7 The Navy will identify any related impacts to the timetable and deadline or schedules that may be affected.

19.8 In any dispute resolution, the Navy shall bear the burden of proof on the issue of whether it exercised due diligence to avoid the situations set out in 19.2.g, h, i, or j, above.

20. FORCE MAJEURE

20.1. A force majeure shall mean any event arising from a cause not foreseeable and beyond the control of the Navy, which could not be avoided or overcome by due diligence and which delays or prevents performance by a deadline that exists because of this Agreement. An event of force majeure shall excuse the Navy from compliance with the schedules in the SMP. Examples of force majeure include:

a. acts of God, fire, war, insurrection, civil disturbance, or explosion;

b. adverse weather conditions that could not be reasonably anticipated;

c. national conflict or emergency declared by the President or Congress and affecting the Navy;

d. restraint by court order or order of public authority;

e. a strike, lockout or other labor difficulty; or

f. insufficient availability of appropriated funds due to Congressionally mandated cuts or rescissions.

20.2. (Reserved)

20.3. When circumstances which may delay or prevent the completion of the Navy's obligation under this Agreement are caused by a force majeure event, the Navy shall notify the State's project manager orally of the circumstances within forty-eight (48) hours after the Navy first became aware of these circumstances. Within fifteen (15)

days of the oral notification, the Navy shall deliver a written explanation of the cause(s) of any actual or expected delay and the anticipated duration of any delay to the State. The Navy shall exercise its best efforts to avoid or minimize any such delay and any effects of such delay.

20.4. The State may invoke expedited dispute resolution (section 21.11) with respect to the Navy's claim of force majeure based on lack of funding, including a dispute on the issue of the Navy's good faith efforts to obtain the funding.

20.5. An event of force majeure does not affect obligations of the Navy that are outside the scope of this Agreement.

21. DISPUTE RESOLUTION

21.1. The Parties will use their best efforts to resolve all disputes informally. DTSC and RWQCB will determine, and notify the Navy in writing, which State Party is the lead regulatory agency, depending upon the nature of the issue disputed. Except as specifically set forth elsewhere in this Agreement, the procedures contained in this section shall apply to resolution of disputes arising under this Agreement. If a Party fails to follow the procedures contained in this section, it shall have waived its right to further consideration of the disputed issue.

21.2. Within fifteen (15) days after the State notifies the Navy that the State disapproves a document, or within fifteen (15) days after the State fails to timely approve a document, or within (15) days after any other action that generates a dispute, the Navy shall submit a written statement of the dispute, setting forth the nature of the dispute, the work affected by the dispute and the technical, legal or factual information upon which the Navy is relying to support its position, to the Branch Chief, Northern California Office of Military Facilities, DTSC (or to his/her designee) or Division Chief, South Lahontan Watersheds Division, RWQCB (or to his/her designee).

21.3. The State and the Navy shall have twenty-one (21) days from the State's receipt of the Navy's written request to resolve the dispute through formal discussions. The Parties may agree to extend this time period for no more than seven days. During such period, the Navy may meet or confer with the State to discuss the dispute.

21.4. After the formal discussion period, the appropriate State Party will provide the Navy with its written decision on the dispute. The State's written decision will reflect any agreements reached during the formal discussion period and be signed by the appropriate State Branch Chief or Division Chief (or his/her designee).

21.5. Within fifteen (15) days after the Navy receives the State's written decision, the Navy may seek additional review of the State's written decision by the Senior Executive Committee ("SEC") by forwarding a copy of the State's written decision, along with a

request for review, to the SEC. The Navy's representative on the SEC is the Commander, SOUTHWESTNAVFACENGCOM, or his/her designee. The DTSC's representative is the Chief, Office of Military Facilities or his/her designee. The RWQCB representative is the Assistant Executive Officer, or to his/her designee.

21.6. The SEC shall have twenty-one (21) days from receipt of the State's decision and Navy's written request to resolve the dispute through formal discussions. If the SEC is not able to resolve the dispute, the State's representative will issue a written decision within five (5) days following the close of this period.

21.7. Within fifteen (15) days after the Navy receives the State's written decision, the Navy may seek additional review of the State's written decision by forwarding a copy of the State's written decision to both the Deputy Assistant Secretary of the Navy (Environment and Safety) and to the DTSC Director and the RWQCB Executive Officer, along with a request for review. These Navy and State representatives, or their respective designees, shall meet and attempt to resolve the dispute within twenty-one (21) days after receipt of the State's SEC decision.

21.8. Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this section, the Navy shall incorporate the resolution and final determination into the appropriate plan, schedule, document or action.

21.9. If the Navy and the State are ultimately unable to resolve the issue in dispute in accordance with this section, the State shall issue a written statement of the status of the dispute. In that case, the State reserves its rights to take any action available to it to enforce the California Hazardous Waste Control Law and the California Water Code, or take any other action under applicable state and federal law. The Navy reserves its rights to take any action or to assert any defense available to it under applicable state and federal law.

21.10. For purposes of this section, each Party's representative must be authorized to bind that Party under Section 21 to any resolution agreed to and reached jointly by the Parties.

21.11. Expedited Dispute Resolution.

a. Issues subject to expedited dispute resolution by the terms of this Agreement shall be submitted directly to the SEC within five (5) days after the appropriate State Party notifies the Navy that the State disapproves a document, or within five (5) days after an action that generates a dispute. The SEC shall have ten (10) days to resolve the dispute. If the SEC is not able to resolve the dispute, the State representative will issue a written decision within five (5) days following the close of this period.

b. Within seven (7) days after the Navy receives the State's written decision, the Navy may seek additional review of the State's written decision by forwarding a copy of the State's written decision to both the Deputy Assistant Secretary of the Navy (Environment and Safety) and to the DTSC Director and the RWQCB Executive Officer, along with a request for review. These Navy and State representatives, or their respective designees, shall meet and attempt to resolve the dispute within ten (10) days after receipt of the State's SEC decision.

c. If the Navy and the State are ultimately unable to resolve the issue in dispute in accordance with this section, the State shall issue a written statement of the status of the dispute. In that case, the State reserves its rights to take any action available to it to enforce the California Hazardous Waste Control Law and the California Water Code, or take any other action under applicable state and federal law. The Navy reserves its rights to take any action or to assert any defense available to it under applicable state and federal law.

21.12. During the pendency of dispute resolution, work affected by the dispute may be discontinued if the Navy makes such a request to the State. The work will stop unless the State makes a determination that work stoppage would present an endangerment to public health or welfare or the environment, in accordance with section 11.2 (Work Stoppage). The existence of a dispute shall not excuse, toll, or suspend any other compliance obligation or deadline required pursuant to this Agreement.

22. OTHER CLAIMS

22.1. Nothing in this Agreement shall restrict any Party from taking any action under RCRA, CERCLA, State law, or other environmental statutes and regulations for any matter not specifically part of the work performed under this Agreement.

22.2. 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 Facility. Specifically, this Agreement does not bar any claim for:

a. natural resources damage assessments, or for damage to natural resources; or

b. liability for disposal of any Hazardous Substances or waste material taken from the Facility.

22.3. DTSC shall not be held as a Party to any contract entered into by the Navy to implement the requirements of this Agreement.

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

23. RESERVATION OF RIGHTS

23.1. Notwithstanding anything in this Agreement, the State may initiate any action or pursue any legal or equitable remedies available to it, including requiring additional response actions by the Navy in the event that: (a) conditions previously unknown or undetected by the State arise or are discovered at the Facility; or (b) the State receives additional information not previously available concerning the premises which it employed in reaching this Agreement; or (c) the State determines that the implementation of the requirements of this Agreement are no longer protective of public health and the environment; or (d) the State discovers the presence of conditions on the Facility which may constitute an imminent and substantial danger to the public health, welfare, or the environment; or (e) the Navy fails to meet any of its obligations under this Agreement; or (f) the Navy fails or refuses to comply with any applicable requirement of CERCLA or RCRA or State laws.

23.2. The Parties reserve all of their statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to the any failure to comply with any of the requirements of this Agreement. This Agreement shall not be construed as a covenant not to sue, release, waiver, or limitation on any rights, remedies, powers, or authorities, civil or criminal, that the Parties have under any statutory, regulatory, or common law authority.

23.3 This Agreement is not intended to change the legal relationship or respective legal authorities, defenses and remedies of the Parties, nor to foreclose consideration of issues related to the scope of the State's authority in the Dispute Resolution process set forth in Section 21 or any legal proceeding.

23.4 The State reserves the right to disapprove work performed by the Navy pursuant to this Agreement and to request that the Navy perform additional tasks.

23.5. The State reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and/or remedial actions it deems necessary to protect human health and/or the environment. The State may

exercise its authority under any applicable State or federal law or regulation to undertake response actions at any time. The State reserves its right to seek reimbursement from the Navy for costs incurred by the State of California with respect to such actions. The State will notify the Navy in writing as soon as practicable regarding the decision to perform any work described in this section.

23.6. If the State determines that activities in compliance or noncompliance with this Agreement have caused or may cause a release of hazardous waste and/or hazardous waste constituents, or a threat to human health and/or the environment, or that the Navy is not capable of undertaking any of the work required, the State reserves its rights to order the Navy to stop further implementation of this Agreement for such period of time as the State determines may be needed to abate any such release or threat. The deadlines for any actions required of the Navy under this Agreement affected by the order to stop work shall be extended to take into account the State's actions.

23.7. This Agreement is not intended to be nor shall it be construed to be a permit. The State's approval of any workplan, plan, and/or specification does not constitute a warranty or representation that the workplans, plans, and/or specifications will achieve the required cleanup or performance standards. The Navy's compliance with the terms of this Agreement shall not relieve the Navy of its obligations to comply with the Health and Safety Code or any other applicable local, State, or federal statute or regulation.

23.8. 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 any law.

24. REAL PROPERTY TRANSFER

24.1. Except as otherwise specifically provided in CERCLA section 120(h)(3)(B), in other applicable State or federal law, or by written agreement with the State, 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 Navy under this Agreement.

24.2. The Navy agrees to give the State ninety (90) days notice prior to the sale or transfer by the United States of America of any title, easement, or other interest in the real property affected by this Agreement. The Navy agrees to comply with section 120 (h) of CERCLA (42 U.S.C. Section 9620 (h)), including the Community Environmental Response Facilitation Act ("CERFA"), and any additional amendments thereof, and with 40 C.F.R. Part 373, if applicable.

24.3. In accordance with section 120(h) of CERCLA (42 U.S.C. section 9620(h)) and 40 C.F.R. Part 373, the Navy shall include notice of this Agreement in any Agreement or Memorandum of Understanding that permits any non-Navy activity to function as an

operator on any portion of the Facility. (*See* subsection 28.4 regarding continued site access for FFSRA activities being conducted on portions of the facility occupied by non-Navy entities.)

25. CALIFORNIA ENVIRONMENTAL QUALITY ACT

25.1. The State must comply with the California Environmental Quality Act (CEQA). The Navy shall provide all information necessary to facilitate any CEQA analysis. The State will determine the applicability of CEQA for each project at the Facility. If the activities are not exempt from CEQA, the State will conduct an Initial Study. Based on the results of the Initial Study, the State will determine if a Negative Declaration or an Environmental Impact Report (EIR) should be prepared. The State will prepare and process any such Negative Declaration. However, should the State determine that an EIR is necessary, such an EIR would be prepared under a separate agreement between the State and the Navy. The Navy's actions taken pursuant to this paragraph shall not be construed as an admission by the Navy that CEQA governs Navy activities at the Facility.

26. PERMITS

26.1. The Navy has been granted a RCRA Permit which governs corrective action for releases of hazardous wastes or constituents at the Facility. This Agreement supersedes the terms of any corrective action order which is incorporated by reference in the RCRA Permit. With respect to corrective actions that are deferred to the CERCLA process, remedial decisions that comply with all substantive RCRA requirements and are approved by the State pursuant to this Agreement will be accepted as satisfaction of the Permit condition.

26.2. The Parties recognize that section 121(e)(1) of CERCLA provides that portions of response actions required by this Agreement and conducted entirely on site are exempt from the procedural requirement to obtain certain permits, when such response action is selected and carried out in compliance with section 121 of CERCLA. It is the understanding of the Parties that the statutory language is intended to avoid delay of on-site response actions, due to procedural requirements of the permit process. The Parties agree that, to the extent consistent with RCRA and California Hazardous Waste Control Law, no state permit or permit modification will be required for activities required under any RAP/ROD that the State approves.

26.3 Where applicable, the Navy agrees to seek and implement any federal, state or local permits, including RCRA permits, for operations or processes required to implement activities regulated under this Agreement.

26.4 This Agreement does not affect any obligation the Navy may have under federal and/or State laws to obtain such permits for ongoing hazardous waste management activities.

26.5 To the extent that the Navy discharges its RCRA corrective action obligations which relate to the releases or threatened releases of hazardous waste or constituents through CERCLA response actions and 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 and the NCP would require a federal, State or local permit, the Navy shall include in its draft decision document:

a. identification of each permit which would otherwise be required,

b. identification of the standards, requirements, criteria, or limitations which would have had to be met under each such permit, and

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

26.6. The Navy shall notify the State 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 Navy shall apply for all such permits and provide the State with copies of all such permits.

27. COMPLIANCE WITH APPLICABLE LAWS

27.1. All actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the applicable requirements of all local, state, and federal laws and regulations. The Navy shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations. This Agreement shall not in any way relieve the Navy from its obligation to comply with any of the applicable provisions of the Hazardous Waste Control Law or its implementing regulations, RCRA or its implementing regulations, or any permit, closure or post-closure plan, hazardous waste management requirement, order or agreement issued or entered into thereunder. The Navy agrees to conduct the appropriate procedures needed to determine that the Navy's corrective action obligations are complete. This Agreement shall not relieve the Navy from its obligation to comply with any other applicable federal, state or local law, regulation, order, permit or any other agreement.

28. ACCESS

28.1. Subject to the Facility's security and safety procedures, the Navy agrees to provide the State and its representatives access at all reasonable times to the Facility and any other property to which access is required for implementation of this Agreement. The Navy shall permit such persons to inspect and copy all records, files,

photographs, documents, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Agreement and that are within the possession or under the control of the Navy or its contractors or consultants.

28.2. The Navy shall honor all reasonable requests for access by the State upon presentation of proper credentials. The Navy project manager or his/her designee will provide briefing information, coordinate access and escort to restricted or controlled-access areas, arrange for base passes and coordinate any other access requests which arise.

28.3. The State shall provide reasonable notice (which shall, if practical, be twenty-four (24) hours advance notice) to the Navy project manager to request any necessary escorts. The State shall not use any camera, sound recording or other recording advice at the Facility without the appropriate permission. The Navy shall not unreasonably withhold such permission.

28.4 The Navy shall ensure that all response measures, ground water rehabilitation measures and remedial actions of any kind which are undertaken pursuant to this Agreement on any areas which: a) are presently owned by the United States and which are occupied by the Navy or any other entity by agreement with the Navy; or b) are in any manner under the control of the Navy or of any other entity under agreement with the Navy, shall not be impeded or impaired in any manner by any transfer of title or change in occupancy or any other change in circumstances of such areas. The Navy shall ensure that any agreements with other entities shall provide for the continued right of entry for all Parties for the performance of such response activities. In accordance with applicable law, any agreement shall provide that no conveyance of title, easement, or other interest in the property shall be consummated without the continued right of entry.

28.5 . To the extent that work being performed pursuant to this Agreement must be done beyond the Facility property boundary, the Navy shall use its best efforts to obtain access agreements necessary to complete work required by this Agreement from the present owners of such property within thirty (30) days of approval of any workplan for which access is required. Best efforts as used in this paragraph shall include, at a minimum, a letter by certified mail from the Navy to the present owners of such property requesting an agreement to permit the Navy and the State and its authorized representatives access to such property and, if necessary, offering the payment by the Navy of fair market value in consideration of granting access. Any such access agreement shall provide for access to the State and its representatives. The Navy shall provide the State's project manager with a copy of any access agreements. In the event that an agreement for access is not obtained within thirty (30) days of approval of any workplan for which access is required, or of the date that the need for access becomes known to the Navy, the Navy shall notify the State in writing within fourteen (14) days thereafter regarding both the efforts undertaken to obtain access and its failure to obtain such agreements. The State may, at its discretion, assist the Navy in

obtaining access. In the event the State obtains access, the Navy shall undertake approved work on such property. The State may determine that additional on-site measures must be taken to address releases beyond the Facility boundary if access to off-site areas cannot be obtained.

28.6 . Nothing herein shall be construed as limiting U.S. EPA's or the State's statutory authority for access or information gathering, except as that right may be limited by applicable national security regulations or other state or federal law.

29. ENFORCEABILITY

29.1. Unless limited or qualified elsewhere in this Agreement, all timetables and deadlines shall be enforceable.

29.2. Any final resolution of a dispute pursuant to section 21 (Dispute Resolution), which establishes a term, condition, timetable, deadline or schedule shall be enforceable, consistent with section 12 (Deadlines and Contents of Site Management Plan) and section 23 (Reservation of Rights) of this Agreement.

29.3. Nothing in this Agreement shall be construed as a restriction or waiver of any rights or defenses, including sovereign immunity, that the State or the Navy may have under federal or State law.

30. RECORD PRESERVATION

30.1. The Parties shall retain, during the pendency of this Agreement and for a minimum of ten (10) years after its termination, all data, records, and documents that relate in any way to the performance of this Agreement, including pertinent documents concerning hazardous waste management and/or disposal at the Facility. Each Party shall notify the other Party in writing ninety (90) days prior to the destruction of any such records, and shall provide the other Party with the opportunity to take possession of any such records. Such written notification shall reference the effective date and caption of this Agreement and shall be addressed to:

Branch Chief, Northern California
Office of Military Facilities
Attn: China Lake Project Manager
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826

Installation Restoration Program Manager
Southwest Division, Naval Facilities Engineering Command

1220 Pacific Highway
San Diego, CA 92132-5190

Division Chief
Groundwater Protection and Waste Containment Division
California Regional Water Quality Control Board - Lahontan Region
15428 Civic Drive, Suite 100
Victorville, California 92393-2359

30.2. If any Party retains or employs any agent, consultant, or contractor for the purpose of carrying out the terms of this Agreement, that Party will require any such agents, consultants, or contractors to provide the other Party a copy of all documents produced pursuant to this Agreement.

30.3. Documents pertaining to this Agreement shall be stored in a central location at the Facility or at a location agreed to by the Parties to afford ease of access by the State and its representatives. The Navy shall maintain an Administrative Record at SWDIV. The State may request access to the Administrative Record verbally or in writing, and the Navy shall provide access and suitable facilities to the State to facilitate review of any documents contained the Administrative Record.

31. NOTICE TO CONTRACTORS AND SUCCESSORS

31.1. The Navy shall provide a copy of this Agreement to all prime contractors/consultants retained to conduct or monitor any portion of the work performed pursuant to this Agreement and shall condition all such contracts on compliance with the terms of this Agreement. The Navy shall give written notice of this Agreement to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify the State at least seven (7) days prior to such transfer.

32. MODIFICATION

32.1. This Agreement may be modified by the Parties' agreement. Any agreed modifications shall be in writing, shall be signed first by the Navy and then by the DTSC and the RWQCB, shall be effective the date on which they are signed by the DTSC and the RWQCB, and shall be deemed incorporated into this Agreement.

33. TERMINATION

33.1. This Agreement may be terminated pursuant to either (a) or (b) below.

a. Acknowledgement of Satisfaction.

(1) The provisions of this Agreement shall be deemed satisfied and this Agreement will terminate upon the execution by both Parties of an Acknowledgment of Satisfaction (Acknowledgment). The State will prepare the Acknowledgment for the Parties' signature. The Acknowledgment will specify that the Navy has demonstrated to the State's satisfaction that the terms of this Agreement, including payment of the State's costs, have been satisfactorily completed. The Acknowledgment will affirm the Navy's continuing obligation to preserve all records after the rest of the Agreement is satisfactorily completed.

(2) The Navy may request in writing that the State prepare the Acknowledgement. Within sixty (60) days after receiving the request, the State shall either approve the request and prepare the Acknowledgement or shall deny the request and provide a written explanation of its denial to the Navy.

b. Any Party to this Agreement may terminate the Agreement by giving thirty (30) days notice to the other Parties.

34. EFFECTIVE DATE

34.1. The effective date of this Agreement shall be the date on which this Agreement is signed by all the Parties.

35. NOTIFICATION

35.1. The Parties shall transmit all required documents and comments thereon, and all required notices by next day mail, hand delivery, or facsimile (and followed by an original by first-class mail), or by certified mail if transmitted sufficiently ahead of the applicable deadline. Notifications shall be deemed effective upon receipt.

35.2. Notice to the individual Parties pursuant to this Agreement shall be sent to the addresses specified by the Parties. Initially these shall be as follows:

DTSC: Ms. Laurie Racca, R.G.
Open Base Navy/Formerly Used Defense Sites
Office of Military Facilities
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826

RWQCB: Ms. Elizabeth Lafferty
California Regional Water Quality Control Board - Lahontan Region
15428 Civic Drive, Suite 100

Victorville, California 92393-2359

Navy: Mr. Michael J. Cornell, Lead Remedial Project Manager
Southwest Division, Naval Facilities Engineering Command
1220 Pacific Highway, Code 05DEN
San Diego, CA 92132

Ms. Carolyn A. Shepherd
Head, Environmental Planning & Management Department
Naval Air Weapons Station
1 Administration Circle
China Lake, California 93555-6100

35.3. All routine correspondence may be sent via first class mail to the above addressees.

35.4. The individuals to whom notice should be given pursuant to this Agreement may be changed by giving notice in accordance with the procedure set out in section 35.1.

36. RELEASE OF RECORDS

36.1. The Parties may request of one another access to or a copy of any record or document relating to this Agreement, or upon the requesting Party's demonstration of the need to know, any other remediation activities conducted at the Facility. If the Party that is the subject of the request (the originating Party) has the record or document, that Party shall provide access to or a copy of the record or document; provided, however, that no access to or copies of records or documents need be provided if they are subject to claims of confidentiality because of attorney-client privilege, attorney work product, deliberative process, enforcement confidentiality, the Federal Privacy Act, or properly classified for national security under law, regulation, or executive order.

36.2. Records or documents identified by the originating Party as confidential pursuant to (a) non-disclosure provisions of the Freedom of Information Act, 5 U.S.C. section 552, other than those listed in subsection 36.1 above, or (b) the California Public Records Act, section 6250, et seq. of the California Government Code, shall be released to the requesting Party, provided the requesting Party states in writing that it will not release the record or document to the public without prior approval of the originating Party or, if the originating Party does not approve, giving that Party the opportunity to contest any preliminary decision to release a document, in accordance with applicable statutes and regulations. Records or documents which are provided to the requesting Party and which are not identified as confidential may be made available to the public without further notice to the originating Party.

36.3. The Parties will not assert one of the above exemptions in sections 36.1 or 36.2, including any exemptions available under the Freedom of Information Act and California Public Records Act if no governmental interest would be jeopardized by access or release as determined solely by the Party who could assert the privilege.

36.4. Any documents required to be submitted to the State for its review and approval, and analytical data showing test results, will not be subject to subsection 36.2 or the proviso in section 36.1.

36.5. This section does not change any requirement regarding press releases in section 37 (Public Participation).

36.6. A determination not to release a document for one of the reasons specified in sections 36.1 and 36.2 above shall not be subject to section 21 (Dispute Resolution). Any Party objecting to another Party's determination may pursue the objection through the determining Party's appeal procedures, concerning releasability of documents.

37. PUBLIC PARTICIPATION

37.1. The Navy shall comply with public participation requirements as set forth in this Agreement and in applicable State and federal law. The State will inform the Navy in a timely manner of all State requirements it determines pertain to public participation.

37.2. Except in an emergency, any Party issuing a press release with reference to any of the work required by this Agreement shall advise the other Party of such press release or fact sheet and the contents thereof, at least 2 business days prior to issuance.

38. STATE SUPPORT SERVICES AND STATE OVERSIGHT COSTS

38.1. The Parties recognize that, for ER,N-eligible activities, the Navy will be providing funds through the Defense/State Memorandum of Agreement ("DSMOA"), executed on August 21, 1992, between Cal/EPA, DTSC and the State Water Resources Control Board on behalf of the State and the Department of Defense, or through an alternative cooperative agreement, as discussed in section 38.8, below.

38.2. For ER,N-eligible activities, the State will submit an accounting of State costs in accordance with the DSMOA and the DSMOA Cooperative Agreement.

38.3. For ER,N-ineligible activities, the Navy shall pay DTSC's costs incurred in the oversight of removal or remedial actions pursuant to H&SC section 25187.2 or in the reviewing and oversight of corrective action for all releases of hazardous waste or constituents from a solid waste management unit or a hazardous waste management unit pursuant to H&SC sections 25205.7(b) and 25200.10(b), to the extent permitted by

law.

38.4. DTSC will provide the Navy with a billing statement at least quarterly, which will include the name(s) of the employee(s), identification of the activities, the amount of time spent on each activity, and the hourly rate charged.

38.5. In the event the Navy contends that any of the costs set forth in the accounting provided pursuant to sections 38.2 or 38.3 above are not properly payable, the matter shall be resolved in accordance with section 21 (Dispute Resolution).

38.6. DTSC will retain all costs records associated with the work performed under this agreement as required by state law. DTSC will make all documents that support the DTSC's cost determination available for inspection upon request, as provided by the Public Records Act.

38.7. All payments shall be made within sixty (60) days of the date of DTSC's invoice by check payable to the Department of Toxic Substances Control and shall be sent to:

Accounting Unit
Department of Toxic Substances Control
P. O. Box 806
Sacramento, California 95812-0806

If the DON notices there is any undue delay between the date of the invoice and the receipt of the invoice, DON shall notify DTSC within five (5) days of the receipt of invoice so an accommodation can be made to adjust the payment due date. All checks shall reference the name and address of the facility.

38.8. An alternative funding mechanism, in the form of a cooperative agreement, for reimbursement of State oversight costs may be used. A cooperative agreement between the Navy and DTSC, and the Navy and RWQCB exist for specifically enumerated Navy installations. At the time NAWS China Lake is added to the cooperative agreement (incorporated herein by reference at the time of addition), State costs incurred on or after that date will be paid pursuant to the terms of the cooperative agreement instead of under DSMOA. When the funding mechanism is a cooperative agreement, the terms and conditions of the cooperative agreement will take precedence over the terms and conditions of section 38 of this Agreement.

In the event the cooperative agreement for this site is violated or terminated for any reason, the Parties recognize that the Navy will be providing funds through the DSMOA as described in section 38.1, above.

38. 9. If the Navy and the State are ultimately unable to resolve the issue in dispute in accordance with section 21 of this agreement (or the cooperative agreement under 38.9 if applicable), The State reserves all its rights to take any action it is entitled to take,

including actions to recover costs, absent this Agreement, in the event of any of the following:

a. Lack of appropriated funds to fulfill the Navy's obligations under the Agreement,

b. Unresolved dispute as to whether any State cost incurred can be reimbursed through the DSMOA or through a separate agreement negotiated for ER,N-ineligible activities,

c. Lack of reimbursement from appropriated funds, or

d. Any other failure or refusal by the Navy to reimburse costs incurred by the State in connection with the subject matter of this Agreement.

39. SEVERABILITY

39.1. If any provision of this Agreement is ruled invalid, illegal, or unconstitutional, the remainder of the Agreement shall not be affected by such a ruling. If either DTSC or the RWQCB elects to terminate this Agreement pursuant to section 33, subsection 33.1.b, this Agreement shall remain in full force and effect as to the remaining two Parties.

40. INTEGRATION

40.1. This Agreement constitutes the entire agreement between the Parties and may not be amended, supplemented, or modified, except as provided in this Agreement or by further written agreement.

41. SECTION HEADINGS

41.1. The section headings set forth in this Agreement are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Agreement.

42. ATTACHMENTS

42.1. All attachments referenced in this Agreement are deemed incorporated into this Agreement by reference. Attachments may be modified in writing, signed by the State and Navy representatives to whom notice is required to be given pursuant to Section 35, and such modified Attachments shall be deemed incorporated into this Agreement.

43. REPRESENTATIVE AUTHORITY

43.1. The undersigned representative of each Party to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement for that Party and to execute and legally bind that Party to this Agreement.

Dated: 11-7-03

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: Anthony J. Landis, P.E.
Chief
Northern California Operations
Office of Military Facilities

Dated:

LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

By: Harold J. Singer
Executive Officer
Lahontan Regional Water Quality Control Board

Dated:

U.S. DEPARTMENT OF THE NAVY

By: C. SCHANZE
Captain, CEC, U.S. Navy
Commander, Southwest Division
Naval Facilities Engineering Command

ATTACHMENT A

INSTALLATION RESTORATION PROGRAM SITES

No.	Name	Planning Area
1	Armitage Field Dry Wells	Armitage Field
2	Aircraft Washdown Drainage Ditches	Armitage Field
3	Armitage Field Leach Pond	Armitage Field
4	Beryllium Contaminated Equipment Disposal Area	Propulsion Labs
5	Burro Canyon	Test Ranges
6	T- Range Disposal Area	Propulsion Labs
7	Michelson Lab Drainage Ditches	Mainsite
8	Salt Wells Drainage Channels	Propulsion Labs
9	Salt Wells Asbestos Trenches	Propulsion Labs
10	Salt Wells Disposal Trenches	Propulsion Labs
11	CLPL Evaporation Ponds	Propulsion Labs
12	SNORT Road Landfill	SNORT
13	Oily Waste Disposal Area	Water Road
14	ER Range Septic System	Water Road

ATTACHMENT A

15	R Range Septic System	Water Road
16	G-1 Range Septic System	Test Ranges
17	G-2 Range Septic System	Test Ranges
18	CLPL Leach Fields	Propulsion Labs
19	Baker Range Waste Trenches	Test Ranges
20	Division 36 Ordnance Waste Area	Test Ranges
21	CT-4 Disposal Area	Propulsion Labs
22	Pilot Plant Road Landfill	Mainsite
23	K-2 South Disposal Area	Test Ranges
24	K-2 North Disposal Area	Test Ranges
25	G-2 Range Disposal Area	Test Ranges
26	G Range Ordnance Waste Area	Test Ranges
27	NAF Disposal Site	Armitage Field
28	Old DPDO Storage Yard	Mainsite
29	C-1 East Disposal Area	Test Ranges
30	C-1 Range West Disposal Area	Test Ranges

ATTACHMENT A

31	Public Works Pesticide Rinse Area	Mainsite
32	Golf Course Pesticide Rinse Area	Mainsite
33	Michelson Laboratory Dry Wells	Mainsite
34	Lauritsen Road Landfill	Water Road
35	SNORT Track Accident	SNORT
36	SNORT Track Storage Sheds	SNORT
37	Golf Course Landfill	Mainsite
38	Cactus Flat Disposal Trenches	Test Ranges
39	CGEH-1 Geothermal Waste	Test Ranges
40	Randsburg Wash #1	Randsburg Wash
41	Randsburg Wash #2	Randsburg Wash
42	Randsburg Wash #3	Randsburg Wash
43	Minideck	Test Ranges
44	Armitage Field Fire Fighting Training Facility	Armitage Field
45	NAF Maintenance Area	Armitage Field
46	Dunkit Drainage Ditch	Propulsion Labs

ATTACHMENT A

47	Michelson Lab Industrial Sewer System	Mainsite
48	Weapons Survivability Holding Ponds	Test Ranges
49	SWPL/CLPL Industrial Waste Ponds and Sumps	Propulsion Labs
50	Airplane Oil Disposal Trench	Armitage Field
51	Area R East	Water Road
52	Area R Warhead Firing Arena	Water Road
53	Area R Laser Laboratory Leach Line	Water Road
54	Area R Slit Trenches	Water Road
55	Area R Solvent Rinse Tank and Vicinity	Water Road
56	Area R Static Firing Rocket Test Stands	Water Road
57	Area R Warhead Research Pit	Water Road
58	Armitage Field VX-5 Line Shack Storage Area	Armitage Field
59	Armitage Field Warehouse 56d Storage Yard	Armitage Field
60	B-2 Spotting Tower 3 Quonset Hut	SNORT
61	B-3 Tower Dump	SNORT
62	B-4 Start-Up Area	SNORT

ATTACHMENT A

63	Dimpsey Dumpster Station	Mainsite
64	Earth & Planetary Sciences Leach Fields	Water Road
65	G-2 Range Gun Mounts	Test Ranges
66	Hans Test Site	Test Ranges
67	Lane Haven Dump	Flight Lines
68	Public Works Old PCB Transformer Storage Pit	Mainsite
69	Public Works Vehicle Paint Shop and Drainage Catch Basin	Mainsite
70	Public Works Tank Truck Dry Well	Mainsite
71	Public Works Heavy Duty Equipment Repair Shop Storage Area	Mainsite
72	Railroad Engine House	Mainsite
73	Randsburg Wash Black Powder Assembly Building	Randsburg Wash
74	Randsburg Wash Central Site Old Leach Field	Randsburg Wash
75	Randsburg Wash Gas Station	Randsburg Wash
76	Randsburg Wash Gun Line	Randsburg Wash
77	Sludge Pit	Water Road
78	SNORT Old Photographic Laboratory Sump	SNORT

ATTACHMENT A

79	K2 1000 m Gunnery Range	Test Ranges
80	Areas of Concern	Basewide

AREAS OF CONCERN (AOC's) SITES

No.	Name	Planning Area
1	Aeroheat Canyon Trench/Dump	Propulsion Labs
3	Aircraft Burial Area	Armitage Field
7	Aircraft Surv. Old Composite Burn Tunnel and Pond	Test Ranges
19	Area R B-29 Parking Area	Water Road
21	Area R Drum Storage	Water Road
22	Area R Dry Well	Water Road
29	Area R Rocket Burial Area	Water Road
32	Armitage Field - Asbestos Dumps	Armitage Field
36	Armitage Field - Bomb Crater Dumps	Armitage Field
45	Armitage Field - Napalm Dump	Armitage Field
50	Armitage Field Dump	Armitage Field

ATTACHMENT A

59	B-Range TCE Burial	Test Ranges
64	Building X (Area ER)	Water Road
70	C5A Fire Fighting Training Pits	Test Ranges
79	CLPL Thermal Research Pond	Propulsion Labs
82	Coso Peak Fuel Storage Tanks & Diesel Spills	Test Ranges
83	CT-A, Hazardous Substance Storage Area	Propulsion Labs
85	CT Main Site Trenches	Propulsion Labs
98	G-2 Centerline Crater/Dump	Test Ranges
99	G-2 Dump	Test Ranges
102	G-4 Track Dump	Test Ranges
106	Homestead Wells	SNORT
113	K-2 Housing Wastes Dump	Test Ranges
118	K-2 West Disposal Trenches	Test Ranges
120	Kennel Body Dump	Mainsite
122	LB Dump	Test Ranges
124	LB West Dump	Test Ranges

ATTACHMENT A

131	Old AEC Trench	Propulsion Labs
143	Dust Abatement	Mainsite
161	Salt Wells Field Chem Lab	Propulsion Labs
163	Sandquist Gate Motor Repair/Maintenance Area	Mainsite
166	Skytop Bay 5	Propulsion Labs
173	SNORT Film Dump	SNORT
176	SNORT Old Acid Storage and Degreaser Station	SNORT
180	SNORT Service Pit	SNORT
200	Richmond Elementary School	Mainsite
201	Groves Street Elementary School	Mainsite
202	Vieweg Elementary School	Mainsite
203	Murray Jr., High School	Mainsite
205	Pierce Elementary School	Mainsite
206	Sierra View Dump	Mainsite
207	Sub-contractor truck area	Mainsite
208	Old Trailer Court	Mainsite

ATTACHMENT A

211	Snort Dump West	SNORT
212	Byrnes St. School	Mainsite
213	NOTS Construction Camp	Mainsite
217	Salt Wells Construction Camp	Propulsion Labs
220	Boy Scout Hut / Photo Shop	Mainsite
221	Housing Area, Chlordane Ditch	Mainsite
227	Baker 3 Area Water Well Site	Test Ranges
228	Baker 3 Tower	Test Ranges
229	Charlie Range Construction Compound	Test Ranges
230	Charlie Range PCB Transformer Dump site	Test Ranges
231	Charlie Range 500 gal Above Ground Gas Tank	Test Ranges
232	Charlie Range Dump Abandoned Well	Test Ranges
234	ML Service Station and dump	Mainsite
239	CLPP Chemical Lab Dump	Propulsion Labs
241	G-Range Control (Temporary)	Test Ranges
242	Baker 3 Film Dump	Test Ranges