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GRIFFISS AFB
NEW YORK

ADMINISTRATIVE RECORD
COVER SHEET

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION II
AND THE
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
AND THE
UNITED STATES AIR FORCE

IN THE MATTER OF: THE U.S. DEPARTMENT OF THE AIR FORCE GRIFFISS AIR FORCE BASE Rome, New York	FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120 Administrative Docket Number: II-CERCLA-FFA-90201

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

ARTICLES

I.	PURPOSE	2
II.	JURISDICTION	3
III.	PARTIES	4
IV.	BACKGROUND	4
V.	JURISDICTIONAL BACKGROUND	7
VI.	PROJECT MANAGERS	8
VII.	DEFINITIONS	9
VIII.	STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION	11
IX.	WORK TO BE PERFORMED	12
X.	COMPLETION REPORTS FOR AOCS	14
XI.	EMERGENCIES AND REMOVALS	15
XII.	CONSULTATION	17
XIII.	RESOLUTION OF DISPUTES	22
XIV.	ENFORCEABILITY	25
XV.	STIPULATED PENALTIES	26
XVI.	DEADLINES	27
XVII.	EXTENSIONS	29
XVIII.	FORCE MAJEURE	30
XIX.	FUNDING	31
XX.	REPORTING	31
XXI.	NOTIFICATION	32
XXII.	SAMPLING AND DATA AVAILABILITY	33
XXIII.	PRESERVATION OF RECORDS	33
XXIV.	ACCESS	34

XXV.	FIVE YEAR REVIEW	35
XXVI.	OTHER CLAIMS	36
XXVII.	AMENDMENT OF AGREEMENT	36
XXVIII.	TRANSFER OF REAL PROPERTY	36
XXIX.	PUBLIC PARTICIPATION	37
XXX.	PUBLIC COMMENT AND EFFECTIVE DATE	38
XXXI.	RECOVERY OF NEW YORK STATE'S EXPENSES	38
XXXII.	RECOVERY OF USEPA EXPENSES	42
XXXIII.	NEW YORK STATE'S RESERVATION OF RIGHTS	42
XXXIV.	TERMINATION	42

I. PURPOSE

A. The general purposes of this Agreement are to:

1. Ensure that environmental impacts on public health, welfare and environment associated with past and present activities at GAFB are thoroughly investigated and appropriate remedial action taken as necessary to protect the public health, welfare and the environment;

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

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

B. The specific purposes of this Agreement are to:

1. Identify operable unit action or removal action alternatives which are appropriate at the Site prior to the implementation of final remedial action(s) for the Site. Operable unit alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of operable unit or removal actions to USEPA pursuant to CERCLA. This process is designed to promote cooperation among the Parties in identifying operable unit or removal action alternatives prior to selection of the final alternatives. For example, if sampling indicates contamination from the Site of off-GAFB homeowner wells, one appropriate removal action to be considered would be connection of the homes to a water main extension.

2. Establish requirements for the performance of a Remedial Investigation (RI) to determine fully the nature and extent of the threat to the public health or welfare, or to the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of a Feasibility Study (FS) for the Site to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA and ARARs.

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

4. Implement the selected operable unit and final remedial action(s) in accordance with CERCLA and ARARs and meet the

requirements of Section 120(e)(2) of CERCLA, 42 U.S.C. § 9620(e)(2), for an interagency agreement among the Parties.

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

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

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

II. JURISDICTION

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

A. The United States Environmental Protection Agency, Region II (USEPA), enters into those portions of this Agreement that relate to the remedial investigation/feasibility study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. § 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter referred to as CERCLA) and Sections 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6924(u) and (v), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter referred to as RCRA) and Executive Order 12580 (52 Federal Register 2923, January 29, 1987);

B. USEPA Region II, enters into those portions of this Agreement that relate to operable unit actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C. § 9620(e)(1), Sections 3004(u) and (v) of RCRA, 42 U.S.C. §§ 6924(u) and (v), and Executive Order 12580;

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

D. The U.S. Air Force enters into those portions of this Agreement that relate to operable unit actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C. § 9620(e)(1), Sections 3004(u) and (v) of RCRA, 42 U.S.C. §§ 6924(u) and (v), Executive Order 12580 and the DERP.

E. The New York State Department of Environmental Conservation enters into this Agreement pursuant to Sections 120 and 121 of CERCLA; Sections 6001, 3006, and 3004(u) and (v) of RCRA, 42 U.S.C. §§ 6961, 6926, 6924(u) and (v),; New York State Environmental Conservation Law (ECL) Article 27, Titles 9 and 13; and ECL 3-0301.

III. PARTIES

The Parties to this Agreement are USEPA, the New York State Department of Environmental Conservation (NYSDEC) and the U.S. Air Force. The terms of this Agreement shall apply to and be binding upon the USEPA, the State of New York, the U.S. Air Force and their employees, agents, and assigns. The U.S. Air Force will notify USEPA and NYSDEC of the identity and assigned tasks of each of its contractors performing work under this Agreement upon their selection. This Agreement shall be enforceable against all of the above mentioned Parties by the Parties to this Agreement. The U.S. Air Force shall notify its agents, members, employees, response action contractors for GAFB, and all subsequent owners, operators and lessees of GAFB of the existence of this Agreement. Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement. NYSDEC is responsible for any state obligations to be carried out under this Agreement, and is the lead agency for the State of New York for purposes of this Agreement.

IV. BACKGROUND

For purposes of this Agreement, the following constitutes background information to this Agreement. None of the information contained herein shall be considered admissions by any Party.

A. GAFB, approximately 3900 contiguous acres, is located in the lowlands of the Mohawk River Valley in Oneida County, New York State. GAFB is near small towns and rural areas. Drinking water for residents of these areas is drawn from the same aquifers which underlie GAFB (it is estimated by USEPA that over 2000 people are served by groundwater wells within three miles of the base). Three Mile Creek, Six Mile Creek (which drain into the New York State Barge Canal) and several state-designated wetlands are located on GAFB, which is bordered by the Mohawk River on the

west. Due to flat topography and high average precipitation, GAFB is considered a groundwater recharge zone.

B. The mission of the base has varied over the years. GAFB was activated on February 1, 1942 as Rome Air Depot, with the mission of storage, maintenance, and shipment of material for the U.S. Air Force. The base became an electronics center in 1950 when the Watson Laboratory Complex was transferred there. The 49th Fighter Interceptor Squadron was also added to GAFB in that year. In June, 1951, the Rome Air Development Center was established at GAFB with the mission of accomplishing applied research, development and testing of electronic air-ground systems. Headquarters Ground Electronics Engineering Installations Agency (GEEIA) was activated at GAFB in June, 1958, to engineer and install ground communications equipment throughout the world. On July 1, 1970, the 416th Bombardment Wing of Strategic Air Command was activated at GAFB with the mission of maintenance and implementation of both effective air refueling operations and long range bombardment capability.

C. As a result of the various national defense missions carried out at GAFB since 1942, including storage, maintenance, and shipping of war material, research and development, and aircraft operations and maintenance, among others, hazardous substances and hazardous wastes have been placed or come to be located at GAFB in various places. At the present time GAFB has two storage facilities which are currently regulated under the RCRA interim status program. The two areas are Lot 11, which contains solvents, waste oils and other flammable wastes generated by GAFB and Building 35, which contains only PCB contaminated waste (e.g., electrical transformer waste oils).

D. Several studies and investigations have been carried out or begun to locate, detect and quantify these substances and wastes. Studies and investigations include: A 1980 inspection by USEPA Region II, of Landfill 1 and the Radio Tube Disposal Area; a 1981 study under the DOD Installation Restoration Program (IRP), referred to as IRP Phase I Problem Identification/Records Search, by Engineering-Science Inc.; a 1981 study by Fred C. Hart and Associates (USEPA's Field Investigation Team (FIT) contractor) of landfills on GAFB; an October 1982 RCRA Waste Management Inspection by NYSDEC Region 6; a December 1982 study for the U.S. Air Force's IRP, Phase II--Problem Confirmation and Quantification, by Roy F. Weston Inc.; a November 1985 study for the U.S. Air Force IRP, Phase II Stage 2--"field investigation"; a December 1986 study investigating a number of additional AOCs done by Hydro-Environmental Technologies Inc.; a May 1987 investigation by the Oneida County Department of Health of residential wells in the vicinity of GAFB; a June 1988 Health Assessment done by the Agency for Toxic Substances and Disease Registry (ATSDR); and a February 1989 report by the U. S. Fish

and Wildlife Service addressing contamination in fish and sediments within Six Mile Creek and Three Mile Creek.

E. Results of the above studies include the following findings.

1. Landfills 1,2,5,6, and 7 have been identified as actual or potential sources of releases of hazardous substances into the environment. Leachate from Landfill 1 to Six Mile Creek was identified and the other landfills presented potential contamination problems due to topography and soils or due to construction techniques, recording-keeping, or closure methods used at the time not meeting present-day standards. Wastes reported to have been disposed of in on-site landfills included pesticide containers, PCB fluids, metal plating sludges, solvents, septic tank residues, ethylene glycol, crank case oils, and fly ash.

2. Drywells, primarily consisting of pits lined with stone or concrete and filled with coarse sand and gravel, including those which are located at Buildings 101, 117, 3, 301, 222, and 255, have been used to dispose of hazardous materials (e.g., battery acids). Such disposal may have resulted in ground water contamination. Soil and sludge samples taken from one or more of these drywells contained high concentrations of lead (83,000 ppm), copper (784 ppm), iron (26,000 ppm) as well as some mercury contamination (0.21 ppm).

3. Analytical data from one or more surface water samples taken in and near Six Mile Creek, at points close to a number of GAFB landfills, indicated that the waters were contaminated with chromium (480 ppb), lead (1240 ppb), and arsenic (40 ppb). Analytical results of samples taken from wells and ground water seeps at a number of areas on GAFB indicate elevated levels of total petroleum hydrocarbons (including in one area a layer of product floating on the water table) and other organic compounds: tetrachloroethylene (105 ppb), trichloroethylene (58 ppb) and 1,1,1 trichloroethane (1.3 ppb). Contamination of the ground water by metals (chromium (86 ppb), lead (28 ppb)) was also detected.

4. One or more samples of sediments and soils along Six Mile Creek and Landfills 1, 2, 3 or 7 have elevated levels of a number of metals: chromium (470 ppm), cadmium (.82 ppm), mercury (0.28 ppm), lead (2210 ppm), and arsenic (2.35 ppm). Soil samples, at a number of areas on GAFB which were used as either storage or handling areas for electric power transformers, and sediment samples from Three Mile Creek, showed high levels of PCB contamination.

F. Data generated by the Oneida County Department of Health and transmitted to USEPA in a letter from NYSDEC dated May 21, 1987, showed that three (3) residential drinking water wells southeast of GAFB along Six Mile Creek are contaminated with levels of volatile organic compounds, including 1,1 dichloroethane (3.0 ppb), 1,1,1 trichloroethane (20 ppb), trichloroethene (1.0 ppb), and 1,1,2,2 tetrachloroethane (2.0 ppb).

Data provided by GAFB to NYSDEC in the fall of 1989 indicated the presence of a variety of contaminants in excess of drinking water standards in 8 of 54 drinking water wells sampled in July, 1989. Contaminants identified include volatile organic compounds at levels up to 77 parts per billion with the majority at or about the Maximum Contaminant Level (MCL) of 5 ppb, and ethylene and/or propylene glycol in 3 wells at 5.7, 6.2 and 11.8 parts per million, respectively. Additionally, New York State Department of Health sampling of water from Six Mile Creek in January 1990 indicated the presence of ethylene and/or propylene glycol at 91 parts per million.

G. As referenced above the Agency for Toxic Substances and Disease Registry (ATSDR) completed a Health Assessment of GAFB that contained findings including the following: past waste disposal practices at the base have resulted in multiple sites of contamination; most of the sites have been insufficiently investigated to determine their possible health effects; the possible contamination of Six Mile and Three Mile Creeks are of particular concern because of the potential of contaminants entering the food chain; this facility is of potential public health concern because of the risk to human health that could result from possible future exposure to hazardous substances at levels that may result in adverse health effects over time. Among other recommendations, the ATSDR recommended that a comprehensive survey of residential and agricultural wells in areas downgradient of the Site and north of the Mohawk River be conducted.

V. JURISDICTIONAL BACKGROUND

A. GAFB was placed on the National Priorities List (NPL) by the USEPA on July 22, 1987, 52 Federal Register 27620, at page 27642.

B. GAFB is a "facility" within the meaning of SARA Section 211, 10 U.S.C. § 2701 et seq., and Executive Order 12580, under the jurisdiction of the Secretary of Defense.

C. GAFB is also a "facility" pursuant to Section 6001 of RCRA, 42 U.S.C. § 6961, and as such is subject to all Federal, State, interstate and local requirements, both substantive and procedural, respecting control and abatement of solid waste or hazardous waste disposal in the same manner, and to the same extent as any "person" (as that term is defined in Section 1004(15) of RCRA 42 U.S.C. Section 6903(15) and in 6 NYCRR Section 370.2(b)(102)) is subject to such requirements.

VI. PROJECT MANAGERS

The USEPA, NYSDEC and the U.S. Air Force shall each designate a Project Manager and Alternate (hereinafter jointly referred to as Project Manager) for the purpose of overseeing the implementation of this Agreement. Within ten (10) days of the effective date of this Agreement, each Party shall notify all other Parties of the name and address of its Project Manager. Any Party may change its designated Project Manager by notifying the other Parties, in writing, within five days of the change. To the maximum extent possible, communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Manager as set forth in Part XXI, Notification, of this Agreement. Each Project Manager shall be responsible for insuring that all communications from the other Project Managers are appropriately disseminated and processed by the entities which the Project Manager represents.

Subject to the limitations set forth in Part XXIV, Access, Project Managers shall have the authority to: (1) take samples, request split or duplicate samples and ensure that work is performed properly ; (2) observe, take photographs and make such other reports on the progress of this work as the Project Manager deems appropriate; (3) review records, files and documents relevant to this Agreement; and (4) recommend and request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or designs utilized in carrying out this Agreement.

Any field modifications proposed under this Part by any Party must be approved orally by all three (3) Project Managers to be effective. The Project Manager recommending the field modification shall memorialize the modification and submit the documentation to other Project Managers in writing within ten (10) working days of the oral agreement. If agreement cannot be reached on the proposed additional work or modification to work, the matter may be taken to dispute resolution as set forth in Part XIII.

The Project Manager for the U.S. Air Force or his designee shall be physically present on GAFB or reasonably available to supervise fieldwork performed pursuant to this Agreement.

The Project Managers shall be reasonably available to consult on work performed pursuant to this Agreement and shall make themselves available to each other for the pendency of this Agreement.

The NYSDEC Project Manager may be accompanied at any meeting or site visit by a representative of the New York State Department of Health or the representative of any other New York State agency concerned with activities under this Agreement at GAFB.

VII. DEFINITIONS

Except as noted below or otherwise explicitly stated, the definitions provided in CERCLA Section 101, 42 U.S.C. 9601 and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (hereinafter National Contingency Plan or NCP), shall control the meaning of the terms used in this Agreement.

In addition:

A. "Agreement" shall refer to this Federal Facility Agreement.

B. "AOC" or "Area of Concern" shall mean a location at the Site where hazardous substances are or may have been placed or may come to be located. The term shall include locations of potential or suspected contamination as well as known or actual contamination, including any Solid Waste Management Units (as that term is defined pursuant to RCRA). Such areas require study and a determination of what if any remediation may be necessary.

C. "ARAR" shall mean applicable or relevant and appropriate requirements. Applicable requirements are those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria or limitations promulgated under federal or New York State law that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at the Site. Relevant and appropriate requirements are those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under federal or New York State law that, while not "applicable" to a hazardous substance, pollutant, contaminant, remedial action, location or other circumstance at the Site, address problems or situations sufficiently similar to those encountered at the site that their use is well suited to this Site.

D. "Authorized Representative" or "Designated Representative" includes a Party's contractors acting in any capacity, including an advisory capacity, when so designated by that Party.

E. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, Public Law 96-510, 42 U.S.C. Section 9601 et. seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499 and any subsequent Amendments.

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

G. "DOD" shall mean the United States Department of Defense, its employees and authorized representatives.

H. "Feasibility Study" or "FS" means a study conducted pursuant to CERCLA, the NCP and the substantive and procedural requirements thereunder, which at a minimum meets the substantive requirements of a RCRA Corrective Measures Study, and which fully develops, screens, and evaluates in detail remedial action alternatives to prevent, mitigate, or abate the migration or release of hazardous substances, pollutants, or contaminants at and from the Site.

I. "Griffiss Air Force Base" or "GAFB" shall mean all of U.S. Air Force property designated as the Base, approximately 3900 contiguous acres in Oneida County, New York State.

J. "Hazardous substance" shall include hazardous substances as defined by CERCLA and hazardous waste/constituents as defined by RCRA.

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

L. "Operable Unit" or "OU" shall have the same meaning as provided in the NCP.

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

N. "Quality Assured Data" shall mean data that have undergone quality assurance as set forth in the approved Quality Assurance Project Plan.

O. "RCRA" shall mean the Resource Conservation and Recovery Act of 1976, Public Law 94-580, 42 U.S.C. Section 6901 et. seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616 and all subsequent Amendments.

P. "Remedial Investigation" or "RI" means that investigation conducted pursuant to CERCLA and the NCP and the substantive and procedural requirements thereunder, which at a minimum meets the substantive requirements of a RCRA Facility Investigation, and which serves as a mechanism for collecting data for Site and waste characterization and conducting treatability studies as necessary to evaluate performance and cost of the treatment technologies. The data gathered during the RI will also be used to conduct a public health evaluation, perform a feasibility study, and support design of a selected remedy.

Q. "Site" shall include GAFB as defined above, any area off GAFB to or under which a release of hazardous substances has migrated, or threatens to migrate, from a source on or at GAFB and any contiguous area necessary for carrying out the response.

R. "State" shall mean the State of New York, represented by the New York State Department of Environmental Conservation (NYSDEC)

VIII. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

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

B. Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement shall be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA (i.e., no further corrective action shall be required). The Parties agree that with respect to releases of hazardous waste covered by this Agreement, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to Section 121 of CERCLA, 421 U.S.C. § 9621.

C. The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at GAFB may require the issuance of permits under Federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to the U.S. Air Force for ongoing hazardous waste management activities at GAFB, the issuing party shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. The Parties intend that the judicial review of any permit conditions which reference this Agreement shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA and ARARs.

D. Nothing in this Agreement shall alter the authority of either USEPA or the U.S. Air Force with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, or any authority NYSDEC may have with respect to removal actions.

IX. WORK TO BE PERFORMED

Under this Agreement the U.S. Air Force agrees that it shall:

A. Conduct an Identification of AOCs for GAFB which complies with the requirements of a RCRA Facility Assessment (RFA), the NCP, CERCLA, RCRA guidance and ARARs. Identify, via a facility map, all discernible source AOCs, including any landfills, surface impoundments, waste piles, land treatment units, elementary neutralization units, transfer stations, container storage areas, incinerators, injection wells, recycling units, closed and abandoned units, tanks, buildings, utilities, paved areas, easements, rights-of-way, and known past or present solid or hazardous waste treatment, storage or disposal areas and any other areas on the Site where hazardous substances could have been released or where hazardous substances could have come to be located. Also identify location of unit/disposal area; type of unit/disposal area; design features; operating practices (past and present); period of operation; age of unit/disposal area; general physical conditions and method used to close the unit/disposal area; quantity and types of hazardous substances; and approximate date, quantity, and substance identification of any past releases of hazardous substances; as well as any other relevant information.

1. USEPA and NYSDEC will determine which AOCs will be investigated and remediated under this Agreement from the data supplied by the U.S. Air Force, an on-site visual inspection conducted by USEPA and NYSDEC, and from any other data collected by the Parties (including, but not limited to, AOCs identified by the U.S. Air Force). USEPA and NYSDEC shall notify the U.S. Air Force of this determination.

2. USEPA and NYSDEC may add or delete AOCs, on the basis of additional information which more accurately reflects the area of contamination and/or new areas of contamination related in whole or in part to the Site.

B. Prepare and submit to USEPA and NYSDEC a Completion Report for any AOCs for which the U.S. Air Force proposes that any of the activities described in paragraphs C through I below have been completed prior to the effective date of this Agreement. The Completion Report shall describe all previously completed

work performed by the U.S. Air Force at said AOC, and how that work meets the intent of this Agreement.

C. Conduct a Remedial Investigation (RI) for each AOC (designated under Subparts 1 and 2 above) which complies with the requirements of the NCP, CERCLA, CERCLA guidance and policy, RCRA, and ARARs.

D. Conduct a Feasibility Study (FS) which complies with the requirements of the NCP, CERCLA, CERCLA guidance and policy, RCRA, and ARARs on each designated AOC.

E. Publish its proposed remedial action plan(s) (PRAP), following completion of the RI and the FS and consultation with USEPA and NYSDEC as described in Part XII, Consultation, for public review and comment in accordance with Sections 117(a) and (d) of CERCLA, 42 U.S.C. §§117(a) and (d) and ARARs. Upon completion of the public comment period, all Parties will consult as to the need for modification of the PRAP(s) and additional public comment based on public response.

F. Submit to USEPA and NYSDEC, when public comment has been properly considered, its draft Record of Decision (ROD), as specified in Part XII, Consultation, in accordance with applicable guidance. If the Parties agree, the draft ROD shall be adopted by USEPA, the U.S. Air Force and NYSDEC in accordance with Part XII, Consultation. The U.S. Air Force shall prepare the final ROD. If the Parties are unable to reach agreement on the draft ROD, the draft ROD will be subject to dispute resolution (Part XIII), with the USEPA Administrator having the ultimate authority to select the Remedial Action (s) pursuant to Part XII, Consultation. In the event that the USEPA Administrator selects the final RA(s), USEPA shall prepare the final ROD. If the dispute is resolved prior to reaching the USEPA Administrator, the U.S. Air Force shall prepare the final ROD. The final selection of the RA(s) by the USEPA Administrator shall be final and not subject to dispute resolution; however, NYSDEC reserves any rights it may have to obtain judicial review of the remedy selected. Notice of the final ROD adopted shall be published by the Party preparing it and shall be made available to the public prior to commencement of the RA, in accordance with CERCLA Section 117, 42 U.S.C. § 9617, pursuant to Part XXIX, Public Participation.

G. Propose and submit a remedial design, which complies with the requirements of the NCP, CERCLA, CERCLA guidance and policy, RCRA, and ARARs, following final selection of the RA(s), for implementation of the selected RA(s) to USEPA and NYSDEC for review and comment as described in Part XII, Consultation.

H. Implement the RA(s), following consultation with USEPA and NYSDEC as described in Part XII, Consultation, in accordance with the requirements and time schedules set forth in this Agreement.

I. Provide for long-term operation and maintenance at the Site for the purpose of completing all remedial actions.

X. COMPLETION REPORTS FOR AOCS

A. For any AOCs for which the U.S. Air Force proposes that remedial action has been completed prior to the effective date of this Agreement, the U.S. Air Force shall prepare a completion report for each such AOC with certification and documentation to establish that each such AOC is no longer a potential threat to public health, welfare, or the environment and that further remedial measures are not needed. Such documentation shall, in intent, meet the requirements of USEPA's RCRA Facility Assessment Guidance, USEPA's Guidance for Conducting RI/FS's under CERCLA (OSWER Directive 9355.3-01) and all other applicable Federal or State guidance.

B. USEPA and NYSDEC will review the completion report submitted by the U.S. Air Force. USEPA, with NYSDEC's concurrence, shall determine whether all appropriate response action has been implemented at the AOC based on information and conditions known by USEPA and NYSDEC at that time, and whether any potential threat to public health, welfare or the environment remains from that particular AOC.

C. Based on information and conditions known by USEPA and NYSDEC at that time, if USEPA with the concurrence of NYSDEC determines that no further response action is necessary at that particular AOC, USEPA shall inform the U.S. Air Force in writing that the response action is complete for that particular AOC.

D. If USEPA and/or NYSDEC determine that further response action is needed for that particular AOC, USEPA or NYSDEC shall so notify the U.S Air Force in writing. The U.S. Air Force shall take all necessary actions, in accordance with this Agreement, to remedy the deficiencies noted by USEPA or NYSDEC, after which time the U.S. Air Force may resubmit documentation to USEPA and NYSDEC for a determination that the response action on that AOC has been completed. The additional documentation must be prepared and presented in accordance with OSWER Directive 9355.3-01, the RCRA Facility Assessment Guidance and all other applicable State and Federal guidance. USEPA and NYSDEC shall review and respond to this additional documentation in accordance with paragraphs B and C above. The provisions of this paragraph shall again apply if USEPA and/or NYSDEC determines that further response action is still warranted.

E. Because of potential changes in applicable statutes or regulations and potential issues raised by five (5) year reviews or public comment a determination that the response action is complete for a particular AOC shall not be binding on USEPA or NYSDEC while making a determination whether GAFB should be deleted from the NPL in accordance with the requirements of 40 C.F.R. Section 300.66. In addition, USEPA and NYSDEC reserve the right to require additional work or remedial action for conditions unknown or undetected by USEPA or NYSDEC at the time of a determination as described in paragraph C above, or for conditions that occur after a determination made pursuant to paragraph C above that create or may create a threat to public health, welfare and/or the environment, or for information received, which indicates that the subject response action is not adequately protective of the public health or welfare or the environment.

XI. EMERGENCIES AND REMOVALS

A. Discovery and Notification

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 Site, which is related to or may affect the work performed under this Agreement, that Party shall immediately orally notify all other Parties. If the emergency or endangerment arises from activities conducted pursuant to this Agreement, the U.S. Air Force shall then take immediate action to notify the appropriate State and local agencies and affected members of the public. Once defined pursuant to Section 2(e) of Executive Order 12580, that definition of the term "emergency" shall be used for this Agreement.

B. Work Stoppage

In the event any Party determines that activities conducted pursuant to this Agreement will cause or otherwise be threatened by a situation described in Subpart A, the Party may propose the termination of such activities. If the Parties mutually agree, the activities shall be stopped for such period of time as required to abate the danger. In the absence of mutual agreement, the activities shall be stopped in accordance with the proposal, and the matter shall be immediately referred for a work stoppage determination in accordance with Subpart H in Part XIII, Resolution of Disputes.

C. Removal Action

1. The provisions of this Subpart shall apply to all removal actions as defined in CERCLA Section 101(23), 42 U.S.C. 9601(23), including all modifications to, or extensions of, the ongoing removal actions, and all new removal actions proposed or commenced following the effective date of this Agreement.

2. Any removal actions conducted at the Site shall be conducted in a manner consistent with this Agreement, CERCLA, the NCP and Executive Order 12580.

3. All reviews conducted by USEPA and the State pursuant to 10 U.S.C. 2705(b) (2) will be expedited to the extent practicable so as not to unduly jeopardize fiscal resources of the U.S. Air Force for funding the removal actions.

4. If a Party determines that there may be an endangerment to the public health or welfare of the environment because of an actual or threatened release of a hazardous substance, pollutant or contaminant at or from the Site, including but not limited to discovery of contamination of a drinking water well at concentrations that exceed any State or federal drinking water action level or standard, the Party may request that the U.S. Air Force 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. Such actions might include provision of alternative drinking water supplies or other response actions listed in CERCLA Section 101(23) or (24), or such other relief as the public interest may require.

D. Notice and Opportunity to Comment

1. The U.S. Air Force shall provide the other Parties with timely notice and opportunity to review and comment upon any proposed removal action for the Site, in accordance with 10 U.S.C. 2705(a) and (b). The U.S. Air Force agrees to provide the information described below in accordance with such obligation.

2. For emergency response actions, the U.S. Air Force shall provide USEPA and the State with notice in accordance with Subpart A. Such oral notification shall, except in the case of extreme emergencies, 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 hazardous substance off-site, and proposed manner of disposal), expected change in the situation should no action be taken or should action be delayed (including associated environmental impacts), any important policy issues, and the U.S. Air Force On-Scene Coordinator recommendations. Within forty-five (45) days of completion of the emergency action, the U.S. Air Force will furnish USEPA and the State with an Action Memorandum addressing the information provided in the oral notification, and any other information required pursuant to CERCLA and the NCP, and in accordance with pertinent USEPA guidance, for such actions.

3. For other removal actions, the U.S. Air Force will provide USEPA and the State with any information required by CERCLA, the NCP, and in accordance with pertinent USEPA guidance, such as the Action Memorandum, the Engineering Evaluation/Cost Analysis (in the case of non-time-critical removals) and, to the extent it is not otherwise included, all information required to be provided in accordance with Paragraph 2 of this Subpart. Such information shall be furnished as early as practicable, but not less than forty-five (45) days before the response action is to begin.

4. All activities related to ongoing removal actions shall be reported by the U.S. Air Force in the progress reports as described in Part XX, Reporting.

E. Dispute

Any dispute among the Parties as to whether a proposed non-emergency response action is a proper removal action under CERCLA, or as to the consistency of such a removal action with the final remedial action, shall be resolved pursuant to Part XIII, Resolution of Disputes. Such dispute may be brought directly to the DRC or the SEC at any Party's request.

XII. CONSULTATION

Review and Comment Process for Draft and Final Documents

A. Applicability:

The provisions of this Part establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and response to comments regarding RI/FS and remedial design and remedial action (RD/RA) documents, specified herein as either primary or secondary documents. In accordance with Section 120 of CERCLA, 42 U.S.C. § 9620, and 10 U.S.C. § 2705, the U.S. Air Force will normally be responsible for issuing primary and secondary documents to USEPA and NYSDEC. As of the effective date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with Paragraphs B through J below.

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

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

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

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

C. Primary Reports:

1. The U.S. Air Force shall complete and transmit draft reports for the following primary documents to USEPA and NYSDEC for review and comment in accordance with the provisions of this Part:

a. Completion Reports for AOCs
b. Identification of AOCs
c. RI Scope of Work
d. RI/FS Work Plan, including Sampling and Analysis Plan [and the Quality Assurance Project Plan (QAPP)]
e. Risk Assessment
f. Community Relations Plan
g. RI Report
h. Initial Screening of Remedial Alternatives
i. FS Report
j. Proposed Remedial Action Plan
k. Record of Decision (ROD)
l. Remedial Design (RD)
m. Remedial Action Work Plan

2. Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. The U.S. Air Force shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Part XVI, Deadlines, of this Agreement.

D. Secondary Documents:

1. The U.S. Air Force shall complete and transmit draft reports for the following secondary documents to USEPA and NYSDEC for review and comment in accordance with the provisions of this Part:

a. Data Quality Objectives
b. Detailed Analysis of Alternatives
c. Treatability Studies (if appropriate for the Site)
d. Sampling and Data Results

2. Although USEPA and NYSDEC may comment on the draft reports for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Subpart B hereof. Target dates shall be established for the completion and transmission of draft secondary reports pursuant to Part XVI, Deadlines, of this Agreement. The Project Managers also may agree in writing upon additional secondary documents that are within the scope of the listed primary reports.

E. Meetings of the Project Managers on Development of Reports:

The Project Managers shall meet approximately every ninety (90) days, except as otherwise agreed by all the Parties, to review and discuss the progress of work being performed at the Site on the primary and secondary documents. Prior to preparing any draft report specified in Subparts C and D above, the Project Managers shall meet to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft report.

F. Identification and Determination of Potential ARARs:

1. For those primary reports or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft report, the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the report being addressed. NYSDEC shall timely identify potential state ARARs as required by CERCLA and the NCP. Draft ARAR determinations shall be prepared by the U.S. Air Force in accordance with Section 121(d)(2) of CERCLA, the NCP and pertinent guidance issued by USEPA.

2. In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances, pollutants and contaminants at a Site, the particular actions proposed as a remedy and the characteristics of a Site. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be re-examined throughout the RI/FS process until a ROD is issued. The State will identify to the U.S. Air Force those state and local agencies which may wish to submit ARARs, and the U.S. Air Force will solicit submission of ARARs from the identified agencies.

G. Review and Comment on Draft Reports:

1. The U.S. Air Force shall complete and transmit each draft primary report to USEPA and NYSDEC on or before the corresponding deadline established for the issuance of the report. The U.S. Air Force shall complete and transmit each draft secondary document in accordance with the target dates established for the issuance of such reports established pursuant to Part XVI, Deadlines, of this Agreement.

2. Unless the Parties mutually agree to another time period, all draft reports shall be subject to a 60-day period for review and comment. Review of any document by USEPA and NYSDEC may concern all aspects of the report (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, consistency with CERCLA, the NCP and any pertinent guidance or policy issued by the USEPA or NYSDEC. Comments by USEPA and NYSDEC shall be provided with adequate specificity so that the U.S. Air Force may respond to the comment and, if appropriate, make changes to the draft report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the U.S. Air Force, USEPA or NYSDEC shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, USEPA or NYSDEC may extend the 60-day comment period for an additional 60 days by written notice to the U.S. Air Force prior to the end of the 60-day period. On or before the close of the comment period, USEPA and NYSDEC shall transmit by next day mail their written comments to the U.S. Air Force.

3. Representatives of the U.S. Air Force shall make themselves readily available to USEPA and NYSDEC during the comment period for the purpose of informally responding to questions and comments on draft reports. Oral comments made during such discussions need not be the subject of a written response by the U.S. Air Force on the close of the comment period.

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

5. Following the close of the comment period for a draft report, the U.S. Air Force shall give full consideration to all written comments on the draft report submitted during the comment period. Within 30 days of the close of the comment period on a draft secondary report, the U.S. Air Force shall transmit to USEPA and NYSDEC its written response to comments received within the comment period. Within 30 days of the close of the comment period on a draft primary report, the U.S. Air Force shall transmit to USEPA and NYSDEC a draft final primary report, which

shall include the U.S. Air Force's response to all written comments, received within the comment period. While the resulting draft final report shall be the responsibility of the U.S. Air Force, it shall be the product of consensus to the maximum extent possible.

6. The U.S. Air Force may extend the 30-day period for either responding to comments on a draft report or for issuing the draft final primary report for an additional 20 days by providing notice to USEPA and NYSDEC. In appropriate circumstances, this time period may be further extended in accordance with Part XVII, Extensions, hereof.

H. Availability of Dispute Resolution for Draft Final Primary Documents:

1. Dispute resolution shall be available to the Parties for draft final primary reports as set forth in Part XIII, Resolution of Disputes.

2. When dispute resolution is invoked on a draft primary report, work may be stopped in accordance with the procedures set forth in Part XIII, Resolution of Disputes.

I. Finalization of Reports:

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

J. Subsequent Modifications of Final Reports (Including Additional Work or Modification to Work):

Following finalization of any primary report pursuant to Subpart I above, a Party to this Agreement may seek to modify the report, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Subparagraphs 1 and 2 below.

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

the requested modification and how the request is based on new information.

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

3. Nothing in this Subpart shall alter USEPA's or NYSDEC's ability to request the performance of additional work which was not contemplated by this Agreement. The U.S. Air Force's obligation to perform such work under this Agreement must be established by either a modification of a report or document or by amendment to this Agreement.

XIII. RESOLUTION OF DISPUTES

Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Part shall apply. Any Party may invoke this dispute resolution procedure.

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

A. Within thirty (30) days after: (1) the period established for review of a draft final primary document pursuant to Part XII, Consultation, of this Agreement, or (2) any action which leads to or generates a dispute, the disputing Party shall, with copies to the other Parties, submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position. The other Parties may submit statements setting forth their positions and supporting information.

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

C. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The USEPA representative on the DRC is the Emergency and Remedial Response Division Director of USEPA Region II or designated representative. The U.S. Air Force's designated member is the Director of Environmental Management, Strategic Air Command or designated representative. The NYSDEC representative on the DRC is the Director of the Division of Hazardous Waste Remediation or designated representative. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Part XXI, Notification.

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

E. The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The USEPA representative on the SEC is the Regional Administrator of USEPA's Region II or designated representative. The U.S. Air Force's representative on the SEC is the Deputy Assistant Secretary of the Air Force for Environment, Safety, and Occupational Health or designated representative. The NYSDEC representative on the SEC is the Assistant Commissioner of Hazardous Waste Remediation or designated representative. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Part XXI, Notification. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, USEPA's Regional Administrator shall issue a written position on the dispute within twenty-one (21) days of the close of the twenty-one (21) day resolution period. The U.S. Air Force or NYSDEC may, within twenty-one (21) days of the Regional Administrator's issuance of USEPA's position, issue a written notice elevating the dispute to the Administrator of USEPA for resolution in accordance with all applicable laws and procedures. Other parties may submit statements of position to the Administrator. In the event that a

Party elects not to elevate the dispute to the Administrator within the designated twenty-one (21) day resolution period, they shall be deemed to have agreed with Regional Administrator's written position with respect to the dispute.

F. Upon escalation of a dispute to the Administrator of USEPA pursuant to Subpart E, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the USEPA Administrator shall meet and confer with the U.S. Air Force's Secretariat Representative and the Commissioner of the NYSDEC or designated representative to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the U.S. Air Force and NYSDEC with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Part shall not be delegated.

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

H. When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Emergency and Remedial Response Division Director for USEPA's Region II or, after the State receives authorization for its corrective action program ("corrective action authorization"), NYSDEC's Director of the Division of Hazardous Waste Remediation requests in writing, that work related to the dispute be stopped because, in USEPA's or NYSDEC's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. Prior to corrective action authorization NYSDEC may request USEPA's Division Director to stop work for the reasons stated above. To the extent possible, the Parties seeking a work stoppage shall consult with the other Parties prior to initiating a work stoppage request. After stoppage of work, if a Party believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Parties may meet to discuss the work stoppage. Following this meeting, and further consideration of the issues, USEPA's Division Director, (and/or, after corrective action authorization, NYSDEC's Division Director) will issue, in writing, a final decision with respect to the work stoppage. The final written decision may immediately be subjected to formal dispute

resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of any Party.

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

J. Except as provided below, resolution of a dispute pursuant to this Part of the Agreement constitutes a final resolution of that dispute arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Part of this Agreement.

Notwithstanding the provisions of this Part, the State reserves all of the rights it may have to obtain judicial review of any final resolution of the Administrator, and all rights reserved pursuant to Part XXXIII, New York State's Reservation of Rights.

XIV. ENFORCEABILITY

A. The Parties agree that:

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

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

3. All terms and conditions of this Agreement which relate to operable unit or final remedial actions, including corresponding timetables, deadlines or schedules, and all work associated with the operable unit or final remedial actions, shall be enforceable by any person pursuant to Section 310(c) of CERCLA, and any violation of such terms or conditions will be subject to civil penalties under Sections 310(c) and 109 of CERCLA; and

4. Any final resolution of a dispute pursuant to Part XIII of this Agreement which establishes a term, condition, timetable, deadline or schedule shall be enforceable by any person pursuant to Section 310(c) of CERCLA, and any violation of such term,

condition, timetable, deadline or schedule will be subject to civil penalties under Sections 310(c) and 109 of CERCLA.

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

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

XV. STIPULATED PENALTIES

A. In the event that the U.S. Air Force fails to submit a primary document to USEPA or NYSDEC pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an operable unit or final remedial action, USEPA may assess a stipulated penalty against the U.S. Air Force. Similarly, in such instances NYSDEC may demand of the U.S. Air Force and, pursuant to such demand, USEPA may assess a stipulated penalty.

A stipulated penalty may be assessed in an amount not to exceed $5,000 for the first week (or part thereof), and $10,000 for each additional week (or part thereof) for which a failure set forth in this Subpart occurs.

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

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

1. The Federal facility responsible for the failure;

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

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

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

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

D. 1. Stipulated penalties assessed pursuant to this Part shall be payable to the Hazardous Substances Superfund and the appropriate State fund in accordance with subparagraph D. 2. of this Part, only in a manner and to the extent expressly provided for in the Acts authorizing funds for and appropriations to DOD.

2. USEPA and NYSDEC agree, to extent allowed by law, to share equally any stipulate penalties paid by the U.S. Air Force between the Hazardous Substance Superfund and the appropriate State fund.

E. In the case of a NYSDEC demand for issuance of stipulated penalty where USEPA chooses not to assess the penalty demanded by the State or if the State does not receive one-half (1/2) of the penalty assessed, NYSDEC may pursue any penalty, remedy or sanction it may have under law.

F. In the event that the U.S. Air Force fails to pay any stipulated penalty as provided hereunder, the U.S. Air Force shall inform the USEPA and NYSDEC of the specific basis for the failure to pay the penalties.

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

H. This Part shall not affect the U.S. Air Force's ability to obtain an extension of a timetable, deadline or schedule pursuant to Part XVII, Extensions, of this Agreement.

I. Nothing in this Agreement shall be construed to render any officer or employee of the U.S. Air Force personally liable for the payment of any stipulated penalty assessed pursuant to this Part.

XVI. DEADLINES

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

1. Identification of AOCs, in accordance with Section IX, Work To Be Performed, of this Agreement, shall be submitted

within forty-five (45) days after the effective date of this Agreement.

2. The RI Scope of Work shall be submitted within ninety (90) days after USEPA and NYSDEC determine which AOCs will be investigated and remediated in accordance with Section IX, Work To Be Performed, of this Agreement.

3. The RI/FS Work Plan, (including Sampling and Analysis Plan and QAPP) shall be submitted thirty (30) days after the date of approval of the RI Scope of Work.

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

1. Completion Reports for AOCs
2. Risk Assessment
3. Community Relations Plan
4. RI Report
5. Initial Screening of Alternatives
6. FS Report
7. Proposed Remedial Action Plan (PRAP)
8. Record of Decision (ROD)

Within fifteen (15) days of receipt USEPA and NYSDEC shall review and provide comments to the U.S. Air Force regarding the proposed deadlines. Within fifteen (15) days following receipt of the comments the U.S. Air Force shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. If they agree on proposed deadlines, the finalized deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree within thirty (30) days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Part XIII, Resolution of Disputes, of this Agreement. The final deadlines established pursuant to this Subpart shall be published by USEPA, in conjunction with the State.

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

1. Remedial Design
2. Remedial Action Work Plan (to include a schedule for (RD/RA)

These deadlines shall be proposed, finalized and published utilizing the same procedures set forth in Subpart B above.

D. The deadlines set forth in this Part, or to be established as set forth in this Part, may be extended pursuant to Part XVII, Extensions, of this Agreement. The Parties recognize that one possible basis for extension of the deadlines for completion of the Remedial Investigation and Feasibility Study Reports is the

identification of significant new Site conditions during the performance of the remedial investigation.

XVII. EXTENSIONS

A. Timetables, deadlines and schedules shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by the U.S. Air Force shall be submitted to USEPA and NYSDEC in writing and shall specify:

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

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

1. An event of force majeure;
2. A delay caused by the failure of another Party to this Agreement to meet any requirement of this Agreement;
3. A delay caused by the good faith invocation of dispute resolution pursuant to this Agreement or the initiation of judicial action;
4. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; provided that the possibility of a delay was foreseeable and identified at the time the initial request for an extension was made; and
5. Any other event or series of events mutually agreed to by the Parties as constituting good cause.

C. Absent agreement of the Parties with respect to the existence of good cause, the U.S. Air Force may seek and obtain a determination through the dispute resolution process that good cause exists.

D. Within seven (7) days of receipt of a request for an extension of a timetable, deadline or schedule, USEPA and NYSDEC shall advise the U.S. Air Force in writing of their respective positions on the request. Any failure by USEPA or NYSDEC to respond within the 7-day period shall be deemed to constitute its concurrence in the request for extension. If USEPA or NYSDEC does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

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

F. Within seven days of receipt of a statement of nonconcurrence with the requested extension, the U.S. Air Force may invoke dispute resolution.

G. A timely and good faith request for an extension shall toll any assessment of related stipulated penalties or application for judicial enforcement of the affected timetable and deadline or schedule until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and the requested extension is denied, stipulated penalties may be assessed and may accrue from the date of the original timetable, deadline or schedule. Following the grant of an extension, an assessment of stipulated penalties or an application for judicial enforcement may be sought only to compel compliance with the timetable and deadline or schedule as most recently extended.

XVIII. FORCE MAJEURE

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

costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

XIX. FUNDING

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

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

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

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

XX. REPORTING

The U.S. Air Force agrees it shall submit to the Project Managers, as set forth in Part XXI, Notification, monthly written Progress Reports which describe the actions which the U.S. Air Force has taken during the previous month to implement the requirements of this Agreement. Progress Reports shall also

describe the activities scheduled to be taken during the upcoming month. Progress Reports shall be submitted by the tenth (10) day of each month following the effective date of this Agreement. The progress reports shall include a detailed statement of the manner and extent to which the requirements and time schedules of this Agreement are being met. The Progress Reports shall identify any anticipated delays (or money shortfalls) in meeting time schedules, the reason(s) for the delay and actions taken to prevent or mitigate the delay.

When the U.S. Air Force Project Manager recognizes that a force majeure event has occurred and that it will require an extension of a timetable schedule or deadline, that circumstance will be reported in the following Progress Report. However, inclusion of such information in the Progress Report shall not alter the U.S. Air Force's obligation to provide timely requests for extension.

XXI. NOTIFICATION

Unless otherwise specified, ten (10) copies of any Report or Submittal provided pursuant to a schedule or deadline identified in or developed under this Agreement shall be sent, return receipt requested, and addressed or hand delivered to:

CERCLA Regional Project Manager for
Griffiss Air Force Base
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
26 Federal Plaza, Room 2930
New York, New York 10278

and seven (7) copies to:

Mr. Joseph L. Slack, P.E., Director
Bureau of Eastern Remedial Action
Division of Hazardous Waste Remediation
N.Y.S. Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

along with one (1) copy sent to:

Mr. Andrew Bellina, P.E., Chief
Air and Waste Management Branch
U.S. Environmental Protection Agency, Region II
26 Federal Plaza, Room 1043
New York, New York 10278

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

Mr. Bruce H. Mero
Chief, Environmental Management Branch
416 CSG/DEV
Griffiss AFB, N.Y. 13441

Unless otherwise requested, all routine correspondences may be sent via regular mail to the above-named persons.

XXII. SAMPLING AND DATA AVAILABILITY

The Parties shall make available to each other quality assured results of sampling, tests or other data generated by any Party, or on their behalf, with respect to the implementation of this Agreement within sixty (60) days of their collection or performance. If quality assurance procedure is not completed within sixty (60) days, raw data or results shall be submitted within the sixty (60) day period and quality assured data or results shall be submitted as soon as they become available.

The sampling Party's Project Manager shall notify the other Parties' Project Managers not less than fourteen (14) days in advance of any sample collection. If it is not possible to provide fourteen (14) days prior notification, the sampling Party's Project Manager shall notify the other Project Managers as soon as possible after becoming aware that samples will be collected. Each Party shall allow, to the extent practicable, split or duplicate samples to be taken by the other Parties, or their authorized representatives, of any such samples.

XXIII. PRESERVATION OF RECORDS

Each Party to this Agreement shall preserve for a minimum of ten (10) years after termination of this Agreement all of its records and documents in its possession or in the possession of its contractors which relate in any way to the presence of hazardous substances, pollutants and contaminants at GAFB which relate to the actions carried out pursuant to this Agreement, despite any document retention policy to the contrary. After this ten (10) year period, each Party shall notify the other Parties at least ninety (90) days prior to destruction of any such documents or records. Upon request by any Party, the requested Party shall make available such records or documents or

copies thereof, unless withholding is authorized and determined appropriate by law.

XXIV. ACCESS

A. Without limitations on any authority conferred on USEPA and NYSDEC by statute or regulation, USEPA, NYSDEC or their authorized representatives, shall have authority to enter GAFB at all reasonable times for purposes consistent with the provisions of the Agreement. Such access shall include, but not be limited to:

1. inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement;
2. inspecting field activities of the U.S. Air Force and its contractors relevant to this Agreement, to assure that the activities of the U.S. Air Force, its response action contractors or lessees in implementing this Agreement are carried out in compliance with the Terms of this Agreement;
3. conducting such tests as the NYSDEC and the USEPA Project Managers deem necessary; and
4. verifying the data submitted to USEPA and NYSDEC by the U.S. Air Force.

The U.S. Air Force shall honor all requests for such access by USEPA and NYSDEC; however, such access shall be obtained in conformance with any statutory or U.S. Air Force regulatory requirements, and in a manner minimizing interference with any military operations at GAFB.

B. The Parties agree that this Agreement is subject to CERCLA 120(j), 42 U.S.C. 9620(j), regarding the issuance of Site Specific Presidential Orders as may be necessary to protect national security.

C. All Parties with access to GAFB pursuant to this section shall comply with all applicable health and safety plans. Implementation of the health and safety plan during GAFB activities under this Agreement will remain the responsibility of the U.S. Air Force and/or its contractors.

D. To the extent that activities pursuant to this Agreement must be carried out on property outside the control of the U.S. Air Force, the U.S. Air Force agrees to exercise its authorities pursuant to Section 104(e) of CERCLA to obtain access for itself, USEPA and NYSDEC from the present owners and occupants, and within a time period sufficient to meet any schedules established for such activities pursuant to this Agreement. The U.S. Air Force may request the assistance of the State and USEPA in obtaining such access to non-U.S. Air Force properties; however,

the U.S. Air Force shall have ultimate responsibility in obtaining access in accordance with its statutory authority.

E. With respect to non-U.S. Air Force property upon which monitoring wells, pumping wells, treatment facilities are to be located, or other response actions are to be taken pursuant to this Agreement, any access obtained shall, to the extent practicable, be conditioned upon (1) that no conveyance of title, easement, or other interest in the property shall be consummated without provisions for the continued operation of such wells, treatment facilities, or other response actions on the property, and (2) that the owners of any such property shall notify the U.S. Air Force, NYSDEC, and USEPA by certified mail, at least thirty (30) days prior to any conveyance of an interest in the property, of the property owner's intent to convey and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other response actions pursuant to this Agreement.

XXV. FIVE YEAR REVIEW

Consistent with Section 121(c) of CERCLA/SARA, 42 U.S.C. 9621(c) and in accordance with this Agreement, if the selected remedial action results in any hazardous substances, pollutants or contaminants remaining at the Site, the Parties shall review the remedial action no less often than each five (5) years after the initiation of the final remedial action to assure that human health and the environment are being protected by the remedial action being implemented. If upon such review any of the Parties propose additional action or modification of the remedial action such proposal shall be handled under Part XII, Consultation, of this Agreement.

To synchronize the five-year reviews for all operable units and final remedial actions, the following procedure will be used:

Review of operable unit remedial actions will be conducted every five (5) years counting from the initiation of the remedial action for the first operable unit, until initiation of the final remedial action for the Site. At that time, a separate review for all operable units shall be conducted. Review of the final remedial action (including all operable units) shall be conducted every five (5) years, thereafter.

XXVI. OTHER CLAIMS

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

Unless specifically agreed to in writing by the Parties, USEPA and the State shall not be held as a party to any contract entered into by the U.S. Air Force to implement the requirements of this Agreement.

This Agreement shall not restrict USEPA or NYSDEC from taking any legal or response action for any matter not specifically addressed by this Agreement.

USEPA, NYSDEC and the U.S. Air Force shall provide a copy of this Agreement to appropriate contractors, subcontractors, laboratories, and consultants retained to conduct any portion of the work performed pursuant to this Agreement prior to beginning work to be conducted under this Agreement.

Nothing in this Agreement shall preclude, limit or affect in any way any claims for damages for injury to, destruction of, or loss of natural resources, or for the costs of assessing such injury, destruction or loss.

XXVII. AMENDMENT OF AGREEMENT

This Agreement can be amended in accordance with Part XXX, Public Comment and Effective Date, upon written consent of all Parties. Such amendments may be proposed by any Party and shall be effective the third business day following the day the last Party to sign the amendment sends its notification of signing to the other Parties. The Parties may agree to a different effective date.

XXVIII. TRANSFER OF REAL PROPERTY

At least ninety (90) days prior to any transfer, the U.S. Air Force shall notify USEPA and NYSDEC of the proposed transfer of real property subject to this Agreement and the provision made for any additional remedial actions. The U.S. Air Force shall also notify USEPA and NYSDEC of any substantial change of use proposed for any AOC.

The U.S. Air Force shall not transfer any real property comprising any portion of GAFB except in compliance with Section 120(h) of CERCLA and any proposed or promulgated regulation thereunder.

XXIX. PUBLIC PARTICIPATION

A. The Parties agree that this Agreement and any subsequent proposed remedial action alternative(s) and subsequent plan(s) for remedial action at GAFB arising out of this Agreement shall comply with the administrative record and public participation requirements of CERCLA, including Sections 117 and 113(k), 42 U.S.C. Sections 9617 and 9613(k), the NCP, USEPA guidance on public participation and administrative records.

B. The U.S. Air Force shall develop and implement a Community Relations Plan (CRP) as required by Part XII, Consultation, which responds to the need for an interactive relationship with all interested community elements, both on and off GAFB, regarding environmental activities conducted pursuant to this Agreement by the U.S. Air Force. The U.S. Air Force agrees to develop and implement the CRP in a manner consistent with Section 117 of CERCLA, 42 U.S.C. Section 9617, the NCP, USEPA guidance on community relations and the NYSDEC Inactive Waste Site Citizen Participation Plan.

C. The public participation requirements of this Agreement shall be implemented so as to be consistent with the public participation requirements applicable to RCRA permits under 40 CFR Part 124 and Section 7004 of RCRA.

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

E. The U.S. Air Force shall establish a Technical Review Committee(TRC) as described in 10 U.S.C. Section 2705(c).

F. The U.S. Air Force agrees it shall establish and maintain an administrative record at or near GAFB in accordance with Section 113(k) of CERCLA, 42 U.S.C. Section 9613. The administrative record shall be established and maintained in accordance with USEPA policy and guidelines. Submissions to the administrative record will be provided to USEPA and NYSDEC by the time of inclusion into the record. NYSDEC or USEPA may designate documents for inclusion in the administrative record.

G. The U.S. Air Force agrees it shall follow the public participation requirements of CERCLA Section 113(k) and comply with any guidance and/or regulations promulgated by USEPA with respect to such Section.

XXX. PUBLIC COMMENT AND EFFECTIVE DATE

A. Within fifteen (15) days of the date of the acceptance of this Agreement, USEPA shall provide public notice that this Agreement has been developed and shall announce the availability of this Agreement to the public for a forty-five (45) day review and comment period. USEPA shall accept comments from the public on behalf of all Parties for a period of forty-five (45) days after such announcement. At the end of the comment period, USEPA shall promptly transmit to the other Parties copies of all comments received. The Parties shall review all such comments and shall either:

1. Determine that the Agreement should be made effective in its present form, in which case USEPA shall immediately issue a written notice to that effect to the other Parties, and the Agreement shall become effective on the date said notice is issued; or

2. If the determination in Subpart 1 above is not made, the Parties shall meet to discuss and agree upon any proposed changes. If the Parties do not mutually agree on all needed changes within fifteen (15) days from the close of the public comment period, the Parties shall submit their written notices of position, concerning those provisions still in dispute, directly to the Dispute Resolution Committee, and the procedures of Part XIII, Resolution of Disputes, shall be applied to the disputed provisions. Upon resolution of any proposed changes, the Agreement, as modified, may be re-executed by the Parties, with USEPA signing last, and, if so re-executed, shall become effective on the date that it is signed by USEPA.

B. Any response action underway upon the effective date of this Agreement shall be subject to oversight by the Parties.

XXXI. RECOVERY OF NEW YORK STATE'S EXPENSES

A. The U.S. Air Force agrees to request funding and reimburse the State, subject to the conditions and limitations set forth in this Part, and subject to Part XIX, Funding, for all reasonable costs it incurs in providing services in direct support of the U.S. Air Force's environmental restoration activities pursuant to this Agreement at the Site, provided that the costs of such

services have not been reimbursed to the States by other federal mechanisms (such as USEPA funding).

B. Reimbursable expenses shall consist only of actual expenditures required to be made and actually made by the State in providing the following assistance to GAFB:

1. Timely technical review and substantive comment on reports or studies which the U.S. Air Force prepares in support of its response actions and submits to the State.

2. Identification and explanation of unique State requirements applicable to military installations in performing response actions, especially State applicable or relevant and appropriate requirements (ARARs).

3. Field visits to ensure investigations and cleanup activities are implemented in accordance with appropriate State requirements, or in accordance with agreed upon conditions between the State and the U.S. Air Force that are established in the framework of this Agreement.

4. Support and assistance to the U.S. Air Force in the conduct of public participation activities in accordance with Federal and State requirements for public involvement.

5. Participation in the review and comment functions of the U.S. Air Force Technical Review Committee.

6. Other services specified in this Agreement.

C. Within ninety (90) days after the end of each quarter of the federal fiscal year, the State shall submit to the U.S. Air Force an accounting of all State costs actually incurred during that quarter in providing direct support services under this Part. Such accounting shall be accompanied by cost summaries and be supported by documentation which meets federal auditing requirements. The summaries will set forth employee-hours and other expenses by major type of support service. All costs submitted must be for work directly related to implementation of this Agreement and not inconsistent with either the National Contingency Plan (NCP) or the requirements described in OMB Circulars A-87 (Cost Principles for State and Local Governments) and A-128 (Audits for State and Local Cooperative Agreements with State and Local Governments) and Standard Forms 424 and 270. The U.S. Air Force has the right to audit cost reports used by the State to develop the cost summaries. Before the beginning of each fiscal year, the State shall supply a budget estimate of what it plans to do in the next year in the same level of detail as the billing documents.

D. Except as allowed pursuant to Subparts E or F below, within ninety (90) days of receipt of the accounting provided pursuant to Subpart C above, the U.S. Air Force shall reimburse the State in the amount set forth in the accounting.

E. In the event the U.S. Air Force contends that any of the costs set forth in the accounting provided pursuant to Subpart C above are not properly payable, the matter shall be resolved through a bilateral dispute resolution process set forth at Subpart I below.

F. The U.S. Air Force shall not be responsible for reimbursing the State for any costs actually incurred in the implementation of this Agreement in excess of one percent (1%) of the U.S. Air Force total lifetime Defense Environmental Restoration Account (DERA) project costs incurred throughout construction of the remedial action(s). This total reimbursement limit is currently estimated to be a sum of one million dollars ($1,000,000) over the life of the Agreement. Circumstances could arise whereby fluctuations in the U.S. Air Force estimates or actual final costs through the construction of the final remedial action creates a situation where the State receives reimbursement in excess of one percent of these costs. Under these circumstances, the State remains entitled to payment for services rendered prior to the completion of a new estimate if the services are within the ceiling applicable under the previous estimate.

1. Funding of support services must be constrained so as to avoid unnecessary diversion of the limited DERA funds available for the overall cleanup, and
2. Support services should not be disproportionate to overall project costs and budget.

G. Either the U.S. Air Force or the State may request, on the basis of significant upward or downward revisions in the U.S. Air Forces's estimate of its total lifetime costs throughout construction used in Subpart F above, a renegotiation of the cap. Failing an agreement, either the U.S. Air Force or the State may initiate dispute resolution in accordance with Subpart I below.

H. This Agreement is the mechanism for payment of the costs incurred by the State in providing the services listed in Subpart B of this Part in relation to DERA-funded work carried out at the Site after the effective date of this Agreement. Full payment of State costs pursuant to this Agreement constitutes final settlement of any claims the State of New York may have for performance, after the effective date of this Agreement, of the foregoing services.

I. Part XIII, Resolution of Disputes, notwithstanding, this Subpart shall govern any dispute between the U.S. Air Force and the State regarding the application of this Part or any matter controlled by the Part including, but not limited to, allowability of expenses and limits on reimbursement. While it is the intent of the U.S. Air Force and the State that these procedures shall govern resolution of disputes concerning State reimbursement, informal dispute resolution is encouraged.

1. The U.S. Air Force and State Project Managers shall be the initial points of contact for coordination of dispute under this Subpart.

2. If the U.S. Air Force and State Project Managers are unable to resolve a dispute, the matter shall be referred to the U.S. Air Force's Director of Environmental Management, Strategic Air Command and NYSDEC's Director of the Division of Hazardous Waste Remediation, or their designated representatives, as soon as practicable, but in any event within five (5) working days after the dispute is elevated by the Project Mangers.

3. If the U.S. Air Force's Director of Environmental Management, Strategic Air Command and NYSDEC's Director of the Division of Hazardous Waste Remediation are unable to resolve the dispute within ten (10) working days, the matter shall be elevated to the U.S. Air Force's Deputy Assistant Secretary of the Air Force for Environment, Safety, and Occupational Health and the NYSDEC's Assistant Commissioner of Hazardous Waste Remediation, or their designated representatives.

4. In the event the NYSDEC's Assistant Commissioner of Hazardous Waste Remediation and the U.S. Air Force's Deputy Assistant Secretary of the Air Force for Environment, Safety, and Occupational Health are unable to resolve a dispute, the State retains the legal and equitable remedies it may have to recover its expenses. In addition, the State may withdraw from this Agreement by giving sixty (60) days notice to the other Parties.

J. Nothing herein shall be construed to limit the ability of the U.S. Air Force to contract with the State for technical services that could otherwise be provided by a private contractor including, but not limited to:

1. Identification, investigation, and cleanup of any contamination beyond the boundaries of the U.S. Air Force Facility;
2. Laboratory analysis; or
3. Data collection for field studies.

K. Nothing in this Agreement shall be construed to constitute a waiver of any claims by the State for any expenses incurred prior to the effective date of this Agreement.

L. The U.S. Air Force and the State agree that the terms and conditions of the Part shall become null and void when the State enters into a Defense/State Memorandum of Agreement (DSMOA) with the Department of Defense (DOD) which addresses State reimbursement.

M. The State is entitled to recover under this Part off-base removal costs incurred by the State in connection with releases on, or from the Site. Recovery of such response costs shall not be subject to the 1% cap provided in Subpart F.

XXXII. RECOVERY OF USEPA EXPENSES

The Parties agree to amend this Agreement at a later date in accordance with any decision agreed to by the U.S. Air Force and USEPA concerning recovery of USEPA expenses.

XXXIII. NEW YORK STATE'S RESERVATION OF RIGHTS

Nothing herein shall be construed to affect New York State's rights to seek appropriate relief, to the extent authorized by law, against USEPA, or the U.S. Air Force, or any other Party, to obtain compliance with the law at the Site including, but not limited to, state law governing hazardous or solid waste storage, treatment, or disposal, state law concerning removal or remedial actions, or liability or compliance with respect to the release of hazardous substances or other pollutants or contaminants.

Consistent with the Agreement, the State agrees to exhaust fully the procedures provided in Part XIII, Resolution of Disputes, of this Agreement prior to taking any enforcement action it may have the authority to exercise relative to remediation of the Site; except, however, that if the State determines that conditions or activities at the Site present an imminent danger to the health and welfare of the people of the State, or are likely to result in irreversible or irreparable damage to natural resources, the State reserves any rights it may have to issue summary abatement orders, undertake removals, or take such other enforcement, judicial or remedial action without first exhausting the dispute resolution procedure provided by this Agreement.

XXXIV. TERMINATION

The provisions of this Agreement shall be deemed satisfied and terminated upon receipt by the U.S. Air Force of written notice from USEPA and NYSDEC that the U.S. Air Force has demonstrated, to the satisfaction of USEPA and NYSDEC, that all the terms and requirements of this Agreement have been completed. If USEPA and NYSDEC deny or otherwise fail to grant a termination notice within a reasonable time period after receiving a written U.S. Air Force request for such notice, such denial may be the basis for dispute resolution.

This provision shall not affect the statutory requirements for periodic review at maximum five year intervals of the efficacy of the remedial actions.

EXECUTION OF DOCUMENT

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

IT IS SO AGREED:

29 MAR 1990
Date

FOR THE U.S. AIR FORCE
Donald O. Aldridge, Lt. General, USAF
Vice Commander in Chief
Strategic Air Command

May 25, 1990
Date

FOR THE STATE OF NEW YORK
Thomas C. Jorling
Commissioner
New York State Department of
Environmental Conservation

June 4, 1990
Date

FOR THE STATE OF NEW YORK
Robert Abrams
Attorney General of the State
of New York
by: David A. Munro
Assistant Attorney General
New York State Department of Law
Environmental Protection Bureau

June 14, 1990
Date

FOR THE USEPA
Constantine Sidamon-Eristoff
Regional Administrator, Region II
U. S. Environmental Protection Agency

FINAL PAGE

ADMINISTRATIVE RECORD

FINAL PAGE

FINAL PAGE

ADMINISTRATIVE RECORD

FINAL PAGE