

ATTACHMENT 17

**INTEGRATION AGREEMENT FOR AIR FORCE
CLEANUP OF THE AIR FORCE'S
UTAH TEST AND TRAINING RANGE,
THE WENDOVER RANGE AND THE
LITTLE MOUNTAIN COMPLEX**

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**INTEGRATION AGREEMENT FOR AIR FORCE CLEANUP OF THE AIR FORCE'S
UTAH TEST AND TRAINING RANGE, THE WENDOVER RANGE, AND THE
LITTLE MOUNTAIN COMPLEX**

Based on information available to the Parties on the effective date of this Agreement, the Parties agree as follows:

1. PARTIES BOUND

1.1 The Parties to this Integration Agreement are the United States Air Force (USAF) through Hill Air Force Base, Utah, and the State of Utah, Department of Environmental Quality (UDEQ). The terms of this Agreement shall apply to and be binding upon USAF and UDEQ, and their successors and assigns.

1.2 This Agreement shall be binding upon both Parties to this Agreement. This Subsection 1.2 shall not be construed as an agreement to indemnify any person. USAF will notify its agents, members, employees, and response action contractors for the Sites, and all subsequent owners, operators, and lessees of the Sites of the existence of this Agreement.

1.3 Each Party shall be responsible for ensuring that its contractors and its successors and assigns comply with the terms and conditions of this Agreement.

1.4 UDEQ is designated as the single Utah State agency, in accordance with the laws of the State of Utah, responsible for the federal programs to be carried out under this Agreement, and the lead agency for the State of Utah, and its actions pursuant to this Agreement are binding on the State of Utah, as provided by Utah Code Annotated, § 19-1-201.

2. STATEMENT OF PURPOSE

2.1 The primary objectives of USAF with respect to the work to be performed under this Agreement are to:

- (a) Apply the principles of performance-based cleanup practices wherever possible to assure the incorporation of existing data, knowledge, experience, initiatives and technological advances to enable the most efficient, cost effective and expeditious response actions possible;
- (b) Achieve and maintain proactive communications to achieve mutual agreement of the Parties on all critical response action decisions such as Deadlines, no further action determinations, remedy selection, and remedy completion;
- (c) Achieve cleanup transformation and continuous improvement, replacing an emphasis on process with a focus on performance and results;

(d) Since this work may involve the identification and neutralization of ordnance and explosives and other hazards, careful incorporation of personnel safety standards will be included in conceptualization of and preparations for all field work. This includes the incorporation of regular and effective safety briefings. Safety mishaps can significantly impair the efficiency of applying effective remedial actions;

(e) Apply the USAF Principles for Performance-Based Records of Decision in Environmental Restoration and its four tenets of remedy selection and implementation as follows:

1. Decision-making and decision documents shall clearly specify response objectives, and the actions and performance necessary to achieve those objectives;
2. Ensure prompt notification and continuous, open and full dialogue between the Parties to achieve streamlining and tailored oversight;
3. Provide regulators and the public prompt disclosure of all germane information for performance verification;
4. Assurance that USAF is fully accountable for performance and achieving results;

(f) Focus on environmental results and describe clear, reasonable and protective performance standards and schedules the remedy must achieve; and

(g) Apply dynamic field activity initiatives and approaches (such as One Cleanup Program and Triad) to the maximum extent feasible by the Parties to streamline and accelerate the remedy decision process.

(h) Assure that early in all phases of the cleanup process that resource use determinations are made and followed based on current and reasonably anticipated resource use and USAF mission needs.

2.2 The general purposes of this Agreement are to:

(a) Ensure that the environmental impacts associated with past activities at the Sites are thoroughly investigated and appropriate response actions taken as necessary to protect the human health and welfare and the environment;

(b) Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Sites in accordance with applicable law;

(c) Establish a framework for USAF's exercise of lead agency authority for

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) response(s) at all Sites;

(d) Facilitate cooperation, exchange of information, and participation of the Parties in such actions;

(e) Provide a framework for UDEQ input into the response process as well as provide a mechanism for dispute resolution; and

(f) Provide a framework under which UDEQ can determine that all of the required solid and hazardous waste corrective action obligations have been met.

(g) Achieve integration of CERCLA, Defense Environmental Restoration Program (DERP), Resource Conservation and Recovery Act (RCRA) and Utah hazardous waste requirements, consistent with 42 U.S.C. §§ 6905(b) and 9620(i) and avoid duplication of work to the maximum extent practicable, so that cleanup actions taken in accordance with this agreement satisfies and complies with the requirements of all these laws. The parties intend to use the CERCLA response process to achieve this integration as specified in this Agreement.

2.3 Specifically, this Agreement is designed to:

(a) Identify remedial actions appropriate for the Sites prior to implementation of the Final Remedial Action(s) (FRA) at the Sites. USAF shall identify to the UDEQ Remedial Action Alternatives prior to USAF's proposal of the FRA at each Site. It is the intention of the Parties that Remedial Actions shall be identified as early as practicable to promote cooperation and expedite response action(s) at the Sites.

(b) Establish requirements for evaluating the Sites to determine fully the nature and extent of the threat to human health or welfare or the environment caused by the potential hazards at the Sites; to determine whether there is a release or threatened release of hazardous substances, pollutants, or contaminants at the Sites; and establish requirements for identifying, evaluating, and selecting remedial actions;

(c) Identify the nature, objective(s), and schedule of response actions taken or to be taken at the Sites. Response actions at the Sites shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA and applicable state law;

(d) Provide for implementation of the selected remedial action(s);

(e) Assure compliance with all applicable federal and state law for matters covered herein;

(f) Coordinate response actions at the Sites with the mission and support activities at the

USAF Properties, as defined herein, so that interference with other USAF missions is avoided to the maximum extent possible;

(g) Provide for UDEQ involvement in initiating, developing, and selecting response actions at the Sites, including review of all applicable data as it becomes available; in developing studies, reports, and action plans; and in identifying, integrating and assuring compliance with state and federal Applicable or Relevant and Appropriate Requirements (ARARs) to the extent required by CERCLA;

(h) Provide for operation and maintenance of any remedial action(s) selected and implemented pursuant to this Agreement;

(i) Assure that there is appropriate community involvement in initiating, developing and selecting remedial action(s); and

(j) Streamline and expedite response at these Sites consistent with protection of human health and welfare and the environment, the Parties' roles specified in this Agreement, and budget constraints.

(k) Identify the process whereby the completion of remedial actions and site/Operable Unit (OU) closeouts are clearly identified and documented.

3. DEFINITIONS

3.1 Except to the extent they are inconsistent with the definitions below, the definitions provided in CERCLA and the National Contingency Plan (NCP) shall control the meaning of terms used in this Agreement.

3.2 "Additional work" shall mean any new or different work outside the originally agreed upon Scope of this Agreement.

3.3 "Agreement" shall refer to this document, the attachments to this document, and all documents finalized pursuant to Section 9 (Consultation). Such documents, when finalized, shall be incorporated into this document, and shall become binding parts of this document.

3.4 "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, Public Law 96-510 (42 U.S.C. §§ 9601 et seq.), as amended.

3.5 "CERCLA Executive Orders" shall mean Executive Orders 13016 and 12580, as those Orders have been amended.

3.6 "Days" shall mean calendar days, unless business days are specified. Any submittal that under the terms of this Agreement would be due on a Saturday, Sunday, or Federal or State

of Utah holiday shall be due on the following business day.

3.7 "Deadline" shall mean the time limitation(s) applicable to any specific submittal or completion of any specific action established within or under the terms of this Agreement.

3.8 "Hill AFB" shall mean Hill Air Force Base, an installation of the United States Air Force.

3.9 "National Contingency Plan" or "NCP" shall refer to the regulations contained in 40 C.F.R. Part 300 and any subsequent amendments thereto.

3.10 "OU" shall mean Operable Unit.

3.11 "RCRA" shall mean the Resource Conservation and Recovery Act of 1976, Public Law 94-580 (42 U.S.C. §§ 6901, et seq.), as amended;

3.12 "Removal" shall have the same meaning as provided in CERCLA § 101(23) (42 U.S.C. § 9601(23)), and "emergency removal," "time critical removal" and "non-time critical removal" shall have the same meanings as provided in the NCP.

3.13 "Schedule" shall mean the time limitations established for the submission of all documents or completion of all actions established within or under the terms of this Agreement.

3.14 "Permit" shall mean the hazardous waste operating permit for the Utah Test and Training Range (UTTR-North UT0570090001) issued on February 13, 2003 by the Executive Secretary of the Utah Solid and Hazardous Waste Control Board of UDEQ.

3.15 "Sites":

(a) "Sites" shall mean those areas within the USAF Properties where a hazardous substance, pollutant or contaminant has been deposited, stored, disposed, or placed, or has otherwise come to be located, due to installation activity before July 26, 1982. An initial list of Sites for UTTR-North is identified in the Permit, Module VI, Table 1. The USAF is in the process of identifying Sites for UTTR-South, Wendover Range, and Little Mountain Complex.

(b) "Sites" shall not include those areas within the USAF Properties where a hazardous substance, pollutant or contaminant has migrated from a source located off USAF Properties. Sites shall also not include those areas identified within the Module IV of the Permit.

3.16 "UDEQ" shall mean the Utah Department of Environmental Quality, an agency of the State of Utah, as well as its agents and employees.

3.17 "USAF" shall mean the United States Air Force, its employees, members and agents, as well as the Department of Defense (DoD) to the extent necessary to effectuate the terms of this Agreement.

3.18 "USAF Properties" means the following properties owned and controlled by USAF: Utah Test and Training Range (North and South), the Wendover Range, and the Little Mountain Complex.

3.19 "Utah hazardous waste laws" shall mean the Utah Solid and Hazardous Waste Act, Utah Code Ann. Title 19, Chapter 6, Part 1, and implementing rules at Utah Admin. Code R315.

4. STATUTORY INTEGRATION

4.1 The Permit has been issued to USAF for ongoing hazardous waste management activities at UTTR-North and corrective action at specified solid waste management units at UTTR-North. For Sites that are on UTTR-North and not on the list in Module IV, the USAF shall incorporate this Agreement into the Permit as specified in Condition VI.B.3 of the Permit. Through this incorporation, all deliverables submitted to UDEQ relating to these UTTR-North I sites shall be submitted as deliverables pursuant to this Agreement and the Permit, and the Schedule as set forth or determined pursuant to this Agreement, including all subsequent changes to the Schedule, shall be incorporated in the Permit. The procedures for evaluating, selecting, and implementing response/corrective actions set forth in this Agreement shall be incorporated into the Permit. The requirements that are incorporated into the Permit under this provision are subject to the USAF's Reservation of Defenses at Section 28.

4.2 The Parties agree, with respect to releases of hazardous waste covered by this Agreement, that RCRA and Utah hazardous waste laws shall be considered ARARs pursuant to CERCLA § 121 (42 U.S.C. § 9621).

4.3 The Parties agree and recognize that CERCLA and the NCP govern the requirement to obtain permits, if any, for response actions undertaken at any of the Sites pursuant to this Agreement. The activities that are not on-site response actions under CERCLA, the NCP, and this Agreement may require issuance of permits under federal and state laws. This Agreement does not affect the requirements, if any, to obtain such permits.

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

5. SCOPE OF AGREEMENT

5.1 The Parties agree that the purpose of this Agreement is to set forth a process to identify, investigate, and remediate the releases or threatened releases of hazardous substances, pollutants or contaminants at or from the Sites. The Parties agree that the releases or threatened releases of CERCLA hazardous substances, pollutants, or contaminants at or from the Sites will be addressed through this Agreement pursuant to CERCLA, and as provided in Section 4 of this Agreement (Statutory Integration).

5.2 The Parties agree to consult with each other regarding actions taken pertaining to the releases or threatened releases of hazardous substances, pollutants, and contaminants not within the scope of this Agreement. The Parties further agree that in the event a dispute between the Parties arises regarding the scope of this Agreement the procedures set forth in Section 15 (Dispute Resolution) shall apply.

5.3 Nothing in this Agreement is intended to affect any jurisdiction the State of Utah may have over activities not included within the scope of this Agreement.

6. ASSUMPTIONS UNDERLYING THIS AGREEMENT

6.1 These assumptions are not to be construed as admissions by either Party, nor are they binding on either Party with respect to claims or causes brought by persons not a Party to this Agreement.

6.2 All Sites are within installations under the jurisdiction, custody, and control of the Department of Defense, through the USAF, within the meaning of the CERCLA Executive Orders. The USAF has been authorized by the Secretary of Defense to act on behalf of the Secretary for all functions relevant to this Agreement which have been delegated by the President to the Secretary of Defense through the CERCLA Executive Orders.

6.3 The Sites are federal facilities to which CERCLA § 120 (42 U.S.C. § 9620) applies.

6.4 USAF at Hill AFB is the authorized delegate of the President under the CERCLA Executive Orders for receipt of notification by the State of Utah of the state's ARARs, as required by CERCLA § 121(d)(2)(A)(ii), (42 U.S.C. § 9621(d)(2)(A)(ii)).

6.5 The authority of USAF to exercise the delegated removal authority of the President pursuant to CERCLA § 104, (42 U.S.C. § 9604) is not altered, inhibited or expanded by this Agreement. Pursuant to 10 U.S.C. § 2705(b), the USAF does not need to afford consultation opportunities for emergency removal actions taken to address an imminent and substantial endangerment to human health or welfare or the environment if such consultation would be impractical.

6.6 The actions to be taken pursuant to this Agreement are reasonable and necessary to protect human health and welfare, and the environment.

6.7 There may have been releases of hazardous substances, pollutants or contaminants at or from one or more of the Sites. With respect to these releases, if any, USAF is an owner and/or operator as defined in CERCLA § 101(20) (42 U.S.C. § 9601(20)).

7. WORK TO BE PERFORMED

7.1 Under this Agreement, USAF agrees it has or shall complete the following, as appropriate (collectively "Work to Be Performed"):

- (a) Identify suspected or known areas of contamination within each Site;
- (b) Conduct a Preliminary Assessment (PA) and Site Inspection (SI) or equivalent for each Site, and prepare a PA/SI report;
- (c) Conduct a Remedial Investigation (RI) and Feasibility Study (FS) or equivalent for each Site and prepare a RI/FS report;
- (d) Prepare a site/OU closeout report, a Record of Decision and Proposed Plan for Remedial Action for each Site and a Remedial Action Completion Report;
- (e) Prepare design and specification documents as needed to implement remedial action for each Site;
- (f) Implement remedial actions for each Site;
- (g) Implement operation and maintenance of response actions at the Site;
- (h) By performing the work in (a) through (g), satisfy corrective action under RCRA and Utah hazardous waste laws, including ARARs; and
- (i) Reimburse UDEQ for its costs, including ongoing technical assistance, pursuant to Section 30 (Payment of UDEQ Costs).

7.2 In performing the Work under this Agreement, the USAF will use USAF guidance set forth in "USAF, Environmental Restoration Program No Further Remedial Action Planned Guide, *June 1995* or later USAF-approved edition.

7.3 All work specified in paragraphs (a) through (g) under Subsection 7.1 shall be considered to be appropriate, and therefore shall be performed, unless there is a determination made in supporting documents at a previous stage that the work is not necessary.

7.4 The Parties agree to perform the tasks, obligations and responsibilities described in this Section 7 in accordance with CERCLA and CERCLA implementing guidelines, rules, regulations and criteria as set forth in CERCLA § 120(a)(2) (42 U.S.C. § 9620(a)(2)); the NCP; the CERCLA Executive Orders; applicable provisions of RCRA, Utah hazardous waste laws and other applicable State laws and rules; and all terms and conditions of this Agreement including documents to be prepared and incorporated into this Agreement in accordance with Section 9 (Consultation). USAF shall not apply internal USAF or DoD guidance that conflicts with requirements in the authorities described above.

7.5 The Parties agree to use their best efforts to expedite the initiation of appropriate response actions at the Site.

7.6 To enable USAF to more efficiently implement response actions, the Parties agree that Sites, or groups or portions of Sites, may be designated as operable units. It is further agreed that combining or "managing" similar areas and/or types of contamination into operable units will be a preferred method of management when such combination or lumping of areas facilitates response methods, organization or operation, is helpful to the overall response process, or appears more efficient than managing individual units. The Parties agree that any such operable units identified at the Sites will be subject to all terms and conditions of this Agreement.

7.7 The Parties recognize that response actions may best be postponed at some Sites where the Sites may be addressed more efficiently or with greater safety at a later time. If the USAF wishes to postpone response activities for a Site, and if postponement would not cause unacceptable risks to human health or welfare or the environment, USAF may propose placement of the Site under a "Site Management Plan (SMP)." The SMP will describe management practices to be implemented until response actions can be undertaken. The SMP will also identify the trigger for removing the Site from the SMP and initiating response actions. The SMPs for different Sites may be combined as appropriate.

7.8 Upon request, UDEQ agrees to provide USAF with guidance or reasonable assistance in obtaining guidance relevant to implementing this Agreement.

8. RESTORATION ADVISORY BOARD

The Parties will participate in a Restoration Advisory Board(s) (RAB), which shall include members from USAF, UDEQ, representatives from the public in impacted communities, and local government. United States Environmental Protection Agency (EPA) representatives may also be invited to participate. Where appropriate, the Parties will seek the views of the RAB on the technical actions to be taken pursuant to this Agreement. The RAB shall hold meetings quarterly unless the Parties agree to hold the meetings more or less frequently. If impacted communities do not desire to participate in a formal RAB, USAF shall, after consultation with UDEQ, implement other approved actions to inform and involve the public as much as possible

in the decision making process. The USAF will prepare a Community Relations Plan that will describe how this process will be conducted.

9. CONSULTATION

9.1 As part of its responsibilities under DERP, the USAF will provide opportunities for State review and comment at the initiation of each discrete response phase (10 U.S.C. § 2705). The provisions of this Section 9 establish procedures for the Parties to provide each other with appropriate technical support, notice, review, comment and response to comments on discrete response phases. Neither this Section 9, nor the designation of a document herein, affects any obligation of the Parties to issue documents for public review and comment as appropriate and/or required by law.

9.2 The USAF shall provide opportunities for UDEQ to review and comment on all significant decisions regarding response actions.

(a) If the following documents or their equivalent are prepared by the USAF in accordance with Subsections 9.1 and 9.2, USAF will provide the documents to UDEQ in final versions, within the timeframes provided in Subsection 9.2(b), (e) and (g):

1. Community Relations Plan(s);
2. Work Plans, including Work Plans for Preliminary Assessments, Site Investigations, Remedial Investigations, Feasibility Studies, Human Health Risk Assessments, Ecological Risk Assessments, Remedial Design, and Remedial Action;
3. Sampling Plans, including Sampling Plans for Preliminary Assessments, Site Investigations, Remedial Investigations, Feasibility Studies, Human Health Risk Assessments, Ecological Risk Assessments, Remedial Design, and Remedial Action;
4. Quality Assurance Plans, including Quality Assurance Plans for Preliminary Assessments, Site Investigations, Remedial Investigations, Feasibility Studies, Human Health Risk Assessments, Ecological Risk Assessments, Remedial Design, and Remedial Action;
5. Health and Safety Plan(s), including Health and Safety Plans for Preliminary Assessments, Site Investigations, Remedial Investigations, Feasibility Studies, Human Health Risk Assessments, Ecological Risk Assessments, Remedial Design, and Remedial Action;
6. PA/SI reports;

7. Human Health Risk Assessment;
8. Ecological Risk Assessment;
9. Remedial Investigation/Feasibility Studies (RI/FS) reports;
10. Record(s) of Decision (ROD);
11. Preliminary (e.g., 30%) remedial design documents;
12. Near final (e.g., 95%) remedial design documents;
13. Final remedial design documents;
14. Operation and maintenance plans;
15. Any document that reflects the completion or closeout of a Site or operable unit(s), any other documents supporting “No Further Response Action Planned” decisions, and any document proposing to postpone response action at a Site and place it in an SMP.

(b) Unless the Parties agree to a shorter time period, UDEQ shall have 45 days to review and comment on draft documents. Review of any document by UDEQ may concern all aspects of the report and should include technical evaluation of any aspect of the document, consistency with CERCLA, RCRA, Utah hazardous waste laws and other applicable State law, the NCP (where applicable), and any other pertinent guidance or policy issued by the UDEQ. Comments provided by UDEQ shall contain adequate specificity so that USAF may respond to the comments and, if necessary, make appropriate corrections. If comments are based on guidance or other sources of authority, UDEQ shall include citations to those documents with its comments and shall, upon request of USAF, provide a copy of the cited authority or reference. UDEQ may extend the 45 day comment period for an additional 30 days by written notice to USAF prior to the expiration of the initial 45 day comment period. On or before the close of the comment period, UDEQ shall transmit its written comments to USAF. In appropriate circumstances, this time period may be further extended by agreement of the Parties.

(c) Representatives of the USAF shall make themselves available to UDEQ during the comment period for purposes of informal discussion and coordination and responding informally to questions and comments. Oral comments made during any such informal discussions need not be the subject of written response by the USAF.

(d) If UDEQ agrees with the draft document, or does not provide any comments within the comment period, and if the comment period is not extended as provided in Section

11, then the document and the decisions documented therein, are deemed “final” as of the end of that comment period.

(e) Following the close of the comment period for a draft document, USAF will give full consideration to all written comments received from UDEQ. Within 30 days following the close of the comment period, the Parties will meet to discuss all comments received (unless the Parties agree to waive such meeting). Within 45 days of the close of the comment period the USAF will provide to UDEQ a written response to the comments received. USAF shall then, within 60 days of the close of the comment period, provide to UDEQ a draft final document which shall include USAF’s response to all written comments received within the comment period. While the resulting draft final report shall be the responsibility of USAF, it shall be the product of consensus to the maximum extent possible.

(f) If UDEQ considers a final document so substantially different from the draft document earlier reviewed that extensive new review and/or comment is required, it shall provide notice to the USAF, within 15 days of its receipt of the document, that it will treat the document as a new draft as provided in Subsection 9.2(b). The document shall be treated as a new draft unless disputed by USAF.

(g) UDEQ shall have 20 days to review final documents and provide any additional comments. If UDEQ agrees with the final document, or does not provide any comments within 20 days, then the document and the decisions documented therein, are deemed “final” as of the end of that 20 day period. If UDEQ and USAF agree on changes to the document following UDEQ’s comment period, the USAF shall issue a final document that includes those changes within 30 days of the end of the 20 day comment period.

(h) If no final document is issued as provided in Subsection 9.2(d) or (g), either Party may initiate dispute resolution within 20 days of the end of the 20 day comment period described in Subsection 9.2(g). If neither Party initiates dispute resolution, the document and the decisions documented therein, are deemed “final” and the Air Force shall proceed to execute the work identified in the document.

(i) For any document for which dispute resolution is initiated, the USAF will transmit to UDEQ a final document within 45 days of the close of the dispute process.

9.3 UDEQ Review and Comment on Other Documents. Other documents created by the USAF may assist it in carrying out its responsibilities under CERCLA, the NCP, or DERP. However, these documents do not represent specific response decision points. The USAF will provide them to UDEQ as early as is practicable for review and comment, consistent with the Parties’ obligations under any Schedule negotiated between the USAF and the UDEQ.

9.4 Communication between the Parties. Nothing in Subsections 9.2 or 9.3 shall be deemed to preclude the free and open exchange of information as is necessary or desirable for the USAF to carry out its response obligations as outlined herein, including the exchange or

discussion of additional documents that the USAF may create as part of its response obligations. Such free and open exchange of information is encouraged between the Parties.

9.5 Meeting of the Remedial Project Managers. The Remedial Project Managers (RPMs) shall meet in Utah, in person approximately once each quarter, except as otherwise agreed by the RPM's, to review and discuss the progress of work being performed at the Sites, which may include discussing the documents listed in Subsection 9.2 above, and the proposed decisions embodied therein.

9.6 Identification and Determination of Potential ARARs

(a) The RPMs shall meet to identify and propose, to the best of their ability, all potential ARARs prior to any relevant decision point identified in Subsection 9.2, including any permit-related requirements which may be a source of ARARs. In a timely manner, UDEQ shall identify potential State ARARs as required by CERCLA § 121(d)(2)(A)(ii) (42 U.S.C. § 9621(d)(2)(A)(ii)), which are pertinent to those activities for which it is responsible. USAF shall prepare draft ARAR determinations in accordance with EPA guidelines, rules, regulations, and criteria implementing CERCLA.

(b) In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances, pollutants and contaminants at a given Site or operable unit, the particular actions associated with the proposed remedy and the characteristics of the Site or operable unit. The Parties recognize that a reexamination of ARARs may become necessary during the RI/FS process until a ROD is issued. Disagreements between the RPMs about ARARs are subject to the provisions of Section 14 (Dispute Resolution) of this Agreement.

9.7 Subsequent Modification to Final Reports

(a) Following the finalization of any document pursuant to Subsection 9.2, either the USAF or the UDEQ may seek to modify such document, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Subsections 9.7(b) and (c) below.

(b) Either the USAF or the UDEQ may seek to modify a document listed in Subsection 9.2 after finalization if it determines, based on new information (i.e., information that becomes available, or conditions that become known, after the report was finalized) that the requested modification is necessary. The USAF or the UDEQ may seek such a modification by submitting a concise written request to the other Party's RPM. The request shall specify the nature of the requested modification and how the request is based upon new information.

(c) In the event that a consensus is not reached by the RPMs on the need for a

modification, either the USAF or the UDEQ may invoke dispute resolution to determine if such modification shall be made. Modification of a report shall be required only upon a showing that:

1. The modification is based on significant new information; and
2. It could be of significant assistance in evaluating the impacts on the human health or welfare or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and welfare and the environment.

(d) Nothing in this Section 9 shall alter UDEQ's ability to request additional work which was not within the scope of this Agreement. USAF's obligation to perform such work must be established by amendments to this Agreement.

10. SCHEDULE

10.1 The Schedule upon which the Parties have already agreed is included as Attachment A to this Agreement and is enforceable under CERCLA/Superfund Amendments and Reauthorization Act as administered by UDEQ/Department of Environmental Response and Remediation and as governed by the provisions of this Agreement.

10.2 For those Sites for which no PA/SI or equivalent has been completed, Deadlines shall be established if proposed by either Party to be added to the Schedule and accepted by the other Party. For those Sites for which a PA/SI report has been finalized as of the date of this Agreement, but for which no Deadlines have been established, USAF shall, within ninety (90) days of the effective date of this agreement, propose Deadlines for the applicable documents specified in Subsection 9.2, through the completion of the ROD.

10.3 Within forty five (45) days following finalizing of a PA/SI report (or equivalent) for a Site(s), the USAF shall propose Deadlines for the applicable documents specified in Subsection 9.2, through the completion of the ROD for the Site(s). Within forty five (45) days following completion of the ROD for a Site(s), the USAF shall propose Deadlines for the applicable documents specified in Subsection 9.2 related to the subsequent response phases.

10.4 Failure of a Party to object to a Deadline proposed by the other Party within twenty (20) days shall constitute acceptance. Any dispute over the Schedule shall be resolved under the procedures outlined in Section 14 (Dispute Resolution).

10.5 Any Deadline established under this Agreement may be extended pursuant to Section 11 (Extensions). The Parties recognize that one of the possible bases for an extension of a Deadline for completion of the RI/FS Report is the identification or discovery of significant new site conditions during the performance of an RI.

11. EXTENSIONS

11.1 A time limitation that is part of the Schedule shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension and without requiring modification of this Agreement or the Permit. The requesting Party shall submit an extension request in writing, or if agreeable to the other Party, by e-mail. Any such request shall identify:

- (a) The time limitation sought to be extended;
- (b) The length of time for which the extension is sought;
- (c) The good cause(s) for the requested extension; and
- (d) The extent to which other parts of the Schedule would be affected by the extension.

11.2 Good cause exists for an extension sought when any of the following conditions exist:

- (a) An event of Force Majeure;
- (b) A delay caused by the other Party's failure to meet any requirement under this Agreement;
- (c) A delay caused by a good faith invocation of dispute resolution;
- (d) A delay caused, or which is likely to be caused, by an extension in regard to another part of the Schedule;
- (e) Any work stoppage within the scope of Section 13 (Emergencies and Removals) provided neither the emergency nor the work stoppage or other delay arises due to the fault or negligence of the Party seeking the extension;
- (f) The Party seeking the extension is unable to complete required review of documents because of an extraordinary workload caused by the submission, by the other Party, of a number of documents for review within a short period of time; or
- (g) Any other event or series of events mutually agreed between the Parties as constituting good cause.

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

11.4 Within seven (7) days of receipt of a request for an extension of a Deadline or Schedule, the receiving Party shall advise the requesting Party in writing, or by e-mail if agreeable, of the receiving Party's position on the request. Any failure by the receiving Party to respond within the seven (7) day period shall be deemed to constitute concurrence with the request for extension. If the receiving Party does not concur with the requested extension, it shall include in its statement of non-concurrence an explanation of the basis for its position.

11.5 If there is consensus that the extension is warranted, or if the seven (7) day time period for response lapses without receipt of a written objection, USAF will adjust the Schedule accordingly. If there is no consensus between the Parties as to whether all or part of the requested extension is warranted, the Deadline or Schedule shall not be extended except in accordance with a determination resulting from the dispute resolution process.

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

12. FORCE MAJEURE

12.1 Force Majeure shall mean any event arising from causes beyond the control of a Party requesting an extension under Section 11 (Extensions) that causes a delay in or prevents the performance of any obligation under this Agreement, provided that neither the event nor the delay could reasonably have been prevented or overcome by the Party's due diligence. Force Majeure events include, but are not limited to: acts of God; fire; war; insurrection; civil disturbance; explosion; breakage or accident to machinery, equipment or lines of pipe; adverse weather conditions; unusual delay in transportation; inability to obtain any necessary authorizations, approvals, permits, or licenses due to action or inaction of any Governmental agency or authority other than the Parties; inability to obtain, at reasonable cost, any necessary authorizations, approvals, permits or licenses due to action or inaction by any local government agency or authority; abnormal action or inaction by any local government agency or authority; abnormal delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, provided that the events arise from causes beyond the control of the Party, and that neither the event nor the delay could have been prevented or overcome by the Party's due diligence. Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Party affected thereby provided that neither the event nor the delay could have been prevented or overcome by the Party's due diligence. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were anticipated.

12.2 The Party requesting an extension due to the occurrence of a Force Majeure will provide the written notification described in Subsection 11.1, within 48 hours after the Party knows, or should have known, of the Force Majeure event and of the resultant delay. The failure to provide timely notice may be weighed in considering whether an extension due to a Force

Majeure shall be granted, but does not constitute a waiver of the right to seek an extension due to Force Majeure.

12.3 Delay caused by the failure of the U.S. Congress to provide adequate funds shall be governed by Subsection 16.6.

13. EMERGENCIES AND REMOVALS

13.1 Discovery and Notification: If either Party discovers or becomes aware of releases or threatened releases of hazardous substances, hazardous waste, pollutants, or contaminants at the USAF Properties, that Party shall immediately notify the other Party orally. The receiving Party may comment on the notification, however USAF shall, where appropriate, prepare and provide the information required by this Section 13 even if UDEQ has provided no comments.

13.2 Work Stoppages: In the event either Party determines that activities conducted pursuant to this Agreement will cause or otherwise be threatened by a situation described in Subsection 14.1, the Party may propose the termination of such activities. If the Parties agree, the activities shall be stopped for such period of time as is required to abate the danger and Schedule developed under this Agreement shall be adjusted accordingly. In the absence of agreement, the activities shall be stopped in accordance with the proposal, and the matter shall immediately be referred to dispute resolution.

13.3 Removal Actions:

(a) The provisions of this Section 13 shall apply to all removal actions as defined in CERCLA § 101(23) (42 U.S.C. § 9601(23)).

(b) Any removal actions conducted at the Sites shall be conducted in a manner consistent with this Agreement, CERCLA, the NCP, the DERP, and the CERCLA Executive Orders.

(c) Nothing in this Agreement shall alter, diminish, or increase USAF's authority with respect to removal actions conducted pursuant to CERCLA § 104 (42 U.S.C. § 9604) and 10 U.S.C. § 2705(b)(2).

(d) Nothing in this Agreement shall alter, diminish or increase any authority of the State of Utah with respect to any removal actions at the Sites.

(e) UDEQ shall expedite its review and comment on emergency removal proposals to the maximum extent practicable. UDEQ shall review and comment on all other removal actions in a timely manner, as herein provided.

13.4 Notice and Opportunity to Comment on Removal Actions:

(a) For any Site for which a Removal Action is anticipated, and except as provided in Subsection 13.5, USAF shall provide to UDEQ adequate information concerning the Site's background, threat to human health or welfare or the environment (including the need for response), proposed actions and costs, including schedule, comparison of possible alternatives, means of transportation of any hazardous substances offsite, 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 recommendations of the USAF RPM, and any other information required under CERCLA and the NCP.

(b) Except as provided in Subsection 13.5, the information specified in Subsection 13.4(a) shall be provided to UDEQ at least thirty (30) days before the response action is to begin in order to afford UDEQ an adequate opportunity for timely review and comment.

(c) USAF shall report all activities related to ongoing removal actions in the progress reports as described in Section 17 (Remedial Project Managers).

(d) In conducting any removal action at a Site, USAF will follow all community involvement requirements for such removal actions required under CERCLA and the NCP.

13.5 Notice and Opportunity to Comment in Emergency Situations: Where an emergency removal action is taken because of imminent and substantial endangerment to human health or welfare or the environment, USAF may specify a shorter time period for UDEQ's review and comment if the period specified in 13.4(b) is impractical given the nature of the emergency. USAF may proceed with a removal action without notice to UDEQ of removal proposals and information about initiation of the removal action, and without an opportunity for UDEQ to comment, if consultation would be impractical given the nature of the emergency.

13.6 Any dispute between the Parties as to whether a proposed non-emergency removal action as defined by the NCP and this Agreement, is properly considered a removal action, or is consistent with any final remedial action, or whether such proposed removal actions should be considered a remedial action, shall be subject to dispute resolution.

13.7 Good faith exists for extension under Section 11 (Extensions), when sought in regard to any work stoppage within the scope of this Section 13, provided neither the emergency nor the delay arises due to the fault or negligence of the Party seeking the extension.

13.8 Within thirty (30) days of completing an emergency removal action for which notice and an opportunity to comment was not provided to UDEQ, USAF will furnish UDEQ with an Action Memorandum addressing the information for which notification would ordinarily have been required, and any other information required pursuant to CERCLA and the NCP.

14. DISPUTE RESOLUTION

14.1 Either the USAF or UDEQ may invoke this dispute resolution procedure. Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section 14 shall apply.

14.2 Within twenty (20) days after the issuance of a final document pursuant to Section 9 (Consultation), or within 45 days of any other final action or final refusal to take action under this Agreement, including actions related to UDEQ access and reimbursement, which leads to or generates a dispute, the disputing Party shall submit to the other Party a written notice of dispute briefly describing the disputing Party's position with respect to the dispute.

14.3 Following the submission of a written notice of dispute, the RPMs shall meet in person to attempt to resolve the dispute. If the RPMs are unable to resolve the dispute within fourteen (14) days or other period as mutually extended, the Parties shall refer the dispute to the Dispute Resolution Committee (DRC) further described in Subsection 14.4. The Parties shall jointly or separately at their discretion provide a written statement of dispute to the DRC. The Statement of Dispute shall set forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the information the disputing Party is relying on to support its position. If the Parties file separate Statements of Dispute, a responding Party may file a written response within fourteen (14) days of its receipt of the other Party's Statement of Dispute.

14.4 The DRC will serve as the forum for resolving disputes for which agreement has not been reached through informal dispute resolution. The USAF representative on the DRC will be the Chief of the Environmental Management Division, 75 Air Base Wing, Hill Air force Base, Utah or his or her delegee. The UDEQ representative will be the Director, Division of Environmental Response and Remediation. Either Party may delegate an alternative representative for the DRC. Written notice of any such delegation shall be provided to all other Parties pursuant to the procedures in Section 34 (Notice to the Parties).

14.5 Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to resolve the dispute and issue a written decision signed by both Parties. If the DRC is unable to resolve the dispute within this twenty-one (21) day period, or other period as mutually extended, the written statement of dispute, and any response thereto, shall be forwarded to the Senior Executive Committee (SEC) further described in Subsection 14.6 for resolution within seven (7) days after the close of the twenty-one (21) day period.

14.6 The SEC shall serve as the forum for resolving disputes which are unresolved by the DRC. The USAF representative on the SEC is the Deputy Asst Secretary of the Air Force for Environment, Safety & Occupational Health. The UDEQ representative on the SEC is the Executive Director of the UDEQ. The SEC members shall, as appropriate, confer, meet and

exert their best efforts to resolve the dispute and issue a written decision signed by the Parties. If resolution of the dispute is not reached within twenty-one (21) days of elevation to the SEC, each Party may take any appropriate action for which it has authority under state or federal law.

14.7 The pendency of a dispute under this Section 14 shall not affect a Party's responsibility for timely performance of the work required by this Agreement, except that the time period for completing 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 these procedures. All elements of the work required by this Agreement not affected by the dispute shall continue and be completed in accordance with the applicable Schedule.

14.8 Except as otherwise provided in 10 U.S.C. § 2705(b), when dispute resolution is in progress, work affected by the dispute will be immediately discontinued only if UDEQ requests, in writing, that work related to the dispute be stopped because, in UDEQ's opinion, such work is inadequate or defective, considering all the circumstances, and such inadequacy or defect is likely to have an adverse impact on human health or welfare or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. After work stoppage, if USAF believes that the work stoppage is inappropriate or may have potential significant adverse impacts, it may meet with UDEQ to discuss the work stoppage. Following this meeting, if the Parties do not agree that work stoppage is appropriate, the matter will immediately be referred to dispute resolution and may be brought either to the DRC or the SEC, at the discretion of USAF.

14.9 Within forty-five (45) days of the end of the dispute resolution process, USAF shall prepare appropriate documents, plans, schedules, or procedures and proceed to implement the final determination.

14.10 The provisions in this Agreement that provide for the availability of the dispute resolution procedures in this Section 14 to resolve specified kinds of disputes shall not be read to mean that dispute resolution is not available for other kinds of disputes that arise under this Agreement.

14.11 Within thirty (30) days of the effective date of this Agreement the Parties shall submit to each other contact information for their representatives on the DRC and the SEC. If a Party's contact information changes, it shall inform the other Party within thirty (30) days of the change.

15. ENFORCEABILITY

15.1 The Parties agree that upon the effective date of this Agreement, the parties, after exhausting their rights under this agreement, may seek to enforce any of the terms, conditions or provisions of this agreement by applicable state or federal law.

15.2 Nothing in this Agreement shall be construed as a restriction or waiver of any rights the State of Utah may have under applicable state or federal law.

15.3 Upon modification of the Permit to incorporate this Agreement, all terms and conditions of this Agreement with regards to those sites in Module VI of the Permit become enforceable as terms and conditions of that Permit, subject to the USAF's reservation in Section 28.

15.4 Consistent with this Agreement, UDEQ agrees to exhaust fully the remedies provided in Section 9 (Consultation) and Section 14 (Dispute Resolution), prior to taking any other enforcement action.

15.5 The Parties agree to exhaust their rights under Section 14 (Dispute Resolution), prior to exercising any right(s) to judicial review.

16. FEDERAL FUNDING AND FISCAL/BUDGETARY CONSTRAINTS

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

16.2 In accordance with CERCLA § 120(e)(5)(g) (42 U.S.C. § 9620(e)(5)(g)), USAF shall include, in its submission to the Department of Defense's Annual Report to Congress, the specific cost estimates and budgetary proposals associated with the implementation of this Agreement.

16.3 Any requirement for the payment or obligation of funds, by USAF 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 and 10 U.S.C. § 2703(e). In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act or 10 U.S.C. § 2703(e), the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

16.4 If appropriated funds are not available to fulfill the USAF's obligations under this Agreement, UDEQ reserves the right to initiate an action against any person, or to take any response action that would be appropriate absent this Agreement. The USAF's reservation of

defenses in Section 28 (Reservation of Defenses) applies to any such action taken against the USAF.

16.5 Funds authorized and appropriated annually by Congress under the Environmental Restoration appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense for Environment to USAF will be the source of funds for activities required by this Agreement. However, should the Environmental Restoration appropriation allocated to USAF be inadequate in any year to meet the total USAF CERCLA implementation requirements under this Agreement, USAF will, after consulting UDEQ, prioritize and allocate that year's appropriation.

16.6 If USAF makes a timely request for funds pursuant to 16.5 above, and if insufficient funds are appropriated, any resulting delay will be treated as a Force Majeure for purposes of this Agreement, subject to Subsection 16.4

16.7 If UDEQ has requested payment for services consistent with Section 30 (Payment of UDEQ Costs), and if payment to UDEQ is not made due to insufficient funding, any Work related to the services for which UDEQ requested payment may be stopped at the request of UDEQ. Any resulting delay will be treated as a Force Majeure for purposes of this Agreement, subject to Section 12.

17. REMEDIAL PROJECT MANAGERS (RPMs)

17.1 Within ten (10) days of the effective date of this Agreement, USAF and UDEQ shall each designate a Remedial Project Manager and an alternate for the purpose of overseeing the implementation of this Agreement. The RPMs shall be responsible on a daily basis for assuring proper implementation and coordination of the work done in accordance with the terms of the Agreement. Communications between USAF and UDEQ on all documents, including reports, comments, and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the RPMs.

17.2 USAF and UDEQ may change their respective RPMs. The other Parties shall be notified in writing within five days of the change.

17.3 The RPMs shall meet in the State of Utah not less than semi-annually to discuss progress as described in Section 10 and other facets of the work performed under this Agreement. The RPMs shall assist in this effort by consolidating the review of documents whenever possible, and by scheduling progress meetings to review reports, evaluate the characterization, remedial action and/or monitoring at the Sites, discuss the Schedule and adjustments to the Schedule, and resolve disputes. At least one week prior to each scheduled progress meeting, USAF will provide UDEQ a draft agenda and summary of the status of the work subject to this Agreement. The minutes of each progress meeting, with the meeting agenda and all documents discussed during the meeting but previously provided shall constitute a

progress report, which will be sent to both RPMs within ten (10) business days after the meeting. At a minimum, there will be one meeting before and after the field season each year. Either RPM may call for additional meetings as necessary.

17.4 The authority of the RPMs shall include, but is not limited to:

- (a) Taking samples and ensuring that sampling and other fieldwork is performed in accordance with the terms of any final Work Plan and Quality Assurance Project Plan (QAPP);
- (b) Observing, taking photographs and making other reports on the progress of the work as the RPMs deem appropriate;
- (c) Reviewing records, files and documents relevant to the work performed;
- (d) Determining the form and specific content of the RPM meetings and of progress reports based on such meetings; and
- (e) Recommending and requesting minor field modifications to the work to be performed pursuant to a final Work Plan, and recommending techniques, procedures, or designs to be utilized in carrying out the Work Plan.

17.5 The USAF RPM and UDEQ RPM may also recommend and request field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or designs utilized in carrying out this Agreement that are necessary to completing the work. Any major modification must be approved in advance by both Parties in writing, in accordance with and subject to the terms of this Agreement. The USAF RPM shall have the authority to order a cessation of work in circumstances in which, in his or her professional judgment, a threat to the human health or welfare or the environment would occur if such work were to continue. In the event an order to halt work is given, the USAF RPM shall notify the UDEQ RPM verbally within one (1) working day of the order, and in writing within five (5) business days, and provide reasons for that decision. If agreement cannot be reached on any proposed additional work or modification of work necessitated by such work stoppage, dispute resolution as set forth in Section 14 (Dispute Resolution) may be invoked, however work will not resume until the dispute is resolved or until the USAF RPM is satisfied that work can safely continue.

17.6 The USAF RPM will make contemporaneous records of minor field modifications in a written log, and a copy of the log entry will be provided to UDEQ as part of the next progress report.

17.7 The USAF RPM shall be responsible for day-to-day field activities at the Site and, consistent with other provisions of this Agreement, shall exercise the authority established in the NCP for the lead agency RPM/On-Scene Coordinator. The USAF RPM or other designated

employee of Hill AFB shall be present at the Site/s or reasonably available to supervise work during all hours work is performed at the Site/s pursuant to this Agreement.

18. PERMITS

The Parties recognize and agree that the provisions of CERCLA §121(e) and 40 C.F.R. § 300.400(e) regarding permit exclusion at CERCLA sites apply to the portion of any removal or remedial action conducted entirely on-site. USAF shall notify UDEQ in writing of any non-exempt permits required for off-site activities as soon as it becomes aware of the requirement. Upon request, USAF shall provide UDEQ copies of all such permit applications, notices of disposition and other documents related to the permit process.

19. QUALITY ASSURANCE

19.1 In order to provide quality assurance and maintain quality control regarding all fieldwork and sample collection performed pursuant to this Agreement, USAF agrees to designate a Quality Assurance Officer (QAO) who will ensure that all work is performed in accordance with approved Work Plans, sampling plans and QAPP. The QAO shall maintain a record of quality assurance field activities and provide a copy to the Parties upon request.

19.2 USAF shall arrange for access, upon request by UDEQ to all laboratories performing analysis on behalf of USAF pursuant to this Agreement. Such access shall be for the purpose of conducting a laboratory audit or otherwise ensuring compliance with the QAPP.

20. SAMPLING AND DATA/DOCUMENT AVAILABILITY

20.1 Each Party shall make available to the other Party the results of sampling, tests, or other data or documents generated through the implementation of this Agreement. Sampling and test data and results generated by the USAF shall ordinarily be provided in conjunction with the associated report, or in preparation for the semi-annual RPM meeting. Sampling and test data and results generated by the UDEQ for quality assurance purposes shall ordinarily be provided within thirty (30) days of UDEQ's receipt of quality assured data. Notwithstanding these established times for providing data or results, either Party shall, upon request, promptly provide to the other Party quality assured data not yet included in a report. If data is requested before the quality assurance procedure has been completed, and if the request is made no earlier than sixty (60) days after sampling or test completion, the Party from which data is requested shall provide raw data, and shall provide quality assured data as soon as they become available. The requirements to share data under this section shall, for data and results generated by USAF, be subject to requirements of national security (*see* CERCLA § 120(j) (42 U.S.C. § 9620(j))). The requirements to share data under this section shall, for data and results generated by UDEQ, be subject to claims of enforcement confidentiality.

20.2 No claim of confidentiality or privilege shall be made by either Party for analytical data or data validation packages that have been validated under the QAPP, except that:

- (a) The USAF may claim confidentiality or privilege for reasons of national security, if applicable under pertinent law; and
- (b) The UDEQ may claim enforcement confidentiality, if applicable under pertinent law.

20.3 The sampling Party's Project Manager shall notify the other Party's RPM at least fourteen (14) days prior to conducting routine environmental sampling. 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. The Parties shall allow any other Party to observe field work and to take split or duplicate samples. Access for sampling is governed by Section 22.

21. RECORD PRESERVATION

Each Party to this Agreement shall preserve, for a minimum of ten (10) years after termination of this Agreement, all records and documents in its possession or control which relate to actions taken pursuant to this Agreement. After this ten (10) year period, each Party shall notify the other Parties at least forty-five (45) days prior to proposed destruction or disposal of any such documents or records. Upon the request of any Party, the requested Party shall make available to the other Party such records or copies of any such records unless withholding is authorized and appropriate by law.

22. ACCESS TO FEDERAL INSTALLATIONS

22.1 UDEQ and/or its authorized representatives shall be allowed to enter the installations at reasonable times for purposes consistent with the provisions of this Agreement, subject to the limitations and procedures specified in Section 22.5.

22.2 After providing reasonable advance notification to the USAF Project Manager, UDEQ and its authorized representatives shall have access for the purposes of, among other things:

- (a) Inspecting and copying records, operating logs, contracts, files, photographs, sampling and monitoring data, and other documents relevant to implementation of this Agreement;
- (b) Reviewing the progress of the USAF in carrying out the terms of this Agreement;

- (c) Assessing and documenting Site conditions and progress of work, which may include taking samples and photographs;
- (d) Ascertaining that the work performed pursuant to the Agreement is in accordance with approved work plans, sampling plans and QAPPs; and conducting such tests as UDEQ, or the Project Managers, deem necessary; and
- (e) Verifying the data submitted to UDEQ by USAF.

22.3 The USAF shall honor all reasonable requests for access by UDEQ, conditioned upon presentation of proper credentials. The USAF RPM will provide briefing information, coordinate access and escort to restricted or controlled-access areas, arrange for base passes and coordinate any other access requests. UDEQ will provide reasonable notice to the USAF RPM to request necessary escorts.

22.4 UDEQ personnel working on the Sites shall apply for permanent camera and sound recorder passes. The USAF will not unreasonably withhold, restrict, or revoke such passes. UDEQ personnel will comply with the conditions specified in the passes.

22.5 The access by UDEQ's authorized representatives and their use of photographic and recording equipment granted in this part shall be subject to those regulations necessary to protect national security, mission-essential activities and safety of individuals. Such access and use of equipment shall also be subject to USAF requirements that all personnel and contractors comply with all range security and identification practices, including ingress, egress and continuous communication requirements specified by range security and safety officers. Such regulations and requirements shall not be applied so as to unreasonably hinder UDEQ from carrying out its responsibilities and authority pursuant to this Agreement. In the event that access requested by UDEQ is denied by the USAF, the USAF shall provide a verbal explanation at the time access is denied. The USAF shall also, if so requested by UDEQ, provide a written explanation of the reason for the denial, including reference to the applicable regulations and guidance. The USAF's written explanation shall be provided within two working days of UDEQ's request. The USAF shall expeditiously make alternative arrangements for accommodating the requested access. The Parties agree that this Agreement is subject to CERCLA 120(j) regarding the issuance of Site-Specific Presidential Orders as may be necessary to protect national security.

22.6 If UDEQ requests access in order to observe a sampling event or other work being conducted pursuant to this Agreement, and access is denied or limited, the USAF agrees to reschedule or postpone such sampling or work if UDEQ so requests, until such time when the requested access is allowed. The USAF shall not restrict the access rights of UDEQ to any greater extent than the USAF restricts the access rights of its own response action personnel and contractors performing work pursuant to this Agreement.

22.7 All persons with access to the Sites pursuant to this Section 22 shall comply with all applicable health and safety plans.

22.8 Contaminants may originate on USAF Properties, but may migrate or threaten to migrate off of USAF Properties. In that situation, the USAF shall use its best efforts, including its authority under CERCLA Section 104, to obtain access agreements from the owners that shall provide reasonable access for the USAF and UDEQ and their respective representatives. The USAF may request the assistance of UDEQ in obtaining such access, and upon such request, UDEQ will use its best efforts to obtain the required access. In the event the USAF is unable to obtain such access agreements, it shall promptly notify UDEQ.

22.9 With respect to non-USAF property on which monitoring wells, pumping wells, or other response actions are to be located, the USAF shall use its best efforts to ensure that any access agreements shall provide for the continued right of entry for all Parties for the performance of such remedial activities. In addition, any access agreement shall provide that no conveyance of title, easement, or other interest in the property shall be consummated without the continued right of entry.

22.10 Nothing in this Section 22 shall be construed to limit UDEQ's rights of access under applicable law, except as that right may be limited by other applicable national security regulations or federal law.

22.11 The Parties agree that from time to time UDEQ may conduct unannounced inspections, subject to access limitations above. In such instances, a telephone call from the gate at the Oasis Compound will be deemed reasonable advance notification for purposes of this Section 22 for inspections at UTTR and/or Wendover Range; and from the gate at Little Mountain Complex for inspections at Little Mountain Complex. In the event Range training activities create an unsafe situation, UDEQ agrees to arrange a site visit at another time agreeable with Range operations

23. PUBLIC PARTICIPATION AND COMMUNITY INVOLVEMENT

23.1 The Parties agree that any proposed response action at the Sites arising out of this Agreement shall comply with the administrative record(s) and public participation requirements of CERCLA §§ 113(k) and 117 (42 U.S.C. §§ 9313(k) and 9617) and the relevant community relations provisions in the NCP.

23.2 USAF shall develop and implement a Community Relations Plan(s) (CRP) addressing community concerns and involvement in environmental activities and elements of work undertaken by USAF pursuant to this Agreement. Development and implementation of the CRP shall be done in consultation with UDEQ.

23.3 USAF shall maintain the administrative record in accordance with relevant provisions in CERCLA and the NCP. UDEQ may furnish documents to USAF for inclusion in the Administrative Record to ensure that the Administrative Record contains all documents that

form the basis for the selection of the response action. USAF will provide a copy of each document placed in the administrative record not previously provided to UDEQ. The administrative record developed by USAF shall be updated on a regular basis. An index of documents in the administrative record will accompany each update of the administrative record. Public access to the administrative record shall be available through at least one administrative record repository. This administrative record repository shall be physically accessible to the public and, at a minimum, be open during normal business hours.

23.4 Except in case of an emergency, any Party issuing a press release or initiating a media contact for the purposes of providing significant information to the media with reference to any of the work required by this Agreement shall advise the other Parties of such press release or media contact and the contents thereof, at least two (2) business days prior to issuance. Other documents prepared by USAF pursuant to the Community Relations Plan (and which are not documents specified in this Agreement), or documents prepared by UDEQ for community involvement purposes related to the site, will be submitted to the other Parties for review and comment at least seven working days prior to finalization and release.

24. FIVE YEAR REVIEW

Consistent with CERCLA § 121(c) (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 in levels which would prohibit unlimited use and unrestricted exposure, the USAF shall review the remedial action program at least every five (5) years after the signing of a Record of Decision to assure that human health and welfare and the environment are being protected by the remedial action being implemented. USAF shall seek input from UDEQ with regard to any conclusions, and provide a draft report to UDEQ in a timely manner for comment prior to finalizing any such report.

25. AMENDMENT OR MODIFICATION OF AGREEMENT

This Agreement can be amended by agreement of the Parties. Such amendments shall be in writing and shall be effective on the date they are signed by both Parties, unless otherwise agreed.

26. TERMINATION AND SATISFACTION

26.1 The provisions of this Agreement shall be deemed satisfied and terminated upon the USAF's receipt of written notice from UDEQ that USAF has demonstrated to the satisfaction of UDEQ that all the terms of this Agreement have been completed. If UDEQ denies or otherwise fails to grant a termination notice within 90 days of receiving a written USAF request for such notice, UDEQ shall provide a written statement of the basis for its denial and describe USAF

actions that, in the view of UDEQ, would be a satisfactory basis for granting a notice of completion. Such denial shall be subject to dispute resolution.

26.2 Subsection 26.1 shall not affect the requirements for periodic review at maximum five-year intervals of the efficacy of the remedial actions.

26.3 Either Party may terminate this Agreement without cause upon 90 days written notice.

27. UDEQ'S RESERVATION OF RIGHTS, AUTHORITIES AND CLAIMS

27.1 By entering into this Agreement, and notwithstanding any other section of this Agreement, UDEQ does not waive any right, authority or claim it may have under law, but expressly reserves all of the rights, authorities and claims it may have thereunder, except that UDEQ expressly agrees to exhaust any remedies applicable as provided under Section 9 (Consultation), and Section 14 (Dispute Resolution), as provided in Section 15 (Enforceability) prior to exercising any such rights. UDEQ also agrees to exercise any such rights within a reasonable period of time.

27.2 Specifically, and without limitation, the rights, authorities and claims of UDEQ with respect to any matters for which remedies have been exhausted as described in Subsection 27.1 shall not be diminished by entering into this agreement. UDEQ reserves any rights and any authority it may have to require corrective action in accordance with the Utah Solid and Hazardous Waste Act, 19-6 Utah Code Annotated, its rights and authorities under Section 15 (Enforceability), and any claim for natural resource damages and damage assessments.

27.3 Unless expressly waived by law, the State of Utah does not waive its Sovereign Immunity by entering into this Agreement.

27.4 This Agreement shall not be construed to restrict UDEQ from taking any appropriate action under pertinent statute, law, regulation, or other authority relative to matters not within the scope of this Agreement. Nothing in this Agreement is intended to restrict UDEQ's right of access under applicable law.

28. USAF'S RESERVATION OF DEFENSES

28.1 By entering into this Agreement, and notwithstanding any other section of this Agreement, USAF does not waive any defense it may have against any claims made by UDEQ, and expressly reserves all defenses it may have, except that USAF expressly agrees to exhaust any remedies applicable as provided under Section 9 (Consultation), and Section 14 (Dispute Resolution) prior to exercising any such rights. USAF also agrees to bring any claims within a reasonable period of time.

28.2 Specifically, and without limitation, any defenses USAF may have with respect to the applicability of claims made by UDEQ under CERCLA, RCRA, or Utah hazardous waste law for any matters for which remedies have been exhausted as described in Subsection 28.1 shall not be diminished by entering into this agreement.

28.3 Unless expressly waived by law, the USAF does not waive its Sovereign Immunity by entering into this Agreement.

28.4 This Agreement shall not be construed to restrict the USAF from taking any appropriate action under pertinent statute, law, regulation, or other authority relative to matters not within the scope of this Agreement.

29. 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 of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous waste, pollutants, or contaminants found at, taken to, or taken from the Sites. Unless specifically agreed to in writing by the Parties, the State of Utah shall not be held as a party to any contract entered into by USAF to implement the requirements of this Agreement.

30. PAYMENT OF UDEQ COSTS

30.1 Coverage:

(a) This Section 30 covers payment of UDEQ costs associated with providing services pursuant to this Agreement. This Agreement does not cover the costs of services rendered prior to the onset of negotiations for this Agreement; services at properties other than the Sites; or services not described in the Agreement.

(b) USAF agrees to seek sufficient funding through the DoD budgetary process to pay UDEQ for the services specified in Subsection 30.2 for those activities or portions of activities at the Sites funded by the Environmental Restoration Account subject to the conditions and limitations set forth in this Agreement.

(c) The Parties shall not expend funds beyond funded levels or create obligation against anticipated future funding.

30.2 Services: UDEQ services that qualify for payment under this Agreement include

the following types of assistance provided by UDEQ under this Agreement commencing at Site identification and continuing through construction as well as any other activities that are funded by the Environmental Restoration Account:

- (a) Technical review, comments and recommendations on documents or data required to be submitted to UDEQ under this Agreement or provided by USAF to UDEQ for review;
- (b) Identification and explanation of State of Utah ARARs for response actions at the Sites.
- (c) Site visits and field activities including sampling to review USAF response actions, ensure their consistency with appropriate State of Utah requirements and ensure data quality in accordance with this Agreement.
- (d) Participation in cooperation with USAF in the conduct of public education and public participation activities in accordance with federal and state requirements for public involvement.
- (e) Services provided at the request of USAF in connection with participation in Restoration Advisory Board.
- (f) Preparation and administration of financial information necessary to implement this Agreement, including the estimates of UDEQ costs.
- (g) Participation in meetings regarding the matters described in this Subsection 30.2, paragraphs (a) through (f).
- (h) Laboratory quality assurance audits conducted under Section 20.2
- (i) Five-year reviews under Section 25.

30.3 This is not intended to change any obligation that USAF may have to pay applicable permit (plan) review fees.

30.4 Accounting Procedures

- (a) Subject to the limitations in this Section 30, eligible UDEQ costs shall be paid if the costs were incurred after the effective date of this Agreement and have been documented using accounting procedures and practices that reasonably identify the nature of the costs involved, the date the costs were incurred, and show that the costs were entirely attributable to activities at the Sites.
- (b) Payment of eligible UDEQ costs for services provided after the effective date of this Agreement must comply with all applicable federal procurement and auditing

requirements.

30.5 Payment Amounts: The Parties recognize that as of the date of this Agreement, the costs of remediation of the sites covered by this Agreement cannot be estimated well and that the corresponding UDEQ services that will be reimbursed under this Section 30 are unknown. USAF currently estimates that the total costs necessary to complete remedial actions for all operable units at the sites are \$10.5 million, although USAF acknowledges that many costs have not yet been estimated. USAF believes that its payment to UDEQ should be limited to no more than one percent (1%) of the costs of remediation for the Sites. Because the Sites are in early stages of investigation, UDEQ cannot accurately estimate its funding needs at this time, but does not believe that payment should be limited to one percent (1%). USAF agrees to negotiate in good faith for an accurate payment amount over the life of this Agreement. USAF agrees to begin negotiations within 31 days of any request made by UDEQ. If negotiations have not been successfully completed within 60 days after they begin or by some other period mutually agreed to, the matter shall be referred to Dispute Resolution pursuant to Section 14 (Dispute Resolution).

30.6 Annual Budget Limits:

(a) UDEQ may request, and USAF shall approve, subject to the restrictions specified in this Section 30, payment of costs incurred up to a maximum of \$32,000.00 during Fiscal Year 2007. USAF may approve a payment amount that exceeds \$32,000.00 if UDEQ demonstrates the need for higher funding based on the work accomplished and the scope of the work projected during the fiscal year.

(b) Annual budget limits for the fiscal years beginning after the first fiscal year of this Agreement shall be negotiated annually or for such other periods to which the Parties may agree. USAF and UDEQ agree to begin such negotiations at least 60 days before the beginning of the new fiscal year. The budget limits shall act as a basis for the USAF identifying funding requirements and providing payment of UDEQ costs. If the cost of UDEQ services during a fiscal year exceeds the annual budget limit, UDEQ may expend its own funds to pay the costs of those services. To the extent allowable under federal procedures for cooperative agreements, UDEQ may seek payment of these costs in a subsequent year..

30.7 Procedures for Payment: Procedures for UDEQ payment will be in accordance with Office of Management and Budget (OMB) Circulars A-102, A-87 and A-128 and 32 C.F.R. § 278.1. This Agreement is considered a cooperative agreement within the meaning of 31 U.S.C. § 6305. After this Agreement is executed, UDEQ may submit requests for payments on a quarterly basis. USAF will process the requests and make payment within 30 days after receipt of the request. Within 60 days after the end of each quarter, UDEQ shall submit to USAF a status report, including cost summaries which directly relate allowable costs actually incurred by UDEQ under this Agreement during the quarter. Allowability of costs shall be determined in accordance with this Agreement and OMB Circular 87. Audits shall be accomplished in

accordance with OMB Circular A-128. USAF has the right to audit cost reports used by UDEQ to develop the cost summaries.

30.8 Additional Work: When USAF requests that UDEQ perform a specific technical study or similar technical support that could otherwise be done by a contractor, and UDEQ agrees to do the work, funding will be negotiated between USAF and UDEQ outside this Agreement.

30.9 Anti-Deficiency Act: Nothing in this Section 30 shall be interpreted to require obligation or payment with regard to a site remediation in violation of the Anti-Deficiency Act (31 U.S.C. § 1341).

30.10 Coordinator: The USAF RPM shall act as the single point-of-contact for the USAF for issues relating this Section 30. UDEQ shall designate a State Agency Coordinator (SAC) who shall be the single point-of-contact for issues related to this Section 30.

31. PUBLIC COMMENT

31.1 The provisions of this Section 31 shall, to the maximum extent possible, be carried out in a manner consistent with, and shall fulfill the intent of Section 4 (Statutory Integration) and shall comply with applicable provisions of CERCLA, the NCP, and DERP.

31.2 Within fifteen (15) days of the date on which the last Party signs this Agreement, USAF shall propose to modify the Permit, in accordance with Module VI.B.3. of the Permit, by incorporating this Agreement.

31.3 Within fifteen (15) days of the date on which the last Party signs this Agreement, USAF shall announce the availability of this Agreement to the public for a forty-five (45) day period of review and comment. USAF shall provide notice of the availability of the Agreement, and the intention to incorporate it into the Permit by publishing an announcement in at least two major local newspapers of general circulation.

31.4 If there is written notice of opposition to this Agreement within the time period for public comment, the Parties shall hold a public hearing after thirty (30) days prior notice. A written transcript or tape recording of the hearing shall be prepared and provided to the Parties, and such written transcript or tape recording shall be a part of the administrative record under this Agreement.

31.5 Comments received shall be transmitted promptly to the other Parties after the end of the comment period. The Parties shall review such comments and shall:

- (a) Determine that this Agreement should be made effective in its present form, in which case the Agreement shall become effective three days after such a determination; or

(b) Modify the Agreement, in which case the Agreement shall become effective as provided in the modification.

31.6 If the Parties are unable to agree that the Agreement shall be made effective in its present or a modified form as provided in Subsection 31.5, this Agreement shall not become effective.

32. SUCCESSORS AND ASSIGNS

32.1 USAF shall include notice of this Agreement in any document transferring ownership to any subsequent owner or operator of any Site. USAF shall assure that no portion of any Site shall be used in any manner which would adversely affect the integrity of any monitoring system or response measure installed pursuant to this Agreement. Transfer of ownership shall not relieve the USAF of its obligation to perform. This Agreement shall also apply to subsequent owners and operators of UTTR Sites.

32.2 USAF shall include notice of this Agreement in any document transferring ownership to any subsequent owner or operator of any portion of the Sites in accordance with Section 120(h) of CERCLA and shall notify UDEQ of any such change or transfer at least ninety (90) days prior to such transfer. Notice pursuant to Section 120 (h)(3)(B) of CERCLA of any transfer of ownership shall not relieve the USAF of its obligation to perform pursuant to this Agreement.

33. CONFIDENTIAL INFORMATION

USAF may assert a confidentiality claim covering all or part of the information requested by this Agreement consistent with Federal law. Information determined to be confidential pursuant to Utah's Government Records Access and Management Act and Utah Code Ann. § 19-1-306 shall be protected from unauthorized release.

34. NOTICE TO THE PARTIES

34.1 Unless the RPMs otherwise agree, all Parties shall transmit documents, comments, notices and all other submissions required herein by certified mail, return receipt requested, Federal Express or other method that provides a record of send and receipt dates. Routine correspondence may be sent by first class mail.

34.2 Submittals and Notices shall be sent to the following addresses:

(a) For USAF:

Environmental Restoration Branch
75th CEG/CEVR
7274 Wardleigh Road
Hill AFB, UT 84056

(b) For UDEQ:

UDEQ/DERR
168 North 1950 West, 1st Floor
P.O. Box 144840
Salt Lake City, UT 84114

Unless otherwise indicated in this Agreement, notification of change of address specified in this Section 34 shall be provided to the other Party at least fifteen (15) days prior to the effective date of such change.

35. TRANSFER OF REAL PROPERTY

USAF shall not transfer any real property comprising the federal facility except in compliance with CERCLA § 120(h) (42 U.S.C. § 9620(h)) and implementing regulations. At least thirty (30) days prior to any conveyance subject to Section 120(h) of CERCLA, USAF shall notify UDEQ of the proposed transfer of any real property subject to this Agreement and the provisions made for any additional response actions, if required.

36. AUTHORIZED SIGNATURES

Each of the undersigned representatives of the Parties 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.

IT IS SO AGREED

UNITED STATES AIR FORCE

BY: _____ Date _____
SCOTT D. CHAMBERS, Colonel, USAF
Commander, 75th Air Base Wing

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

BY: _____ Date _____
DIANNE R. NIELSON, PhD
Executive Director
Utah Department of Environmental Quality

ATTACHMENT A

SCHEDULE

At the time of the signing of this agreement no schedule has been developed. In compliance with paragraph 10.2 the USAF will provide a schedule to the UDEQ.