

TABLE OF CONTENTS

WASTEWATER DISPOSAL AND WATER SERVICE FACILITIES SUBLEASE AND LICENSE AGREEMENT BETWEEN PEASE DEVELOPMENT AUTHORITY AND THE CITY OF PORTSMOUTH

1]	Recitals	Page 1, 2
2]	Section 1.0, Sublease of Existing Facilities and Grant of License	Page 2,3
3]	Section 1.2, License	Page 3,4
4]	Section 1.3 Condition of Transferred Facilities	Page 4
5]	Section 1.4, Condition of the Airport District	Page 4,5
6]	Section 1.5, Notice	Page 5
7]	Section 1.6, Pre-Existing Conditions	Page 5
8]	Section 1.7, PDA Non-Liability and Indemnification by Portsmouth	Page 5,6
9]	Section 1.8, Insurance	Page 6,7,9
10]	Section 1.9, Environmental Protection	Page 8,9, 10,11,12
11]	Section 1.10, Maintenance of Facilities	Page 12,13
12]	Section 1.11, Compliance with Applicable Laws	Page 13
13]	Section 1.12, Development & Alterations	Page 14
14]	Section 1.13, Relocations of Wastewater Disposal and Water Distribution Facilities	Page 14,15
15]	Section 2.0, Historic Property	Page 15
16]	Section 3.0, Federal Aviation Administration Requirements	Page 15
17]	Section 4.0, Restrictions on Use of Airport District	Page 15,16
18]	Section 5.0, Agreement Subject to Master Lease and Application and FFA	Page 16

11]	Section 6.0, Assumption by Portsmouth of Master Lease Obligations	Page 16
12]	Section 7.0, PDA's Covenants	Page 17
13]	Section 8.0, Default and Termination	Page 17
14]	Section 9.0, Miscellaneous	Page 17,18, 19
15]	Signature Page	Page 19
16]	Appendices	Page 20
17	Appendix 4	Unnumbered

WASTEWATER DISPOSAL AND WATER SERVICE FACILITIES SUBLEASE
AND LICENSE AGREEMENT

This WASTEWATER DISPOSAL AND WATER SERVICE FACILITIES SUBLEASE AND LICENSE AGREEMENT ("Agreement") dated as of January 1, 1993, by and between the PEASE DEVELOPMENT AUTHORITY a body corporate and politic organized under the laws of the State of New Hampshire ("PDA") and the CITY OF PORTSMOUTH, NEW HAMPSHIRE, a New Hampshire municipal corporation having a mailing address of 1 Junkins Avenue, Portsmouth, County of Rockingham, State of New Hampshire 03801-0628 ("Portsmouth").

Recitals

A. The PDA is an agency of the State of New Hampshire established pursuant to RSA Ch. 12-G, "Pease Development Authority," for the redevelopment of the former Pease Air Force Base ("Pease") and is authorized to enter into this Agreement pursuant to the provisions contained therein.

B. The PDA anticipates acquiring fee title to the portion of Pease comprising the Airport District from the United States Air Force (the "Air Force") by public benefit transfer (i.e. transfer without consideration) pursuant to Section 13(g) of the Federal Surplus Property Act of 1944, 50 App. USC §1622(g). The terms of such acquisition are set forth in an Amended Application for Public Benefit Transfer executed by the PDA (the "Application") and accepted by the Air Force on April 14, 1992 (the "Acceptance"). Pending final disposition of the Airport District in accordance with the terms of the Application and Acceptance, the PDA and Air Force have entered into a Lease as of April 14, 1992 and a supplement dated August 4, 1992 (the "Master Lease") pursuant to which the PDA has leased the property described in Exhibits A and B thereto, (the "Airport District"). The parties acknowledge that the Application, Acceptance and Master Lease impose certain requirements on the PDA and Portsmouth with respect to the use of the Airport District, including, without limitation, those which are addressed in the terms and conditions of this Agreement. Copies of the Master Lease and the Application and Acceptance are attached to this Agreement as Appendices 1 and 2, respectively.

C. The parties acknowledge that a Federal Facilities Agreement ("FFA") required under Section 120 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq., has been entered into by the Air Force, the New Hampshire Department of Environmental Services ("NHDES") and the United States Environmental Protection Agency ("EPA") regarding certain contamination at Pease and that this FFA also imposes certain requirements upon the PDA and Portsmouth, including, without

limitation, those which are addressed in the terms and conditions of that Agreement. A copy of the FFA is attached to this Agreement as Appendix 3.

D. The Master Lease includes the utility systems identified in Exhibit A, Section II.12, of the Master Lease, and sets forth terms relating to the provision of utility services to Pease.

E. The Application includes the utility systems identified in Schedule A, Section II.12 of the Application and sets forth terms relating to the provision of utility services at Pease effective upon the transfer of said utility systems.

F. As part of the process of developing an appropriate and effective infra-structure for the redevelopment of Pease, the PDA and Portsmouth desire for Portsmouth to sublease, own and operate the existing wastewater disposal and water distribution system at Pease and to provide for a secure, safe, economical and environmentally and aesthetically sound wastewater disposal and water distribution system. In order to provide such effective infra-structure, the PDA and Portsmouth have this day entered into this Agreement and a Wastewater Disposal and Water Service Agreement, a Wastewater Disposal and Water Facilities Transfer Agreement and a Municipal Services Agreement (collectively "the Portsmouth Agreements").

Operative Provisions

NOW, THEREFORE, in consideration of the foregoing Recitals, which Recitals are incorporated herein by reference, and of the covenants herein contained, and of other good and valuable consideration, the receipt of which is hereby acknowledged, the PDA and Portsmouth hereby agree as follows:

1.0 Sublease of Existing Facilities and Grant of License.

1.1 Sublease. The PDA sublets and subleases to Portsmouth the wastewater disposal and water distribution and related facilities and equipment located within the Pease Base (both within and not within the Airport District), together with any inventories of spare parts or equipment therefor, leased by the PDA under the Master Lease, an inventory of which subleased property is attached hereto and made a part hereof as Appendix 4 (the "Facilities"). The PDA expressly excepts, reserves and excludes from this sublease, and Portsmouth expressly disclaims any interest in, (a) all wastewater disposal and water distribution facilities and equipment on the PDA side of the point of ownership determined in accordance with the provisions of Section 1.10.3 hereof. The term of this sublease shall be coextensive with that of the Master Lease and of any extension or renewal of the Master Lease, except as it may be terminated pursuant to Section 8.1 hereof. The PDA further assigns to Portsmouth, and Portsmouth hereby assumes, the PDA's rights and obligations with respect to the disposal of those portions of the foregoing subleased wastewater

disposal and water distribution facilities which are on the date hereof, or become during the term of this Agreement, worn out, obsolete or no longer used or useful in providing wastewater disposal and water distribution service at Pease. This sublease shall also exclude the wastewater disposal and water distribution facilities located within the New Hampshire Air National Guard Contonment area and the area to be transferred to the United States Fish and Wildlife Service; provided, however, that if the Master Lease shall not have been amended on or before September 30, 1992 to relieve the PDA from responsibility for wastewater disposal and water distribution facilities in those areas, then such facilities shall automatically be deemed thereafter to be facilities subleased by the PDA to Portsmouth hereunder.

1.2 License. The PDA grants to Portsmouth a license to exercise during the entire term of this Agreement and any extension or renewal thereof, the rights set forth in Section 1.2.1 hereof at the sole cost and expense of Portsmouth except as otherwise explicitly provided herein.

1.2.1 The right to repair, relocate, maintain, upgrade, operate, patrol and remove the existing aboveground and underground wastewater disposal and water distribution facilities at the Pease Base being subleased to Portsmouth pursuant to Section 1.1 of this Agreement, and the right to construct, install, repair, relocate, maintain, upgrade, patrol and remove new aboveground and underground wastewater disposal and water distribution facilities which may, without limitation, consist of treatment plants, wells, reservoirs, pumping stations, meters, standpipes, filters, headworks, dewatering equipment, pipes, valves, sewer and water mains, tanks, hydrants, manholes, and septic systems as Portsmouth may from time to time desire within the streets, private ways and other areas where wastewater disposal and water distribution facilities are presently located and utility corridors are later designated by the PDA, all within the Airport District or, subject to the provisions of Condition 18.2 of the Master Lease and Condition 5e(7) of the Application, such extended areas to which the PDA shall be obligated to provide wastewater disposal and/or water distribution services, together with the right to construct, install, repair, relocate, maintain, upgrade and remove service pipes extending to the buildings and structures within the Airport District in order to provide wastewater disposal and water service thereto, including the right of access from other land of the PDA for all purposes in connection with the exercise of the within granted license; the right to excavate, trench, and backfill by men or machines and temporarily to place excavated earth and other material on adjacent land, provided that the land shall be restored by Portsmouth to substantially the condition in which it was immediately prior to such excavation, trenching and backfilling; the right to go upon adjoining land when working on said facilities and associated equipment; and the right, to be exercised only for temporary periods when continuity of service requires, to install temporary above ground pipes, all over and

across the Airport District to provide service to buildings thereon. plan showing the location of existing wastewater disposal and water distribution facilities is attached hereto as Appendix 5. Plans showing the location of utility corridors to be designated from time to time by the PDA in the Airport District shall be attached hereto as Appendix 6. The PDA agrees on behalf of itself and its sublessees that it and they will not erect or maintain, or permit to be erected or maintained, in the Airport District any building or structure of any kind or nature upon the land over said underground pipes and that it and they will not plant or permit to be planted in the Airport District any trees over said pipes. The PDA further covenants and agrees upon behalf of itself and its sublessees that in the event of excavation or grading in the Airport District which might disturb, dislocate, damage or endanger said pipes in any way, the PDA or sublessee, as the case may be, will install shoring or bear the expense of its installation at locations specified by Portsmouth or its representatives.

1.2.2 All wastewater disposal and water distribution and related facilities and equipment constructed or placed upon, over or under the Pease Base by Portsmouth pursuant to the license rights granted in Section 1.2.1 hereof shall be and remain the property of Portsmouth. The facilities and equipment described in Section 1.1 of this Agreement together with the facilities and equipment described in this Section 1.2.2 are hereinafter referred to as the "System."

1.2.3 Each sublease of property at the Airport District made by the PDA shall be made subject and subordinate to the sublease and the license rights granted to Portsmouth in this Agreement.

1.3 Condition of Transferred Facilities.

PORTSMOUTH ACKNOWLEDGES AND AGREES THAT IT ACCEPTS THE WASTEWATER DISPOSAL AND WATER DISTRIBUTION FACILITIES BEING SUBLEASED TO IT BY THIS AGREEMENT AS IS, AS SHOWN WITHOUT ANY WARRANTY WHATSOEVER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE PDA EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED OR EXPRESSED WARRANTIES WITH RESPECT TO THE FACILITIES BEING SUBLEASED PURSUANT TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL THE PDA BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES WITH RESPECT TO ANY CLAIM WHICH MAY ARISE WITH RESPECT TO SUCH FACILITIES OR WITH RESPECT TO ANY CLAIM MADE BY PORTSMOUTH ARISING OUT OF THE TRANSACTIONS CONTEMPLATED IN THIS AGREEMENT OR PORTSMOUTH'S EXERCISE OF THE RIGHTS AS SUBLESSEE AND LICENSEE HEREUNDER.

1.4 Condition of the Airport District. In addition to the provisions of Condition 3 of the Master Lease, Portsmouth agrees that, to the extent necessary for Portsmouth's performance of its obligations hereunder, a representative of Portsmouth shall participate in the joint inspection of the areas of the Airport District to which this Agreement relates as required under Conditions 3.2 and

3.3 of the Master Lease. The PDA shall provide Portsmouth with a copy of Exhibit C ("Condition Report") and Exhibit D ("Environmental Condition Report") from the Master Lease upon receipt of same by the PDA. The PDA and Portsmouth agree to accept Exhibits C and D, attached hereto as part of Appendix 1 to this Agreement, for the purposes set forth in Condition 3 of the Master Lease as incorporated herein by reference, unless both the PDA and Portsmouth agree in writing to any modifications of those documents.

1.5 Notice. Whenever the PDA or Portsmouth shall desire to give or serve upon the other any notice, demand, request or other communication with respect to this Agreement, each such notice, demand, request or other communication shall be in writing and shall not be effective for any purpose unless same shall be given or such notice, demand, request or other communication is directed to such party or parties by certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the PDA: Executive Director
 Pease Development Authority
 601 Spaulding Turnpike
 Suite 1
 Portsmouth, NH 03801-2833

If to Portsmouth: City Manager
 City of Portsmouth
 Municipal Complex
 P.O. Box 628
 Portsmouth, NH 03802-0628

or at such other address or addresses as the PDA or Portsmouth may from time to time designate by notice given by certified mail. Every notice, demand, request or communication hereunder sent by mail shall be deemed to have been given or served as of the lapse of five business days following the date of such mailing.

1.6 Pre-Existing Conditions.

1.6.1 The PDA shall have no obligation to Portsmouth to remedy or abate either the asbestos, whether friable or stable, contained in the Airport District or any other pre-existing conditions referred to in Condition 10 of the Master Lease.

1.6.2 The PDA and Portsmouth recognize and acknowledge the statutory obligation of the Air Force to indemnify the PDA and Portsmouth, to the extent required by the provisions of Public Law 101-511, §8056.

1.7 PDA Non-Liability and Indemnification by Portsmouth.

1.7.1 The PDA shall not be responsible for damages to property or injuries to persons which may arise from or be attribu-

table or incident to the condition or state of repair of the System, or the construction, repair, operation, maintenance and removal hereof, or for damages to the property of Portsmouth, or for damages to the property or injuries to the person of Portsmouth's officials, agents, servants or employees, or others who may be on the Airport District at their invitation or the invitation of any one of them.

1.7.2 Portsmouth agrees to assume all risks of loss or damage to property and injury or death of persons by reason of or incident to the construction, repair, operation, maintenance and removal of the System or the activities conducted under this Agreement. Portsmouth expressly waives all claims against the United States and the PDA for any such loss, damage, personal injury or death caused by or occurring as a consequence of the construction, repair, operation, maintenance and removal of the System or the conduct of activities or the performance of its duties under this Agreement. Portsmouth further agrees to indemnify, save, hold harmless, and defend the PDA, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorney's fees (collectively "Losses") arising out of, or in any manner predicated upon personal injury, death or property damage resulting from, related to, caused by or arising out of the construction, repair, operation, maintenance and removal of the System or any activities conducted under this Agreement unless such Losses are due to the PDA's willful misconduct or gross negligence. The PDA will give Portsmouth notice of any claim against it covered by this indemnity as soon after learning of it as practicable.

1.8 Insurance.

1.8.1 Risk. Portsmouth shall in any event and without prejudice to any other rights of the PDA bear all risks of loss or damage to the System, including the following: fire; lightning; storm; tempest; explosion; impact; aircraft; vehicles; smoke; contamination; riot; civil commotion; bursting or overflowing of water tanks, apparatus, or pipes; boiler and machinery coverage against loss or damage by explosion of steam boilers, pressure vessels and similar apparatus now or hereafter installed; flood; labor disturbance; or malicious damage.

1.8.2 Insurance.

1.8.2(a) Portsmouth Insurance. In accordance with Condition 15.7 of the Master Lease, Portsmouth may elect to self-insure, in whole or in part, the risk of loss borne by Portsmouth and set forth in this Article 1.8.

1.8.2(b) Portsmouth's Contractors' Insurance. During the entire period this Agreement shall be in effect, Portsmouth shall either carry and maintain the insurance required below at its expense

or require any contractor performing work on the Airport District to carry and maintain at no expense to the PDA:

1.8.2(b)(1) Commercial general liability coverage for bodily injury and property damage insurance, including but not limited to, insurance against assumed or incidental contractual liability under this Agreement, with respect to the construction, repair, operation, maintenance and removal of the System to afford protection with limits of liability in amounts approved from time to time by the PDA, but not less than Five Million Dollars (\$5,000,000) in the event of bodily injury and death to any number of persons in any one accident, and not less than One Million Dollars (\$1,000,000) for property damage;

1.8.2(b)(2) If and to the extent required by law, worker's compensation or similar insurance in form and amounts required by law;

1.8.2(b)(3) Automobile liability insurance in amounts approved from time to time by the PDA, but not less than Two Million Dollars (\$2,000,000) combined single limit for owned, hired and non-owned automobiles.

1.8.2(c) Policy Provisions. All insurance which this Agreement requires Portsmouth to carry and maintain or cause to be carried or maintained pursuant to Section 1.8 hereof shall be in such form, for such amounts, for such periods of time, with such deductible or self-retention amounts, and with such insurers as is customary for wastewater disposal and water utilities of similar size and risk. All policies or certificates issued by the respective insurers shall name the United States and the PDA as additional insureds, provide that any losses shall be payable notwithstanding any act or failure to act or negligence of the United States, the PDA, Portsmouth or any other person, provide that no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least sixty (60) days after receipt by the PDA of written notice thereof, provide that the insurer shall have no right of subrogation against the United States or the PDA, and be reasonably satisfactory to the PDA in all other respects. In no circumstances will Portsmouth be entitled to assign to any third party rights of action which Portsmouth may have against the PDA. Notwithstanding the foregoing, any cancellation of insurance coverage based on nonpayment of the premium shall be effective only upon ten (10) days' written notice to the Government and the PDA. Portsmouth understands and agrees that cancellation of any insurance coverage required to be carried and maintained by Portsmouth under Section 1.8 hereof will constitute a failure to comply with the terms of this Agreement.

1.8.2(d) Delivery of Policies. Portsmouth shall deliver or cause to be delivered promptly to the PDA a certificate of insurance evidencing the insurance required by this Agreement and

shall also deliver no later than thirty (30) days prior to the expiration of any such policy, a certificate of insurance evidencing each renewal policy covering the same risks.

1.8.2(e) Loss or Damage. In the event that any item or part of the System or any other property or facilities on the Airport District, shall require repair, rebuilding, or replacement resulting from loss or damage, the risk of which is assumed by Portsmouth under Section 1.8.1, Portsmouth shall promptly give notice thereof to the PDA. Portsmouth will as soon as practicable after the casualty restore such item or part as nearly as possible to the condition which existed immediately prior to such loss or damage, subject to Condition 25 of the Master Lease.

1.9 Environmental Protection.

1.9.1 Portsmouth and PDA will comply with the environmental laws and regulations set out in Exhibit "G" of the Master Lease, and all other federal, state, and local laws, regulations, and standards that are applicable to Portsmouth's activities on the Airport District, reference being also made to Conditions 10 and 11 of the Master Lease. PDA agrees that it will take no action to impede or impair the Facilities or Portsmouth's activities with respect to this Sublease.

1.9.2 Portsmouth shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operations under this Agreement, independent of any existing Pease Air Force Base or PDA permits.

1.9.3 Portsmouth shall indemnify and hold harmless the Government and the PDA from any costs, expenses, liabilities, fines, or penalties resulting from discharges, emissions, spills, storage, disposal, or any other action by Portsmouth or its agents, servants or contractors giving rise to Government or PDA liability, civil or criminal, or responsibility under federal, state or local environmental laws. This provision shall survive the expiration or termination of this Agreement, and Portsmouth's obligations hereunder shall apply whenever the Government or the PDA incurs costs or liabilities for Portsmouth's actions giving rise to liability of the types described in this Section and Condition 10 of the Master Lease.

1.9.4 The PDA's rights and the Government's rights under this Agreement specifically include the right for State and Air Force officials to inspect the System upon reasonable notice for compliance with environmental, safety, and occupational health laws and regulations, whether or not the PDA or the Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections.

1.9.5 Except as provided in Section 1.9.6 below, neither the PDA nor the Government is responsible for any removal or containment of asbestos. Portsmouth will submit any plans for "Alterations", as defined in Condition 17.1 of the Master Lease to the PDA and the Base Civil Engineer for approval as required under Condition 17.3 of the Master Lease. If the plans require the removal of asbestos, an asbestos disposal plan must be submitted concurrently with the plans. The asbestos disposal plan will identify the proposed disposal site for the asbestos.

1.9.6 The Government shall be responsible for removal or containment of friable asbestos existing within the Airport District on the beginning date of this Agreement in accordance with Condition 10.6 of the Master Lease. The PDA agrees to require the Air Force to abate all such existing friable asbestos to the extent provided in Condition 10.6 of the Master Lease. Portsmouth agrees that the Air Force may choose the most economical means of remediating any friable asbestos, which may include removal or containment, or a combination of removal and containment. The foregoing agreement does not apply to non-friable asbestos which may be disturbed by Portsmouth's activities and thereby become friable. Non-friable asbestos which becomes friable through or as a consequence of Portsmouth's activities under this Agreement will be abated by Portsmouth at its sole cost and expense.

1.9.7 Notwithstanding any other provision of this Agreement, the PDA and Portsmouth do not assume any liability or responsibility for environmental impacts and damage caused by the use by the Government, including any agency or agent thereof, of "toxic substances" or "hazardous wastes", "hazardous substances" or "hazardous materials" or "oil" or "petroleum products," as such terms are defined by applicable law, on any portion of Pease Air Force Base. The PDA and Portsmouth have no obligation to the Air Force to undertake the defense, remediation and cleanup (including the liability and responsibility for the costs of damage, penalties, or legal and investigative services) solely arising out of any claim or action in existence now, or which may be brought in the future by third parties or any governmental body against the Government, because of any use of, or release from, any portion of Pease Air Force Base of any "toxic substances," "hazardous wastes", "hazardous substances" or "hazardous materials" (collectively "Hazardous Items") or "oil" or "petroleum products" prior to the beginning date of the Master Lease. Furthermore, the parties understand that the Air Force recognizes and acknowledges its obligation to indemnify the PDA and Portsmouth to the extent required by the provisions of Public Law No. 101-511, Section 8056. The provisions of this Section and Condition 10.7 of the Master Lease shall survive the expiration or termination of this Agreement.

1.9.8 Pease Air Force Base has been identified as a National Priority List (NPL) Site under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of

1980, as amended. Portsmouth acknowledges that the PDA has provided it with a copy of the FFA and will provide Portsmouth with a copy of any amendments thereto. Portsmouth agrees that should any conflict arise between the terms of the FFA as it presently exists or may be amended and the provisions of this Agreement, the terms of the FFA will take precedence. Portsmouth further agrees that notwithstanding any other provision of this Agreement, the PDA and the Government assume no liability to Portsmouth should implementation of the FFA interfere with Portsmouth's use of the Airport District pursuant to this Agreement. Portsmouth shall have no claim on account of any such interference against the PDA or against the United States or any officer, agent, employee or contractor thereof.

1.9.9 The Air Force, The United States Environmental Protection Agency (EPA), and the New Hampshire Department of Environmental Services (NHDES) and their officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to Portsmouth, to enter upon the portions of the Airport District used by Portsmouth pursuant hereto for the purposes enumerated in this subparagraph and for such other purposes consistent with any provisions of the FFA:

1.9.9(a) to conduct investigations and surveys, including, where necessary, drilling, testpitting, borings and other activities related to the Pease Air Force Base Installation Restoration Program ("Pease AFB IRP") or the FFA;

1.9.9(b) to inspect field activities of the Air Force and its contractors and subcontractors in implementing the Pease AFB IRP or the FFA;

1.9.9(c) to conduct any test or survey required by the EPA or NHDES relating to the implementation of the FFA or environmental conditions at the Airport District to verify any data submitted to the EPA or NHDES by the Air Force relating to the FFA or such conditions;

1.9.9(d) to construct, operate, maintain or undertake any other response or remedial action as required or necessary under the Pease AFB IRP or the FFA, including, but not limited to, monitoring wells, pumping wells and treatment facilities.

1.9.10 Portsmouth agrees to comply with the provisions of any health or safety plan in effect under the Pease AFB IRP or FFA during the course of any of the above described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by Portsmouth. Portsmouth shall have no claim on account of such entries against the PDA, the State of New Hampshire, the United States, or any officer, agent, employee, contractor, or subcontractor thereof.

1.9.11 Pease Air Force Base air emissions offsets will not be made available to Portsmouth. Portsmouth shall be responsible for obtaining from some other source(s) any air pollution credits that may be required to offset emissions resulting from its activities under this Agreement.

1.9.12 Portsmouth shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act, or its New Hampshire equivalent. Portsmouth must provide at its own expense such hazardous waste storage facilities, complying with all laws and regulations, as it may need for storage. Neither PDA nor Government hazardous waste storage facilities will be available to Portsmouth. Any violation of the requirements of this Section 1.9.12 shall be deemed a material breach of this Agreement.

1.9.13 Air Force or PDA accumulation points for hazardous and other wastes will not be used by Portsmouth. Neither will Portsmouth permit its hazardous wastes to be commingled with hazardous waste of the Air Force or the PDA.

1.9.14 Portsmouth shall have a completed and approved plan for responding to hazardous waste, fuel, and other chemical spills prior to commencement of operations on the Airport District. Such plan shall be independent of Pease Air Force Base and the PDA and, except for initial fire response and/or spill containment, shall not rely on use of Pease Air Force Base or PDA personnel or equipment. Should the Government or the PDA provide any personnel or equipment, whether for initial fire response and/or spill containment, or otherwise on request of Portsmouth, or because Portsmouth was not, in the opinion of the PDA or the Government, conducting timely cleanup actions, Portsmouth agrees to reimburse the PDA and the Government for its costs.

1.9.15 Portsmouth further agrees that it shall provide the PDA, Air Force, EPA and NHDES with prior written notice accompanied by a detailed description of all plans for any Alterations (as defined in Section 1.12.1 hereof and Condition 17.1 of the Master Lease) which may impede or impair any activities under the FFA or are to be undertaken in certain areas of the Airport District identified as "Areas of Special Notice" on Exhibit I-2 of the Master Lease. (These Areas of Special Notice consist of either "operable units" (as defined in the National Contingency Plan) or "Areas of Concern" as defined in the FFA and include buffer areas as shown in Exhibit I-2 of the Master Lease.) The notice and accompanying plans shall be provided to the PDA, Air Force, EPA and NHDES sixty (60) days in advance of the commencement of any such Alterations. The detailed description of said plans shall include a description of the effect such planned work may have with respect to site soil and groundwater conditions and the cleanup efforts contemplated under the FFA.

1.9.16 Notwithstanding any other provision of this Agreement, Portsmouth agrees it shall coordinate all Alterations and any other work subject to the notice requirement imposed by Section 1.9.15 above with the PDA, the Air Force, EPA and NHDES in accordance with the FFA and in a manner that does not impede or impair any activities under the FFA or exacerbate then existing conditions.

1.10 Maintenance of Facilities.

1.10.1 Portsmouth shall at all times operate and maintain and exercise due diligence in protecting the System against damage or destruction by fire and other causes, subject to applicable provisions of Conditions 4, 10, 15 and 17 of the Master Lease. At a minimum, Portsmouth agrees to maintain the System to the extent required by the FAA conditions of transfer identified in Condition 23 of the Master Lease and in the Application. Portsmouth shall comply with the provisions of Condition 17 of the Master Lease and Exhibit H thereto in conducting any maintenance activities required to be performed hereunder.

1.10.2 Portsmouth is under no duty nor does it undertake to inspect buildings or other Air Force, PDA or tenant facilities to determine the safety of the wastewater disposal and water distribution system equipment serving those facilities. If at all practicable, Portsmouth will notify a representative of the Department of the Air Force, the PDA or the PDA's sublessee of Portsmouth's discovery of any code violations or conditions which could potentially be dangerous to life, property or the continued supply of service to others. Portsmouth is under no duty to provide or to continue to provide wastewater disposal or water service to any building or location if a condition dangerous to the health, safety or utility service of others exists or if there is a condition which would cause a clear and present danger of life, health or physical property. If Portsmouth discovers such conditions, it may discontinue service to the building or location at the meter or at the building without prior notice to the customer or the PDA, but notice will be provided as soon as possible thereafter.

1.10.3 For each building within the Airport District, Appendix 8 designates a specific point where Portsmouth's owned property ends and the PDA's or its sublessee's property begins. This location is designated as the point of ownership. The PDA or the sublessee (other than Portsmouth) must provide, on the customer's side of the point of ownership, an acceptable location to which a water service meter or a backflow prevention device, if one is required by applicable regulations of the City of Portsmouth as applied uniformly to all users in the City of Portsmouth, may be attached. PDA or its sublessees (other than Portsmouth) will be responsible for any repair, relocation, upgrades or other expenses associated with the equipment located on the customer's side of the point of ownership, except for expenses associated with any water service meters or the installation thereof which will be the

responsibility of COP. Portsmouth is responsible for curing any condition on its side of the point of ownership which would result in violation of the BOCA National Plumbing Code.

1.11 Compliance with Applicable Laws.

1.11.1 In the exercise of the rights granted hereunder, Portsmouth will at all times during the existence of this Agreement promptly observe and comply, at its sole cost and expenses, with the provisions of all applicable Federal, state and local laws, regulations, and standards, and in particular those provisions concerning the protection of the environment and pollution control and abatement.

1.11.2 Portsmouth shall comply with all applicable state and local laws, ordinances, and regulations with regard to construction, sanitation, licenses or permits, and all other matters. Portsmouth shall be responsible for determining whether it is subject to local building codes or building permit requirements and for compliance with them to the extent they are applicable.

1.11.3 Portsmouth shall comply with all applicable Federal, state and local occupational safety and health regulations. In addition, Portsmouth shall comply with all applicable Air Force safety, health and fire regulations, standards, tech orders, and procedures in the common use work and operating areas of the airfield portion of the Airport District, including ramps and taxiways, until such time as the PDA shall assume full responsibility for operation of the airfield.

1.11.4 None of the provisions of this Agreement shall be deemed to constitute a waiver by the PDA or the State of New Hampshire of the doctrine of sovereign immunity, and by the extension of that doctrine, the official immunity of officers, directors, officials or employees of the PDA.

1.11.5 Responsibility for compliance as specified in Section 1.11 hereof and Condition 16 of the Master Lease rests exclusively with Portsmouth. The Department of the Air Force and the PDA assume no enforcement or supervisory responsibility except with respect to matters committed to its jurisdiction and authority. Portsmouth shall be liable for all costs associated with compliance, defense of enforcement actions or suits, payment of fines, penalties, or other sanctions and remedial costs related to Portsmouth's use of the Airport District pursuant to this Agreement.

1.11.6 Portsmouth shall have the right to contest by appropriate proceedings diligently conducted in good faith, without cost or expense to either the Government or to the PDA, the validity or application of any law, ordinance, order, rule, regulation or requirement of the nature referred to in this Section 1.11 hereof.

Neither the Air Force nor the PDA shall be required to join in or assist Portsmouth in any such proceedings.

1.12 Development and Alterations.

1.12.1 Portsmouth acknowledges that the PDA is subject to certain restrictions on the use of the Airport District in accordance with Conditions 10, 17, 23 and 25 of the Master Lease. Notwithstanding any other provision of this Agreement, Portsmouth shall also comply with and be subject to the restrictions in Conditions 10, 17, 23 and 25 of the Master Lease to the extent applicable to the Airport District or the System or any rights granted to Portsmouth under this Agreement in the same manner and to the same extent as the PDA is obligated in its capacity as Lessee under the Master Lease. Such requirements extend to, but are not limited to, actions consisting of (a) clearing, site preparation or construction on, over or under or otherwise altering any part of the Airport District or (b) construction, installation, maintenance, placement, demolition, relocation or removal of the System (such actions being hereinafter referred to as "Alterations").

1.12.2 Title to additions to or replacements of the System shall vest in Portsmouth. Portsmouth agrees to hold the PDA and the United States harmless from mechanics' and materialmen's liens arising from any Alterations effected by Portsmouth.

1.12.3 Any contractor or subcontractor of Portsmouth shall maintain or cause to be maintained the insurance required pursuant to Condition 1.9.

1.12.4 Portsmouth shall maintain drawings when any Alteration authorized hereunder is completed.

1.13 Relocations of Wastewater Disposal and Water Distribution Facilities.

1.13.1 The PDA and Portsmouth will coordinate in the fixing of the locations of wastewater disposal and water distribution facilities within streets so as to minimize the likelihood of any need for relocation of such facilities. However, the PDA shall have the same rights to require relocation of such facilities without compensation to Portsmouth as would the State of New Hampshire or a city or town which has issued highway licenses under the laws now in effect (RSA 231:159-182).

1.13.2 The PDA and Portsmouth will coordinate in fixing the location of new underground wastewater disposal and water distribution facilities (including, without limitation, underground pipe and other associated facilities) extending from streets to buildings or from the utility corridors to buildings. No such facilities shall be required to be relocated unless Portsmouth is reimbursed for the cost of the relocation. Portsmouth shall be

responsible for all costs of connecting individual service locations to the underground system at the street or utility corridor, as the case may be, including, without limitation, trenching and back-filling.

1.13.3 In the event that Portsmouth is requested to make any relocation for which Portsmouth is required to be reimbursed pursuant to Section 1.13.2 above and the request coincides or nearly coincides with plans of Portsmouth to upgrade, replace or relocate such facilities for system purposes, the amount of reimbursement to Portsmouth shall be limited to the lower of the stand-alone cost of the relocation or the incremental difference in cost to Portsmouth of the requested relocation performed in conjunction with such system improvement over the cost of the system improvement alone.

2.0 Historic Property.

2.1 Portsmouth hereby covenants on behalf of itself, its successors and assigns, in the exercise of the rights granted under this Agreement to observe and conform to the provisions of Condition 22 of the Master Lease to the extent applicable.

3.0 Federal Aviation Administration Requirements.

3.1 Portsmouth hereby covenants on behalf of itself, its successors and assigns, to observe and conform to the provisions of Conditions 23 of the Master Lease to the extent applicable.

4.0 Restrictions on Use of the Airport District.

4.1 In accordance with Condition 25 of the Master Lease, Portsmouth shall not install any new drinking water or other wells in the locations specified in Exhibit I-1 of the Master Lease. Portsmouth shall not install any new drinking water or other wells in any other location on the Airport District without the prior written approval of the PDA and the Air Force. Notwithstanding the foregoing, qualified employees of Portsmouth or its environmental consultants may install groundwater monitoring wells in support of site assessments or investigations in locations shown in Exhibit I-1 of the Master Lease upon prior notice and written approval of the PDA, the Air Force and the Remedial Project Managers appointed under the FFA.

4.2 Portsmouth shall not conduct any subsurface excavation, digging, drilling or other disturbance of the surface at the locations specified in Exhibit I-2 of the Master Lease without the provision of notice to the PDA, the Air Force, EPA and NHDES in accordance with Section 1.9.15 of this Agreement and Condition 10.16 of the Master Lease and the prior written approval of the Air Force in accordance with Condition 17.3 of the Master Lease. Requests for such approval will be made in accordance with Condition 17 of the Master Lease.

4.3 Portsmouth shall not occupy or conduct any activities in any facility or portion thereof as specified in Exhibit I-3 of the Master Lease until such time as any friable asbestos existing in them has been remediated in accordance with Sections 1.9.5 and 1.9.6 of this Agreement and Conditions 10.5 and 10.6 of the Master Lease.

4.4 Portsmouth may use the areas identified in Exhibit I-4 of the Master Lease subject to the limitations set forth in such exhibit.

4.5 Portsmouth will minimize the destruction, loss, or degradation of wetlands in those areas of Parcels D and E shown and described on Figure 3-23 and in pages 3-28 to 3-93 inclusive of the FEIS and the ROD and Supplemental ROD (as defined in the Master Lease) and identified in Exhibits A and I-5 of the Master Lease ("Designated Wetlands"). Before locating new construction in the Designated Wetlands, the PDA shall find in writing that there is no practicable alternative for such new construction and that the construction includes all practicable measures to minimize harm to the Designated Wetlands from such use. In making that finding, the PDA may take into account economic, environmental and other pertinent factors. In addition, the PDA shall provide an opportunity for early public review of any plan or proposal for new construction in the Designated Wetlands in such areas. For purposes of this provision, the term "new construction" includes structures, facilities, draining, dredging, channelizing, filling, diking, impounding and related activities.

5.0 Agreement Subject to Master Lease and Application and FFA.

5.1 This Agreement is hereby made expressly subject to all of the terms and conditions of the Master Lease, the Application and the FFA as the same apply to the Airport District, and such terms, and conditions are hereby incorporated herein by reference. In the event of any conflict between this Agreement and the Master Lease, the provisions of the Master Lease shall control. In the event of any conflict between this Agreement and the Application, the provisions of the Application shall control, consistent with the provisions of Section 8 thereof. In the event of any conflict between this Agreement and the FFA, the FFA shall control.

6.0 Assumption by Portsmouth of Master Lease Obligations.

6.1 For so long as Portsmouth is authorized to provide Pease with wastewater disposal and water distribution service, Portsmouth assumes and agrees to perform the obligations and responsibilities of the PDA under the Master Lease to the extent that the same apply to the provision of wastewater disposal and water distribution service.

7.0 PDA's Covenants.

7.1 The PDA covenants that:

The PDA has not assigned its interest in the Master Lease or granted to any other person the rights granted hereby with respect to the System;

As of the date of this Agreement, the PDA is not in default in the performance of the Master Lease and has not committed any material breach of the Master Lease;

As of the date of this Agreement, the Air Force is not in default in the performance of the Master Lease; and

As of the date of this Agreement, the PDA has no defenses or offsets which the PDA could allege in any action brought against the PDA under the Master Lease.

8.0 Default and Termination.

8.1 In the event Portsmouth shall breach or fail to comply with any provision of this Agreement and such breach or failure continues for thirty (30) or more days after written notice thereof by the PDA to Portsmouth, such breach or failure shall constitute an "Event of Default" under this Agreement; provided, however, that such breach or failure shall not be deemed to constitute an Event of Default if (a) such breach or failure does not cause the PDA to be in default under the Master Lease, the Application or any other contract or agreement by which the PDA is bound or to which the PDA's property is subject and (b) within such 30-day period Portsmouth shall have begun the actions necessary to cure such breach or failure as promptly as is reasonably possible. If an Event of Default shall have occurred and be continuing, the PDA may exercise all of its rights at law or in equity. The PDA shall have the further right, but not the obligation, to take such actions as may be necessary to cause such Event of Default to be cured, and Portsmouth shall reimburse the PDA for the costs associated therewith.

9.0 Miscellaneous.

9.1 Each individual executing this Agreement on behalf of Portsmouth represents and warrants that he or she is duly authorized to execute this Agreement on behalf of said municipality, and that this Agreement is binding on said municipality in accordance with its terms.

9.2 At the time of the execution of this Agreement Portsmouth shall be a municipality organized and in good standing under the laws of the State of New Hampshire.

9.3 This Agreement and the related Portsmouth Agreements of even date herewith cover in full each and every agreement of every kind or nature whatsoever between the parties hereto concerning the subject matter hereof and shall supersede all preliminary negotiations and agreements of every kind or nature whatsoever with respect thereto; and no other person, firm or corporation has at any time had any authority from the PDA to make any representations or promises on behalf of the PDA, and Portsmouth expressly agrees that if any such representations or promises have been made by the PDA or others, Portsmouth hereby waives all right to rely thereon. No verbal agreement or implied covenant shall be held to vary the provisions hereof, any statute, law, or custom to the contrary notwithstanding. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

9.4 Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between the PDA and Portsmouth.

9.5 This Agreement shall be construed and enforced in accordance with the laws of the State of New Hampshire, and, where applicable, the laws of the United States of America.

9.6 Any actions or proceedings with respect to any matters arising under or growing out of this Agreement shall be instituted and prosecuted only in courts located in the State of New Hampshire.

9.7 This instrument may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

9.8 Portsmouth shall faithfully observe and comply with such rules and regulations as the PDA may adopt for the operation of the Airport District as well as modifications thereof and additions thereto. The PDA shall not be responsible to Portsmouth for the violation or nonperformance by any tenant of the PDA of any of such rules and regulations.

9.9 Portsmouth shall not erect or place or cause to be placed any sign on the Airport District without the prior consent of the PDA. The PDA shall have the right to approve the type, size, location and color of any and all signs which Portsmouth desires to use or place in or upon the Airport District.

9.10 The provisions of this Agreement shall inure to the benefit of, and be binding upon, the respective successors and assigns of the PDA and Portsmouth. Portsmouth shall not, without the written consent of the PDA, assign its rights under this Agreement.

9.11 If any provisions of this Agreement are deemed invalid or unenforceable, the remaining provisions shall be unaffected thereby and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

PEASE DEVELOPMENT AUTHORITY

By: [Signature]

Its: Executive Director

CITY OF PORTSMOUTH

By: [Signature]

Its: CITY MANAGER

STATE OF NEW HAMPSHIRE
COUNTY OF

The foregoing instrument was acknowledged before me this 1st day of January, 1993 by Thaddeus J. Jan Kowski, JR., CITY MANAGER of the Pease Development Authority, a body corporate and politic organized under the laws of the State of New Hampshire, on behalf of said Authority.

My Commission Expires: 11/93

[Signature]
~~Notary Public~~/Justice of the Peace

STATE OF NEW HAMPSHIRE
COUNTY OF Rockingham

The foregoing instrument was acknowledged before me this 13 day of JANUARY, by GEORGE D. JONES, EXEC. DIRECTOR of the City of Portsmouth, a New Hampshire municipal corporation, on behalf of the municipal corporation.

My Commission Expires:

[Signature]
~~Notary Public~~/Justice of the Peace

APPENDICES

- Appendix 1 - Master Lease
- Appendix 2 - Application and Acceptance
- Appendix 3 - Federal Facilities Agreement ("FFA")
- Appendix 4 - Wastewater Disposal and Water Distribution Facilities
- Appendix 5 - Plan of Existing Wastewater Disposal and Water Distribution Facilities
- Appendix 6 - Plans Showing Location of Utility Corridors
- Appendix 8 - Point of Ownership

App 4 only appears on file

APPENDIX 4

WASTEWATER DISPOSAL AND WATER DISTRIBUTION FACILITIES

The description below describes the Facilities in general and is not intended to be a legal description. The Facilities are graphically depicted on the Plan of Existing Wastewater Disposal and Water Distribution Facilities (Appendix 5) attached hereto. When the Air Force and the PDA have agreed, in accordance with the Master Lease, upon a final area, the PDA will provide Portsmouth with a recordable legal description of the property to be conveyed.

1. The water and sewer systems at Pease, and all facilities and appurtenances associated therewith (the "Systems"), exclusive of the utility systems within the New Hampshire Air National Guard Cantonment Area as described in Exhibit A, Section III of the Master Lease as amended by the Supplement dated August 4, 1992 (the "Master Lease") and the Systems within the Great Bay National Wildlife Refuge property west of McIntyre Road.
2. All subsurface water rights to all portions of the real property transferred pursuant to the Master Lease.
3. The following inventory of parts and equipment.

[To be supplied by Portsmouth subject to PDA approval]

The above description is subject to all reservations, restrictions and conditions as are set forth in Exhibit A, Section IV of the Master Lease.