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ENVIRONMENTAL PROTECTION

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
ADMINISTRATIVE ORDER ON CONSENT

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Reid Gardner Station

ENVIRONMENTAL PROTECTION

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NEVADA DIVISION OF ENVIRONMENTAL PROTECTION **ADMINISTRATIVE ORDER ON CONSENT**

This Administrative Order on Consent (“AOC”) is made and entered into this 20th day of February, 2008, by and among (i) the State of Nevada, Department of Conservation and Natural Resources, Division of Environmental Protection (the “Division”), and (ii) Nevada Power Company, as the owner and operator of Reid Gardner Station (“RGS”) Units Nos. 1, 2, and 3 and as the co-owner and Operating Agent for Unit No. 4 (“NPC”). NPC and the Division are referred to collectively herein as the “Parties.”

I. BACKGROUND

1. The Legislature of the State of Nevada has designated the Division as the agency empowered to administer and enforce Nevada’s Environmental Laws, including, but not limited to, water pollution control laws, Nevada Revised Statutes (“NRS”) §§ 445A.300 to 445A.730, inclusive, Nevada’s hazardous waste disposal laws, NRS §§ 459.400 to 459.600 inclusive, and Nevada’s Air Pollution Control laws, NRS §§ 445B.230 to 445B.640, inclusive.

2. NPC is the owner and operator of Units Nos. 1, 2 and 3 of RGS. NPC entered into the “Participation Agreement Reid Gardner Unit No. 4” (the “Participation Agreement”) with the California Department of Water Resources (“CDWR”) dated July 11, 1979, whereby CDWR and NPC jointly own Unit No. 4 of RGS. The Participation Agreement further designates NPC as the Operating Agent of Unit No. 4.

3. RGS has a number of raw water storage ponds, process water evaporation ponds, and fly ash settling ponds. Process water, which has been used beyond the treatable limits, is routed to onsite ponds for evaporation. Waste management units (“WMUs”) are present throughout the site and surrounding area. Approximately 150 monitoring wells have been constructed to monitor the shallow, intermediate, and deeper groundwater conditions on and near the site. Currently, regular groundwater monitoring of approximately 75 monitoring wells occurs on a quarterly schedule. Site characterization and groundwater monitoring activities have focused on pollution conditions attributable to the operation of current and historic wastewater ponds, various WMUs, and other site-related activities. NPC has

implemented source control methods including without limitation salt removal and pond lining on most of the ponds, interim measures including construction and operation of a groundwater collection system south of Ponds D & E and north of the mesa, and long-term Corrective Action measures including the construction and operation of a diesel recovery system and Pond 4-A groundwater treatment system. The diesel recovery system has been in operation since 1988 and was upgraded in 2003. The diesel recovery system continues to operate in the eastern portion (power generation area) of the site recovering diesel and contaminated groundwater attributable to operation of large onsite aboveground storage tanks ("ASTs"). The Pond 4-A groundwater treatment system and related Corrective Action activities were designed to be implemented in phases. The Pond 4-A groundwater treatment system was installed and tested during development of this AOC.

Environmental contaminants beneath portions of the RGS facility and surrounding properties have been revealed by characterization and other work activities. Areas of known Releases of Environmental Contaminants from the RGS facility onto adjacent property include, but are not limited to, areas of Hogan Wash, property north of Pond 4A, property east of the power generation units, property north and east of WMU-4 (Mesa Landfill), and property south of WMU-4. Environmental contaminants identified at the RGS facility include, but are not limited to, elevated concentrations of total dissolved solids ("TDS"), sulfate, chloride, dissolved metals, volatile organic compounds ("VOCs"), and petroleum hydrocarbons.

4. This AOC governs the performance and/or completion of Environmental Contaminant characterization, the screening and selection of Corrective Action, and the implementation and long-term Operation and Maintenance of Division-approved Corrective Action concerning Pollution Conditions at the Site.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to NRS Chapter 445A. This AOC is issued under the authority of NRS § 445A.690. NPC has consented to the Division's jurisdiction over NPC and its jurisdiction to enter this AOC. NPC shall not challenge the terms of this AOC or the Division's jurisdiction to enter and enforce this AOC; however, NPC does not waive its right to challenge the Division's interpretation of any terms or conditions of this AOC through Dispute Resolution in Section XX (Dispute Resolution).

III. PARTIES BOUND

1. The provisions of this AOC shall apply to and be binding upon the Division of Environmental Protection, upon NPC and upon their successors and assigns.

2. Any change in ownership or corporate status of RGS or NPC including, but not limited to, any transfer of assets of real or personal property, or a portion of the Site, shall in no way alter NPC's responsibilities under this AOC, provided that, should NPC transfer ownership or operation of the Site, NPC may transfer its obligations under this AOC and may request the Division to look solely to the transferee for the performance of NPC's obligations hereunder. Any such request shall be in writing and be accompanied by an explanation of the transferee's capability to fulfill the obligations of NPC. The Division shall not unreasonably withhold its approval of a request by NPC pursuant to this Section.

3. In the event that NPC proposes to sell or transfer all or a portion of the Site, or any real property subject to this AOC, NPC shall, prior to such sale or transfer, provide written notice to such purchaser or transferee of the existence and terms of this AOC and status of the Work. NPC shall also obtain, and provide to the Division a copy of a written undertaking (approved in advance by the Division) from any purchaser in connection with such sale or transfer that said purchaser will comply with the foregoing notice requirements in connection with any subsequent transfer of such real property.

IV. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this AOC that are defined in Nevada Law or in regulations promulgated under Nevada Law shall have the meaning assigned to them in Nevada Law or in such regulations. Whenever terms listed below are used in this AOC or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Administrator" means the Administrator of the Nevada Division of Environmental Protection.

"Administrative Order on Consent" or "AOC" means this agreement and all appendices attached hereto, and Division-approved deliverables, amendments, modifications, and items incorporated by reference as provided in Section XXVII (such section titled "Incorporation and

Enforceability of Appendices or Referenced Materials”). In the event of conflict between this agreement and any appendix, this Agreement shall control.

“CEM” means a Certified Environmental Manager certified by the State of Nevada as defined in NAC 459.9704.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et. seq.*

“Community Relations Plan” means a document that identifies stakeholders and proposes work to keep the identified stakeholders informed on the progress of the Corrective Action being conducted at the site.

“Contractor” means any entity or person, including any contractor, subcontractor, consultant, firm or laboratory, retained by NPC or the Division to conduct or monitor any portion of the work performed pursuant to this AOC.

“Corrective Action” means those activities, except for Operation and Maintenance, to be undertaken by NPC to implement the Scope of Work, final Corrective Action Design, Corrective Action Plan, and other plans approved by the Division, which are designed to provide a long-term remedy to minimize the potential exposure to Environmental Contaminants.

“Corrective Action Alternative Study” means the document of the same name developed pursuant to the Scope of Work and approved by the Division and any amendments thereto including remediation alternatives evaluated using appropriate feasibility studies.

“Corrective Action Plan” means the document of the same name developed pursuant to the Scope of Work and approved by the Division and any amendments thereto, including the final plans and specifications for the Corrective Action.

“Corrective Action Design” means those activities to be undertaken by NPC to develop the final plans and specifications for the Corrective Action.

“Corrective Action Standards” shall mean the cleanup standards and other measures that, when met, reflect achievement of the goals of the Corrective Action, as further described in Section XIV (such section titled “Corrective Action Performance Standards”).

“Corrective Action Waste” means a Waste Material that is generated as a result of any remedial activity conducted pursuant to this AOC.

“Day” shall mean a calendar day; however, if the day falls on a Saturday, Sunday, State, or federal holiday the date for compliance shall be the next calendar day that is not a Saturday, Sunday, State, or federal holiday.

“Deliverable” means, without limitation, any Work plan, report, progress report, plan, data, document, information, submittal, obligation, permit application, Corrective Action Alternative Study, or Corrective Action Plan, which NPC is required to submit to the Division under the terms of this AOC or other document further defined by the Division as a Deliverable.

“Division” means the State of Nevada, Department of Conservation and Natural Resources, Division of Environmental Protection, or its successor department or agency of the State of Nevada.

“Effective Date” shall be the effective date of this AOC as provided in Section XXXIV (“Effective Date”).

“Effective Period” means the period of time between the Effective Date and the date upon which this AOC terminates as specified in Section XXXV (“Termination”).

“Engineering Controls” means any designed, installed, and/or constructed component or facility required by the Division that minimizes the potential for human and Environmental exposure to Environmental Contaminants and that is necessary to achieve the Corrective Action Standards associated with a selected Corrective Action.

“Environment” means air, land (including subsurface strata), and water (including groundwater) or any combination or part thereof.

“Environmental” means of or relating to the air, land (including subsurface strata), and water (including groundwater) or any combination or part thereof.

“Environmental Commission” means the Nevada State Environmental Commission as defined by NRS §§ 445B.200 to 445B.245, inclusive.

“Environmental Contaminant” means any material, substance, or waste regulated by any Environmental Law.

“Environmental Law(s)” means each federal and State law and implementing regulations promulgated there under relating in any way to Environmental pollution or the protection of the Environment or the Release of any Environmental Contaminant into the Environment including, without limitation, the Nevada Water Pollution Control Law, NRS §§ 445A.010 to 445A.730, inclusive, the Nevada Solid Waste Disposal Law, NRS §§ 444.440 to 444.645, inclusive, the Nevada Hazardous Waste Disposal Law, NRS §§ 459.400 to 459.652, inclusive, the Nevada Air Pollution Control Law, NRS §§ 445B.230 to 445B.640, inclusive, the Nevada Underground Storage Tank Law, NRS §§ 459.800 to 459.856, inclusive, the Nevada Radiation Control Law, NRS §§ 459.010 to 459.290, inclusive, the Clean Air Act, 42 U.S.C. §§ 7401 to 7671q, inclusive, the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601- 9675, and the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692, each as may be amended from time to time.

“EPA” means the United States Environmental Protection Agency or its successor department or agency.

“Institutional Control” means any non-engineered measure or instrument such as an administrative and/or legal control (e.g. covenant, easement, well drilling prohibition, deed restriction, title recordation, servitude) required by the Division that minimizes the potential for human and Environmental exposure to Environmental Contaminants by limiting land or resource use. Institutional Controls include Environmental covenants as created by Senate Bill 263 (2005).

“Interest” means the current Federal funds rate as set by the Federal Reserve Board plus two percent (+2%), compounded monthly, but in no case will be less than five percent (5%) annually or greater than twelve percent (12%) annually. The rate can currently be found on the Federal Reserve Board’s internet website at www.federalreserve.gov\FOMC\fundsrate.htm.

“NAC” means the Nevada Administrative Code or its successor codification of rules and regulations.

“NFA” means No Further Action

“NPC” shall have the meaning assigned to it in the introductory paragraph of this AOC.

“NRS” means the Nevada Revised Statutes or its successor codification.

“Operation and Maintenance” or “O & M” shall mean all activities required to maintain the effectiveness of the Corrective Action as required under the Operation and Maintenance Plan approved or developed by the Division pursuant to this AOC and the Scope of Work.

“Oversight Costs” means all costs reasonably incurred by the Division for oversight of this AOC with NPC, pursuant to Section XVII (“Reimbursement of Division Oversight Costs”).

“Parties” shall mean the Nevada Division of Environmental Protection and NPC.

“Policies and Guidance” means the policies and guidance documents issued by the Division or EPA in implementing Environmental Laws.

“Pollution Conditions” means the conditions resulting from the Release of Environmental Contaminants at any time at or from the Site, above, on, into, under or upon land, soil, sediments, structures, atmospheres, or any natural or artificial waters including but not limited to: (1) all rivers, streams, lakes, ponds, washes, impounding reservoirs, seeps, springs, wetlands, marshes, watercourses, waterways, wells, irrigation systems and drainage systems; (2) all bodies or accumulations of water whether on the surface or underground; and (3) groundwater.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

“Receptor” means any appropriate and representative population, community or habitat of any biological organism (including humans, animals and plants), which is or may be affected by the Releases of Environmental Contaminants at or from the Site or Pollution Conditions.

“Records” mean all (1) Deliverables and (2) documents in the possession of NPC (including without limitation its officers, directors, and employees) and its consultants and

Contractors that are required by this AOC.

“Registered Professional Engineer” means a person who, by reason of his professional education and practical experience, is granted a license by the Nevada Board of Professional Engineers and Land Surveyors to practice professional engineering, subject to NRS §§625.005 to 625.590, inclusive.

“Release” means any past or present spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping, dispersal or disposing of any Environmental Contaminant into the Environment (including the abandonment or discarding of drums, barrels, containers, and other closed receptacles containing any Environmental Contaminant)

“Remedy” means all Response Actions implemented to provide for long-term Corrective Actions and which are designed to protect human health or welfare and the Environment at or related to the Site.

“Response Action” mean Corrective Actions, Institutional Controls, Engineering Controls, Operation and Maintenance, Interim Measures (as defined in Section VIII), and emergency response conducted for the remediation of Environmental Contaminants at the Site.

“Site” means all that certain land, structures, other appurtenances, and improvements described in Appendix A.

“State” shall mean the State of Nevada, including, as appropriate, its agencies, departments, political subdivisions, agents, and employees.

“Scope of Work” shall mean the statement of work as set forth in Appendix B to this AOC and any modifications made in accordance with this AOC.

“Sub-Area” shall mean any area on or off the Site that has been impacted by Waste Material and/or Environmental Contaminants originating from the Site that may be considered hydrologically, geographically, or otherwise separate from other areas of the Site.

“Supervising Contractor” shall mean the principal contractor retained by NPC to supervise and direct the implementation of portions of the Work under this AOC that require

the use of a Contractor.

“Waste Material” shall mean any discarded material, including solid, liquid, or contained gaseous material, that is (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and NRS § 459.429; (2) any “pollutant” or “contaminant” under Section 101(33) 42 U.S.C. § 9601(33) and NRS §§ 445A.325, 445A.400; (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27) and NRS § 444.490; and (4) any “hazardous material” under NRS § 459.428 that contributes or has contributed to the Pollution Conditions at the Site unless otherwise excepted by law.

“Work” shall mean all activities regarding Pollution Conditions that NPC is required to perform under this AOC, including but not limited to Corrective Action, Interim Measures (as defined in Section VIII), emergency response, and Institutional Controls.

V. STATEMENT OF PURPOSE

1. The objectives of the Parties in entering into this AOC are to protect human health or welfare and the Environment at and near the Site by the design and implementation of Response Actions at or near the Site by NPC, to reimburse the Division’s Oversight Costs, to resolve the potential claims of the State against NPC as provided in this AOC, and to ensure compliance with applicable Environmental Laws.

2. This AOC governs the performance and/or completion of Environmental Contaminant characterization, the screening and selection of Corrective Action(s) and other Response Actions, and the implementation and long-term Operation and Maintenance of Division-approved Corrective Action(s) concerning Pollution Conditions.

3. This AOC supersedes the following administrative orders and Division requests:

a. The Division issued “Finding of Alleged Violation and Administrative Order No. 040191W1” in April 1991 because NPC had not applied for and obtained water pollution control permits for wastewater ponds and dewatering activities at the RGS. NPC complied with all requirements of this Order in June 1991.

b. The Division issued “Finding of Alleged Violation and Administrative Order No. NV052797W1” to NPC in May 1997 for discharging pollutants to waters of the state without authorization. Four of the six requirements in this Order are complete. The remaining

two, relating to investigation and cleanup of groundwater contamination, will be superseded by this AOC.

c. The Division issued "Finding of Alleged Violation and Administrative Order No. NV083199W1" to NPC in August 1999 for discharging pollutants to waters of the state without authorization. This Order was replaced by National Pollutant Discharge Elimination System ("NPDES") Permit No. NEV91022. NPC is still operating under this NPDES permit.

4. By entering into this AOC the Division and NPC recognize the actions undertaken by NPC in accordance with this AOC do not constitute an admission of liability, and NPC does not admit, and retains the right to controvert in any subsequent proceedings other than to implement or enforce this AOC, the validity of any determination made by the Division in connection with entering into this AOC.

VI. GENERAL PROVISIONS

1. Commitments by the Nevada Power Company. NPC, upon written notice from the Division, shall finance and perform the Work in accordance with this AOC, the Scope of Work, and all Work plans, other plans, standards, specifications, and schedules set forth herein or developed by NPC and approved by the Division pursuant to this AOC. NPC shall also reimburse the Division for Oversight Costs as provided in this AOC.

2. Compliance with Applicable Law. All activities undertaken by NPC pursuant to this AOC shall be performed in accordance with the requirements of all applicable federal and State laws and regulations. NPC must also comply with the Scope of Work.

3. Permits.

a. Where any portion of the Work requires a federal or State permit or approval, NPC shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. NPC may seek relief under the provisions of Section XIX ("Force Majeure") of this AOC for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This AOC is not, and shall not be construed to be, a permit issued pursuant to any federal or State statute or regulation.

4. Notice to Successors-in-Title.

a. With respect to any property owned or controlled by NPC that comprises a part of the Site, within thirty (30) days after the Effective Date of this AOC, NPC shall submit to the Division for review and approval a notice to be filed with the Recorder's Office, Clark County, State of Nevada, in a form and substance reasonably satisfactory to the Division, which shall provide notice to all successors-in-title that the property(ies) is(are) part of the Site, that the Division has approved a Remedy, or will select a Remedy, for the Site and that potentially responsible Parties have entered into an AOC requiring implementation of the Remedy. Such notice(s) shall identify where a copy of this AOC may be obtained. NPC shall record the notice(s) within thirty (30) days of the Division's approval of the notice(s) and shall provide the Division with a certified copy of the recorded notice(s) within thirty (30) days of recording such notice(s).

b. In the event of any conveyance of any property interest within the Site, including but not limited to fee interest, leasehold interests, and mortgage interests, NPC's obligations under this AOC, including, but not limited to, its obligation to provide or secure access and Institutional Controls, as well as to abide by such Institutional Controls, pursuant to Section XI (such section titled "Site Access and Institutional Controls") of this AOC, shall continue to be met by NPC. In no event shall the conveyance, release or other transfer of any interest in the Site affect the liability of NPC to comply with all provisions of this AOC, absent the prior written consent of the Division pursuant to Section III, Paragraph 2.

VII. PERFORMANCE OF THE WORK BY THE NEVADA POWER COMPANY

1. NPC shall submit, receive approval for and likewise implement, as appropriate, Deliverables, consistent with the requirements of the Scope of Work attached as Appendix B and incorporated by reference.

2. Upon approval by the Division, Deliverables shall be incorporated into and become enforceable under this AOC.

3. Modification of the Scope of Work or related Deliverables.

a. If the Division determines that modification to the Work specified in the Scope of Work and/or in other Deliverables developed pursuant to the Scope of Work is necessary to achieve and maintain the Corrective Action Standards or to carry out and maintain the effectiveness of the Remedy, the Division may require that such modification be

incorporated in the Scope of Work and/or such Deliverables provided; however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the Remedy selected.

b. If NPC objects to any modification determined by the Division to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XX (such section titled "Dispute Resolution"). The Scope of Work and/or related Deliverables shall be modified in accordance with final resolution of the dispute.

c. NPC shall implement any Work required by any modifications incorporated in the Scope of Work and/or in Deliverables developed pursuant to the Scope of Work in accordance with this Paragraph.

d. Nothing in this Paragraph shall be construed to limit the Division's authority to require performance of further Response Actions as otherwise provided in this AOC.

4. All Work shall be performed in compliance with the health and safety plan as required in the Scope of Work.

5. NPC shall continue to implement the Corrective Action and O & M until the Corrective Action Standards are achieved and for so long thereafter as is otherwise required under this AOC.

6. NPC acknowledges and agrees that nothing in this AOC, the Scope of Work, or the associated Deliverables constitutes a warranty or representation of any kind by the State that compliance with the Work requirements set forth in the Scope of Work and the Work plans will achieve the Corrective Action Standards.

7. NPC shall, prior to any off-Site shipment of Corrective Action Waste from the Site to a waste management facility, provide written notification to the Division Project Coordinator of such shipment of Corrective Action Waste.

a. In the event that any Corrective Action Waste is destined for an out-of-state facility, NPC shall provide written notification to the Division Project Coordinator.

b. NPC shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Corrective Action Waste is to be shipped; (2) the type and quantity of the Corrective Action Waste to be shipped; (3) the

expected schedule for the shipment of the Corrective Action Waste; and (4) the method of transportation. NPC shall notify the Division Project Coordinator of major changes in the shipment plan, such as a decision to ship the Corrective Action Waste to another facility.

c. NPC shall provide the information required by this Paragraph as soon as practicable after the award of a waste management agreement or contract but in no event, later than 30 days before the Corrective Action Waste is actually shipped (unless the Corrective Action Wastes must be shipped sooner in order to comply with applicable law).

VIII. INTERIM MEASURES

1. If, at any time during the Effective Period of this AOC, the Division determines, based upon consideration of any of the factors specified in Paragraph 2 below, that any Pollution Conditions may pose an imminent and substantial hazard to human health, welfare, or the Environment, the Division may notify NPC in writing of the measure(s) the Division has determined need to be developed and implemented by NPC to mitigate the imminent and substantial hazard ("Interim Measure(s)"). If deemed appropriate by the Division, the identification of such Interim Measure(s) may be deferred pending the collection, by NPC, of additional data or information requested by the Division.

2. The following factors, among others, may be considered by the Division in determining whether any Interim Measure(s) should be required:

- a. the time required to develop and implement a final Remedy for Pollution Conditions;
- b. actual or potential exposure of nearby Receptors to Environmental Contaminants from Pollution Conditions;
- c. actual or potential contamination of drinking water supplies or sensitive ecosystems by Pollution Conditions;
- d. further degradation of the Environment, which may occur because of Pollution Conditions if an Interim Measure is not implemented expeditiously.
- e. the presence of Environmental Contaminants in drums, barrels, tanks, or other bulk storage or disposal containers or facilities at the Site that pose a threat of Release;
- f. weather conditions that may cause Environmental Contaminants to be Released;

risks of fire or explosion, or potential for exposure to Environmental Contaminants as a result of an accident or failure of a container, facility, or handling system that may cause a Release;

g. any other factor relating to Pollution Conditions that may indicate the existence of an imminent and substantial threat to human health, welfare, or the Environment.

3. If, at any time during the Effective Period of this AOC, NPC determines that information or data has been identified or developed indicating that any Pollution Conditions pose a potential threat to human health, welfare, or the Environment of a degree that reasonably requires the prompt development and implementation of an Interim Measure(s), NPC shall so notify the Division (1) orally within twenty-four (24) hours, and (2) in writing within three (3) days following the making of such determination, summarizing the immediacy and magnitude of the potential threat and explaining how NPC intends to address those Pollution Conditions.

4. Within fourteen (14) days following any requirement by the Division regarding an Interim Measure that is the subject of Division notification pursuant to Paragraph 1, NPC shall submit to the Division a Work plan for the development and implementation of the Interim Measure(s) ("Interim Measure(s) Work Plan") as identified in such notification. Each Interim Measure(s) Work Plan is subject to approval by the Division, and each Interim Measure(s) Work Plan shall address, as appropriate and without limitation:

- a. objectives of the Interim Measure(s);
- b. technical approach;
- c. engineering design and planning (including Division approval of all design plans and specifications);
- d. schedule for development and implementation of the Interim Measure(s);
- e. qualifications of personnel performing the development or implementation of the Interim Measure(s), including Contractor personnel;
- f. health and safety planning;
- g. data collection quality assurance, strategy, management, and analysis;
- h. construction quality assurance including inspection activities, sampling requirements, documentation, and certification of construction consistent with Division-

approved designs;

- i. Operation and Maintenance of the Interim Measure(s);
- j. document/data submittals for Division approval; and
- k. regular progress reporting during the development and implementation of the Interim Measure(s).

5. Interim Measure(s) shall, to the extent practicable, be consistent with the objectives of, and contribute to the performance of, any long-term Remedy at the Site.

6. Division approval of an Interim Measure(s) Work Plan and any Work undertaken by NPC pursuant thereto shall be governed by the other provisions of this AOC, including without limitation, the dispute resolution provisions of Section XX. In the case of a dispute related to an Interim Measure, the timeframes outlined in Section XX shall be shortened by one-half of the time allowed. The Division is entitled to take over the performance of an Interim Measure pursuant to Paragraph 13 (such paragraph titled "Work Takeover") of Section XXII (such section titled "Covenants by the Division and Reservation of Rights").

IX. PROJECT COORDINATORS AND KEY PERSONNEL

1. Designation of Project Coordinator. NPC and the Division shall each designate a Project Coordinator ("Project Coordinator") and Alternate Project Coordinator ("Alternate Project Coordinator") for the Site and will notify the Parties, in writing of the name, address and telephone number of such coordinators. The Project Coordinator shall be a representative of a team of individuals who have expertise to oversee implementation of the Scope of Work at or related to the Site. The Project Coordinator shall be responsible for overseeing the implementation of this AOC and for designating a person to act in his/her absence. The Division Project Coordinator will be the Division's designated representative for the Site. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Party at least seven (7) days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. NPC's Project Coordinator shall have the technical expertise sufficient to adequately oversee all aspects of the Work, or shall retain Key Personnel, as defined in Paragraph 3 of this Section, who have such expertise. He or she may assign other representatives, including other Contractors, to serve as a Site representative for oversight of performance of daily

operations during Site activities.

2. CEM Signature. All Work conducted for NPC by a Contractor shall be signed by a CEM and shall include the jurat language found in NAC 459.97285

3. For the purposes of this Section, the term "Key Personnel" is defined to mean those individuals who have primary responsibility for the direction of employees or subcontract personnel for major project tasks, outputs, or deliverables including, but not limited to, data collection, data interpretation, and report writing.

4. Unless the Division notifies NPC otherwise, the Division's Project Coordinator, Alternate Project Coordinator, and Emergency Contact shall be:

Project Coordinator

Staff Engineer III / RPE
Nevada Division of Environmental Protection
2030 E. Flamingo Rd, Suite 230
Las Vegas, NV 89119
TL: 702-486-2850
FX: 702-486-2863

Alternate Project Coordinator

Remediation Branch Supervisor
Nevada Division of Environmental Protection
2030 E. Flamingo Rd, Suite 230
Las Vegas, NV 89119
TL: 702-486-2850
FX: 702-486-2863

Emergency Contact

Spill Reporting Number (Reportable releases per NAC 445A.347)
888-311-6337

5. Unless NPC notifies the Division otherwise, NPC's Project Coordinator, Alternate Project Coordinator, and Emergency Contact shall be:

Project Coordinator

Supervisor, Environmental Services
Reid Gardner Generating Station MS #77
P.O. Box 279
501 Wally Kay Way
Moapa, NV 89025
TL: 702-579-1389
FX: 702-579-1885

Alternate Project Coordinator

Manager, Environmental Services, Coal
Nevada Power Company
6226 West Sahara Avenue, MS #30
Las Vegas, NV 89146
TL: 702-367-5767
FX: 702-227-2051

Emergency Contact

Environmental Services 24-Hour Emergency Response Number
702-598-7352

6. The absence of the Division Project Coordinator from the Site shall not be cause for the stoppage of Work.

7. To the maximum extent practicable, all communications from NPC to the Division, which shall include without limitation all Deliverables, documents, reports, approvals and other correspondence concerning the activities performed pursuant to this AOC, shall be in writing and shall be directed to the Division Project Coordinator and a copy provided to the Division's Alternate Project Coordinator.

8. Communications from the Division to NPC shall be directed to the responsible corporate officer discussed in Section XII (such section titled "Reporting Requirements") or Section XXV (such section titled "Notices and Deliverables"), and copied to NPC's Project Coordinator.

9. Authority of the Division Project Coordinators.

a. The Division's Project Coordinator or Alternate Project Coordinator shall have the authority to halt any Work required by this AOC and to take any Emergency Response pursuant to Section XVI.

b. The Division may designate other representatives, including, but not limited to, State employees, and State Contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this AOC.

10. Within thirty (30) days following the Effective Date of this AOC, and before the required Work begins, NPC shall notify the Division's Project Coordinator in writing of the names, titles and qualifications of any other Key Personnel, Contractors, and its personnel proposed to be used in carrying out the terms of this AOC. If Key Personnel or Contractors to be used to carry out the terms of the AOC are not known within the initial thirty (30) days of the Effective Date, NPC shall provide such notification of Key Personnel and Contractors to the Division at least thirty (30) days prior to their incorporation into performance of any Work, unless circumstances reasonably warrant shorter notice.

11. The qualifications of the Project Coordinator, Alternate Project Coordinator, and Key Personnel shall be subject to the Division's review and approval, for verification that such persons meet minimum technical background and experience requirements. The Division reserves the right to disapprove NPC Project Coordinator, Alternate Project Coordinator, or Key Personnel for good cause shown at any time during the Effective Period of this AOC. If the Division disapproves any Project Coordinator, Alternate Project Coordinator or Key

Personnel proposed by NPC to perform Work pursuant to this AOC, then NPC shall, within thirty (30) days after receipt from the Division of written notice of such disapproval, notify the Division in writing of the name, title, and qualifications of any replacement. The Division's disapproval under this Section shall be subject to review in accordance with Section XX ("Dispute Resolution") of this AOC.

12. During the Effective Period of this AOC, NPC shall notify the Division in writing of any changes or additions in the Key Personnel used to carry out the Work required by the AOC, providing their names, titles, and qualifications. The Division shall have the same right to approve changes and additions to such persons as it has hereunder regarding the initial notification.

13. Changes to personnel shall not be considered a modification to this AOC.

X. QUALITY ASSURANCE, SAMPLING, DATA ANALYSIS AND DATA AVAILABILITY

1. NPC shall use quality assurance, quality control, and chain of custody procedures for all characterization, treatability, design, compliance, monitoring, and risk assessment/closure samples consistent with current and applicable EPA Policies and Guidance.

2. Within the timeframe established by the schedule in the Scope of Work, NPC shall submit to the Division for approval, a Quality Assurance Plan ("QAP") for the Site that is consistent with the Scope of Work and applicable Policies and Guidance. Work plans shall reference and incorporate the Site QAP and, as applicable, contain Work plan-specific quality assurance/quality control ("QA/QC") and chain of custody procedures for all sampling, monitoring and analytical activities associated with the Work plan. Any deviations from the approved Site QAP and/or Work plan QA/QC procedures must be approved by the Division; must be documented, including reasons for the deviations, and must be reported in any applicable Deliverable.

3. If relevant to a proceeding, the Parties agree that validated sampling data generated in accordance with the QAP(s) and reviewed and approved by the Division shall be admissible as evidence, without objection, in any proceeding under this Agreement.

4. NPC shall ensure that all samples are collected and analyzed using Division approved procedures, accepted laboratory methods, and laboratories certified under Nevada

law. NPC shall use best efforts to ensure that its Contractor or contract laboratories obtain high quality data. NPC shall require that laboratories used for analysis, perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" ("SW -846") or other methods deemed satisfactory by the Division. NPC shall submit any deviations from the protocols proposed in any Work plan to the Division for its approval thirty (30) days prior to the commencement of analyses, except in extraordinary circumstances. The Division may reject any data that does not meet the requirements of the approved Work plan or EPA analytical methods and may require re-sampling and additional analysis.

5. NPC shall ensure that laboratories NPC or NPC's Contractor(s) use for analyses participate in a QA/QC program that is deemed acceptable to the Division. As part of such a program, and upon request by the Division, NPC shall ensure that Division personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by NPC in implementing this AOC. In addition, NPC shall ensure that such laboratories shall analyze all samples submitted by the Division for quality assurance monitoring. Such laboratories shall perform analyses of samples provided by the Division to demonstrate laboratory performance and the quality of analytical data. If the audit reveals deficiencies in a laboratory's performance or QA/QC, the Division may require re-sampling and additional analysis of any samples affected by the deficiencies.

6. Any deviations from the QAP must be approved by the Division, must be documented, including reasons for the deviations and must be reported in the applicable Deliverable.

7. The name(s), addresses, and telephone numbers of the analytical laboratories NPC proposes to use must be submitted to the Division for review and approval prior to Work being performed.

8. Upon request, NPC shall allow split or duplicate samples to be taken by the Division or its authorized representatives. NPC shall notify the Division not less than fourteen (14) days in advance of any sample collection activity unless the Division approves a shorter notice period, which approval shall not be unreasonably withheld. During sample collection activities conducted by NPC, the Division shall have the right to take any additional samples

that the Division deems necessary. Upon request, the Division shall allow NPC to take split or duplicate samples of any samples the Division takes as part of the oversight of NPC's implementation of the Work.

9. All final results of sampling, tests, modeling and other data generated by NPC, or on NPC's behalf pursuant to this AOC (not including raw data that has not been subject to QA/QC procedures), shall be submitted to the Division. NPC shall submit to the Division two (2) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of NPC with respect to the Site and/or the implementation of this AOC unless the Division agrees otherwise. NPC shall make all raw data available to the Division for review on request, and shall submit such data to the Division on written request. The Division will provide to NPC validated data generated by the Division, unless it is exempted or prohibited from disclosure by any applicable federal or State law or regulation.

10. Notwithstanding any provision of this AOC, the Division hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under any applicable statutes or regulations.

XI. SITE ACCESS AND INSTITUTIONAL CONTROLS

1. The Division, its Contractors, employees, and/or any duly designated Division representatives carrying out the authority of the Division shall have NPC's permission, at all reasonable times, upon notice to NPC's Project Coordinator, Alternate Project Coordinator, or Emergency Contact and in conformance with any health and safety requirements at the Site, to enter and freely move about the Site whether or not Work is being performed pursuant to this AOC for the purposes of, *inter alia*: (1) discussing the Work being performed under this AOC with NPC or relevant Contractor personnel; (2) inspecting conditions, activities, the results of activities, Records, operating logs, and contracts related to the Site or NPC and its Contractors pursuant to this AOC; (3) reviewing the progress of NPC in carrying out the terms of this AOC; (4) conducting such tests, sampling, or monitoring as the Division or its authorized representatives deem necessary; (5) using a camera, sound recording device or other documentary type equipment; (6) verifying the Records submitted to the Division by NPC; and (7) inspecting and copying all non-privileged Records, files, photographs, documents, sampling and monitoring data, and other writings or materials related to Work undertaken in carrying out

the requirements of this AOC consistent with the requirements of this AOC. Nothing herein shall be interpreted as limiting, waiving or otherwise affecting (1) the Division's right of entry or inspection under state or federal laws; (2) the Division's rights to require, or enforcement authority related to, Institutional Controls or Engineering Controls including any land or water use restrictions; (3) any attorney-client, work-product or other privilege with respect to any matter affecting NPC; or (4) NPC's right to seek confidential treatment of any matter pursuant to applicable law.

2. To the extent that the Site or any other property to which access is required for the performance of Work required under this AOC is owned or controlled by persons or entities other than NPC, NPC shall use best efforts pursuant to Paragraph 6 of this Section to obtain access to such property for NPC, and the Division and its authorized representatives, within thirty (30) working days after the date that the need for access becomes known to NPC. The Division may provide reasonable assistance to NPC in the event that any third-party property owner refuses to provide access.

3. NPC agrees to indemnify, defend and hold harmless the Division as provided in Section XVIII (such section titled "Indemnification"), for any and all claims arising from NPC's, or its officers', employees', agents' or Contractors' activities described in Paragraph 2 of this Section.

4. Nothing in this Section shall be construed to limit or otherwise affect NPC's liability and obligations with respect to any Release of Environmental Contaminant(s) or Pollution Condition(s).

5. If the Site, or any other property where Institutional Controls regarding land or water use restrictions are needed to implement this AOC, is owned or controlled by NPC, NPC shall, commencing on the Effective Date of this AOC, refrain from using the Site, or such other property on which Work is being performed in any manner that would interfere with or adversely affect the integrity or effectiveness of the Response Action (s) to be implemented pursuant to this AOC.

6. For purposes of this Section, "best efforts" shall include, at a minimum: (1) a certified letter from NPC to the present owners of such property requesting access agreements to permit NPC and the Division, including its authorized representatives, to access such

property, and the payment of reasonable compensation in consideration of granting access or access easements; (2) the payment of reasonable sums of money in consideration of any land or water use restriction, easements, covenants, Institutional Controls or agreements required by this Section; or (3) compliance with federal and state laws, regulations and policies addressing access, easements, covenants, Institutional Controls or agreements, including but not limited to such actions as are contemplated by NRS 459.930 (such section titled "Immunity from liability for certain persons for response actions and cleanup with respect to certain real property at which a hazardous substance has been or may have been released"). Any such access agreement(s) or restriction(s) shall be incorporated by reference into this AOC upon execution. NPC shall provide to the Division's Project Coordinator a copy of each such access agreement or restriction. In the event that any necessary agreement for access is not obtained within thirty (30) days following approval of any Work plan for which access is required, or following the date that the need for access became known to NPC, NPC shall notify the Division thereafter regarding both the efforts undertaken to obtain access and its failure to obtain such access agreement. The Division shall cooperate with NPC in obtaining access agreements or restrictions, but NPC shall pay any just compensation required for any agreements or restrictions as described herein. In the event that the Division obtains access, NPC shall undertake Division approved Work on such property. The Division may, as it deems appropriate, assist NPC in obtaining land or water use restrictions, either in the form of contractual agreements or in the form of easements, covenants, or Institutional Controls running with the land. NPC shall reimburse the Division in accordance with the procedures in Section XVII ("Reimbursement of Division Oversight Costs"), for all costs incurred, direct or indirect, by the Division in obtaining such access or land or water use restrictions including, but not limited to, the cost of attorney time.

7. Division officials, agents, employees, Contractors, subcontractors, or representatives shall be safety trained by NPC before entry to the Site and shall have any required safety equipment issued by NPC during the Site visit.

XII. REPORTING REQUIREMENTS

1. Beginning with the first full calendar quarter following the Effective Date, and throughout the Effective Period of this AOC, and in addition to any other requirement of this

AOC, NPC shall submit to the Division a written quarterly progress report. The report shall: (a) describe the actions which have been taken toward achieving compliance with this AOC during the previous quarter; (b) include a summary of all results of sampling and tests and all other data received or generated by NPC or its Contractors or agents in the previous quarter; (c) identify all Work plans, plans and other deliverables required by this AOC that were completed and submitted during the previous quarter; (d) describe all actions including, but not limited to, data collection and implementation of Work plans that are scheduled for the next quarter and provide other information relating to the progress of construction including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the Work plans or other schedules that NPC has proposed to the Division or that have been approved by the Division; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous quarter and those to be undertaken in the next quarter.

2. NPC shall submit quarterly progress reports to the Division by the twenty-eighth (28th) day of the month following the end of each calendar quarter. If requested by the Division, NPC shall also provide briefings for the Division, upon reasonable notice, to discuss the progress of the Work.

3. NPC shall notify the Division of any change in the schedule described in the quarterly progress report for the performance of any activity, including, but not limited to, data collection and implementation of Work plans, no later than fourteen (14) days prior to the performance of the activity.

4. NPC is expected to report any unexpected occurrence at the Site that is related to Work conducted in compliance with this AOC. Unexpected occurrences include, but are not limited to, interruptions of remediation, unusual or unanticipated malfunctions, upsets, interruptions, delays, slowdowns, accelerations, and other discoveries that are not subject to other reporting requirements in this AOC.

5. Upon the occurrence of any event that NPC is required to report, NPC shall, within 24 hours of discovery such event, orally notify the Division's Project Coordinator or

Alternate Project Coordinator if the Division's Project Coordinator is unavailable. If neither the Division's Project Coordinator nor Alternate Project Coordinator is available, then the Division's Chief of the Bureau of Corrective Actions shall be the point of contact. In no case will this Paragraph relieve NPC from complying with State reporting requirements contained in NAC § 445A.347 (such section titled "Notice Required") when any such reportable event occurs.

6. Within twenty (20) days of the discovery of such an event, NPC shall furnish to the Division a written report, signed by the Company's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days after completion of the measures taken in response to such an event, NPC shall submit a report setting forth all actions taken in response thereto.

7. NPC shall submit an original and at least two (2) copies of all Deliverables required by the Scope of Work or any other data or approved plans to the Division in accordance with the schedules set forth in such plans or the Scope of Work pursuant to the terms and conditions of this AOC. One copy shall be a paper copy and one copy shall be an electronic copy. The electronic copy shall be in a form acceptable to the Division. Deliverables shall be hand delivered, sent by certified mail - return receipt requested, sent by overnight parcel delivery service, or sent by verified facsimile transmission to the Division's Project Coordinator in accordance with Section XXV (such section titled "Notices and Deliverables").

8. All Deliverables and other documents submitted by NPC to the Division (other than the quarterly progress reports referred to above), which purport to document NPC's compliance with the terms of this AOC shall be signed and certified by a responsible corporate officer of NPC. A responsible corporate officer means: a president, secretary, treasurer, general manager, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation.

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

I certify that this document and all attachments submitted to the Division were prepared under the direction or supervision of NPC in accordance with a system designed to gather and evaluate the information by appropriately

qualified personnel. Based on my inquiry of the person or persons who manage the system(s) or those directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted and provided by NPC is, to the best of my knowledge and belief, true, accurate, and complete in all material respects. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____
Company: _____
Date: _____

10. In addition, all Deliverables and other documents submitted by NPC to the Division that are required under Nevada Law to be prepared or submitted by a Certified Environmental Manager shall be signed and certified by the CEM responsible for the project. These Deliverables shall include the Jurat required by NAC 459.97285 and shall be in the following form:

I hereby certify that I am responsible for the services described in this document and for the preparation of this document. The services described in this document have been provided in a manner consistent with the current standards of the profession and to the best of my knowledge comply with all applicable federal, state, and local statutes, regulations, and ordinances. I hereby certify that all laboratory analytical data was generated by a laboratory certified by the NDEP for each constituent and media presented herein.

Signature: _____
Name: _____
Title: _____
Company: _____
Date: _____
EM Certificate Number: _____
EM Expiration Date: _____

XIII. DIVISION APPROVAL OF PLANS AND OTHER SUBMISSIONS

1. After review of any Deliverable, which is required to be submitted for approval pursuant to this AOC, the Division shall: (a) approve, in whole or in part, the Deliverable; (b) approve the Deliverable upon specified conditions; (c) disapprove, in whole or in part, the Deliverable, directing that NPC modify the Deliverable; or (d) any combination of the above.

The Division will notify NPC of the decision in writing within a reasonable time after submittal by NPC.

2. In the event of approval or approval upon conditions pursuant to Paragraph 1 (a) or (b), NPC shall proceed to take any action required by the Deliverable, as approved by the Division subject only to its right to invoke the dispute resolution procedures set forth in Section XX with respect to the conditions made by the Division. The Division retains its right to seek stipulated penalties, as provided in Section XXI in the event NPC fails to implement the approved Deliverable.

3. Upon receipt of a notice of disapproval pursuant to Paragraph 1, NPC shall, within fourteen (14) days or such longer time as specified by the Division in such notice, correct the deficiencies and resubmit the Deliverable for approval. Any stipulated penalties applicable to the Deliverable, as provided in Section XXI, may accrue during the 14-day period or otherwise specified period if NPC fails to correct the deficiency or fails to resubmit the Deliverable to the Division. If NPC submits an approvable Deliverable within the 14-day period or otherwise specified period, the Division will not assess stipulated penalties.

4. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 1, NPC shall proceed, at the direction of the Division, to take any action required by any non-deficient portion of the Deliverable. Implementation of any non-deficient portion of a Deliverable shall not relieve NPC of any liability for stipulated penalties under Section XXI as to the deficient portion of the Deliverable, subject to Paragraph 3.

5. In the event that a resubmitted Deliverable, or portion thereof, is disapproved by the Division, the Division may again require NPC to correct the deficiencies, in accordance with the preceding Paragraphs, or the Division retains the right to develop the Deliverable. NPC shall implement any such Deliverable as developed by the Division, subject only to its right to invoke the dispute resolution procedures set forth in Section XX as to the portions developed by the Division.

6. If upon resubmission, a Deliverable is disapproved by the Division, NPC shall be deemed to have failed to submit such Deliverable timely and adequately unless NPC invokes the dispute resolution procedures set forth in Section XX and the Division's action is overturned pursuant to that Section. The dispute resolution provisions of Section XX and the

stipulated penalty provisions of Section XXI shall govern the implementation of the Work and accrual and payment of any stipulated penalties during a period of dispute resolution. If the Division's disapproval is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally due.

7. All Deliverables required by the Division under this AOC shall, upon approval or development by the Division, be incorporated by reference into and made enforceable under this AOC. In the event the Division approves a portion of a Deliverable required by the Division under this AOC, the approved portion shall be enforceable under this AOC.

XIV. CORRECTIVE ACTION PERFORMANCE STANDARDS

1. The Corrective Action Design(s) required in the Scope of Work shall provide for design, construction, and implementation of the Remedy(ies). Upon their approval by the Division, the Corrective Action Design(s) shall be incorporated into and become enforceable under this AOC. Corrective Action Standards approved by the Division shall be incorporated into and become enforceable under this AOC.

2. NPC shall continue to implement the Remedy(ies) and Operations & Maintenance until the Corrective Action Standards are achieved and for so long thereafter as is otherwise required under this AOC.

XV. DETERMINATION OF COMPLETION

A. No Further Action.

1. If at any time NPC believes that sampling results, the performance of other Work or other circumstances demonstrate that, with respect to any portion of the Site, no further Response Actions are required or necessary to protect human health and the Environment, NPC may propose that the Division issue a written notice to that effect. The Division's disapproval of or failure to act upon (within a reasonable time) a proposal made under this Section may be subject to dispute resolution under Section XX.

2. In making any determination hereunder, the Division may consider within its statutory discretion any and all relevant factors including, without limitation:

a. existing and potential or planned land uses for such portion of the Site and Environmental and human exposure threats associated therewith;

b. whether the issuance of such written notice would preclude or significantly and adversely affect the investigation or Corrective Action of Environmental Contaminants at or associated with the Site;

c. the sampling data or other information and circumstances relied upon by NPC; and

d. applicable or relevant and appropriate environmental cleanup standards (including, without limitation, any Division Policies and Guidance regarding contaminated soil and groundwater remediation).

3. The issuance by the Division of a written determination of "No Further Action" hereunder shall not constitute or be construed as either: (1) a release, covenant not to sue, or any other limitation whatsoever on the authority of the Division to respond to subsequently-identified Environmental conditions at or associated with the Site; (2) a determination, decision or opinion regarding the suitability of any particular land use for the Site; or (3) a limitation on the Division's ability to require that Institutional Controls be recorded on the property with the Clark County Recorder's office.

B. Completion of Sub-Area Corrective Action.

1. Within ninety (90) days after NPC concludes that the Corrective Action Plan(s) for a Sub-Area has/have been fully performed and the Corrective Action Standards have been attained, NPC shall schedule and conduct a pre-determination inspection to be attended by NPC and the Division. If, after the pre-determination inspection, and within thirty (30) days of the inspection, NPC still believes that the Corrective Action(s) has/have been fully performed, that the Corrective Action Standards have been attained and that no further Work is necessary to protect human health and the Environment, NPC may propose that the Division acknowledge this status in writing. NPC shall submit such a proposal to the Division in writing, together with a report including data and analysis to support its opinion. In the report, a CEM and NPC's authorized representative shall state that the Corrective Action(s) has/have been completed in full satisfaction of the requirements of this AOC in accordance with certification requirements in Section XII ("Reporting Requirements"). The written report shall include as-built drawings signed and stamped by a professional engineer. Upon receipt of such proposal and report, the Division will review the documentation and take appropriate action to confirm

that the Work is complete pursuant to Section XIII (such section titled "Division Approval of Plans and Other Submissions"). The Division shall acknowledge this status in writing by providing NPC with a "No Further Action" letter. A determination of "No Further Action" regarding Corrective Action(s) shall not affect NPC's remaining obligations under this AOC.

2. If, after completion of the pre-determination inspection and receipt and review of the written report, the Division determines that the Corrective Action(s) or any portion thereof has/have not been completed in accordance with this AOC or that the Corrective Action Standards have not been achieved, the Division will notify NPC in writing of the activities that must be undertaken by NPC pursuant to this AOC to complete the Corrective Action(s) and achieve the Corrective Action Standards. The Division will set forth in the notice a schedule for performance of such activities consistent with the AOC and the Scope of Work or require NPC to submit a schedule to the Division for approval pursuant to Section VIII (such section titled "Division Approval of Plans and Other Deliverables"). NPC shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XX.

C. Completion of the Work.

1. Within ninety (90) days after NPC concludes that all elements of the Scope of Work (including O & M and any long-term monitoring) have been fully performed, NPC shall schedule and conduct a pre-determination inspection to be attended by NPC and the Division. If, after the pre-determination inspection, NPC still believes that the Work has been fully performed and that no further Work is necessary to protect human health and the Environment, NPC may propose that the Division acknowledge this status in writing. NPC shall submit such a proposal to the Division in writing, together with a report including data and analysis to support its opinion. In the report, a CEM and NPC authorized representative shall state that the Work has been completed in full satisfaction of the requirements of this AOC in accordance with certification requirements in Section XII (such section titled "Reporting Requirements"). Upon receipt of such proposal and report, the Division will review the documentation and take appropriate action to confirm that the Work is complete pursuant to Section XIII (such section titled "Division Approval of Plans and Other Deliverables").

2. If, after review of the written report, the Division determines that any portion of the Work has not been completed in accordance with this AOC, the Division will notify NPC in writing of the activities that must be undertaken by NPC pursuant to this AOC to complete the Work. The Division will set forth in the notice a schedule for performance of such activities consistent with the AOC and the Scope of Work or require NPC to submit a schedule to the Division for approval pursuant to Section XIII (such section titled "Division Approval of Plans and Other Deliverables"). NPC shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XX.

3. If the Division concludes, based on the initial or any subsequent request by NPC for a determination that the Work has been performed in accordance with this AOC, the Division will so notify NPC in writing.

XVI. EMERGENCY RESPONSE

1. In the event of any action or occurrence during the performance of the Work, which causes or threatens a Release of Waste Material from the Site that constitutes an emergency situation or may present an imminent and substantial threat to human health or welfare or the Environment, NPC shall, subject to Paragraph 2 of this Section, immediately take all appropriate action to prevent, abate, or minimize such Release or threat of Release, and shall immediately notify the Division's Project Coordinator, or, if the Project Coordinator is unavailable, the Division's Alternate Project Coordinator. If neither of these persons is available, NPC shall notify the Chief of the Bureau of Corrective Action. In no case will this Paragraph relieve NPC from complying with State reporting requirements contained in NAC 445A.347 (such section titled "Notice Required") when any such reportable event occurs. NPC shall take such actions in consultation with the Division's Project Coordinator or other available authorized Division officer and in accordance with all applicable provisions of the health and safety plans, the contingency plans, and any other applicable plans or documents developed pursuant to the Scope of Work. In the event that NPC fails to take appropriate Response Action(s) as required by this Section, and the Division takes such action instead, NPC shall reimburse the Division all costs of the response action pursuant to Section XVII (such section titled "Reimbursement of Division Oversight Costs") and NPC will, if applicable, be subject to

the stipulated penalties set forth in Section XXI. In the event that the Division is required to take action pursuant to this Paragraph, NPC may not dispute the Division's actions under the dispute resolution provisions of this AOC prior to the Division taking such actions; however, NPC may later dispute only the Division's determination of imminent and substantial threat.

2. Nothing in the preceding Paragraph or in this AOC shall be deemed to limit any authority of the Division: (a) to take all appropriate action to protect human health and the Environment or to prevent, abate, respond to, or minimize an actual or threatened Release of Waste Material on, at, or from the Site or (b) to direct or order such action, or seek an order from the Court, to protect human health and the Environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXIII (such section titled "Covenants by the Nevada Power Company and Reservation of Rights").

XVII. REIMBURSEMENT OF DIVISION OVERSIGHT COSTS

1. Following the Effective Date and for the Effective Period of this AOC, NPC shall reimburse the Division for costs reasonably incurred for oversight of this AOC. NPC shall advance the Division \$100,000 within thirty (30) days after the Effective Date of this AOC. The Division shall draw upon the advance to pay its oversight costs and NPC shall remit to the Division payment on a quarterly basis the amount necessary to restore the advanced funds to \$100,000 as described in Paragraphs 2 and 3. Such payments shall cover all reasonable direct and indirect costs incurred by the Division in overseeing, administering, or performing Work regarding NPC's implementation of the requirements of this AOC. Costs incurred may also include reasonable costs associated with conducting discussions regarding disputes that may arise under this AOC (except where the Division's actions are not upheld in the dispute resolution process). Reimbursable costs shall not include any direct or indirect costs incurred in connection with a matter subject to dispute resolution after the filing of a Statement of Position (as defined in Section XX below) by NPC. Reimbursable costs shall exclude the costs and expenses incurred by the Division's consultants and Contractors, which will be paid directly by NPC as described herein. The Division shall be responsible for selecting and managing the work performed by its consultants and Contractors, provided that such consultants and Contractors shall contract with NPC for the services to be provided under this

AOC, shall meet the contracting procedures customarily used by NPC, including those related to the content of invoices, and shall submit their invoices directly to NPC. The consultants and Contractors shall report directly to the Division and send a copy of all reports to NPC. NPC shall forward each invoice to the Division for review and approval and shall pay such invoice after approval of the Division.

2. The Division shall submit to NPC invoices for its oversight and expenses on a quarterly basis. Submittals shall be made promptly after the Division's preparation and internal review. Such invoices shall contain reasonable detail regarding the work performed. To the extent practicable, the Division will identify in reasonable detail the costs and expenses incurred for each task performed by the Division. Upon request, the Division shall make available to NPC all relevant documents in support of its invoices for inspection or audit by NPC.

3. All payments due by NPC hereunder shall be received by the Division within sixty (60) days of NPC's receipt of the invoice, shall reference the name of the Site, the Company name and address, the progress billing number identified in the Division invoice and shall be by a check payable to the "State of Nevada Hazardous Waste Fund" for the full amount due and owing to:

Nevada Division of Environmental Protection
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701
Attn: Chief, Bureau of Corrective Actions

4. Upon termination of this AOC pursuant to Section XXXV, NPC shall receive the balance of any remaining funds advanced pursuant to this Section XVII.

5. NPC may contest payment of any Oversight Costs under this Section if it determines that the Division has made an accounting error or if it alleges that a cost item that is included represents costs that are unreasonable or inconsistent with the Work. Such objection shall be made in writing within thirty (30) days of receipt of the invoice and must be sent to the Division pursuant to Section XXV (such section titled "Notices and Submissions"). Any such objection shall specifically identify the contested Oversight Costs and the basis for objection. In the event of an objection, NPC shall within sixty (60) days pay all uncontested Oversight Costs to the State in the manner described in Paragraph 3 and NPC shall initiate the

dispute resolution procedures in Section XX. If the Division prevails in the dispute, within fifteen (15) days of the resolution of the dispute, NPC shall pay the sums due (with accrued Interest) to the Division in the manner described in Paragraph 3. If NPC prevails concerning any aspect of the contested costs, NPC shall pay that portion of the costs (plus associated accrued Interest) for which they did not prevail to the Division. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX shall be the exclusive mechanisms for resolving disputes regarding NPC's obligation to reimburse the Division for its Oversight Costs.

6. In the event that the payments required by this Section are not made within sixty (60) days of NPC's receipt of the invoice, NPC shall pay Interest on the unpaid balance. The Interest on Oversight Costs shall begin to accrue on the due date of the invoice. The Interest shall accrue through the date of NPC's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the Division by virtue of NPC's failure to make timely payments under this Section, including the assessment of stipulated penalties. NPC shall make all payments required by this Paragraph in the manner described in Paragraph 3.

XVIII. INDEMNIFICATION

1. The Nevada Power Company's Indemnification of the Division. The Division does not assume any liability by entering into this AOC. NPC shall indemnify, save and hold harmless the Division, and its officials, agents, employees, Contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of NPC, its officers, directors, employees, agents, Contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this AOC. Further, NPC agrees to pay the Division all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the Division based on negligent or other wrongful acts or omissions of NPC, its officers, directors, employees, agents, Contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this AOC. This indemnity shall not apply to any negligent or other wrongful acts or omissions of the Division, or any of its employees, agents, contractors,

subcontractors, and any persons acting on its behalf or under its control. The Division shall not be held out as a party to any contract entered into by or on behalf of NPC in carrying out activities pursuant to this AOC. Neither NPC nor any such Contractor shall be considered an agent of the State.

2. The Division shall give NPC notice of any claim for which the Division plans to seek indemnification pursuant to Paragraph 1 within sixty (60) days of service of a complaint, and shall not settle any such claims without written approval from NPC, which approval shall not be unreasonably withheld. The Division may tender the defense of such a claim to NPC.

3. NPC waives all claims against the Division for damages or reimbursement or for set-off of any payments made or to be made to the Division, arising from or on account of any contract, agreement, or arrangement between NPC and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, NPC shall indemnify and hold harmless the Division with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between NPC and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. This indemnity shall not apply to any negligent or other wrongful acts or omissions of the Division, or any of its employees, agents, Contractors, subcontractors and any persons acting on its behalf or under its control including without limitation any Contractors with whom NPC contracts under Section XVII, Paragraph 1.

XIX. FORCE MAJEURE

1. NPC shall perform the requirements of this AOC within the time limits prescribed, unless the performance is prevented or delayed by events that constitute a *force majeure*. NPC shall have the burden of proving such a *force majeure*. A *force majeure*, for purposes of this AOC, is defined as any event arising from causes not reasonably foreseeable or beyond the reasonable control of NPC, or of any person or entity controlled by NPC, which delays or prevents the timely performance of any obligation under this AOC despite NPC's best efforts to fulfill such obligation. A *force majeure* may include without limitation: extraordinary weather events, natural disasters, strikes and lockouts [by other than NPC employees], national emergencies, wars, acts of terror, delays in obtaining access or use of property not owned or

controlled by NPC despite timely best efforts to obtain such access or use approval, and delays in obtaining any required approval or permit from the Division or any other public agency that occur despite NPC's complete, timely and appropriate submission of all information and documentation required for approval or applications for permits within a timeframe that would allow the Work to proceed in a manner contemplated by the schedule of the AOC. A *force majeure* does not include (i) increased costs of the Work to be performed under the AOC, (ii) financial inability to complete the Work or (iii) normal weather events.

2. If any event occurs or has occurred that may delay the performance of NPC's obligations under this AOC, whether or not caused by a *force majeure* event, NPC shall notify the Division orally within three (3) Days of when NPC first knew that the event might cause a delay. If NPC wishes to claim a *force majeure* event, then within seven (7) Days thereafter, NPC shall provide to the Division a written explanation and description of the obligation(s) delayed or affected by the *force majeure* event; the reasons for the delay; the anticipated duration of the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; NPC's rationale for attributing such delay to a *force majeure* event; and a statement as to whether, in the opinion of NPC, such event may cause or contribute to an imminent and substantial hazard to human health, welfare, or the Environment. NPC shall include with any notice all available documentation supporting its claim that the delay was attributable to a *force majeure*. Failure to comply with the above requirements shall preclude NPC from asserting any claim of *force majeure* for that event.

3. The Division shall notify NPC in writing of its *force majeure* determination within ten (10) Days after receipt of the written notice from NPC. If the Division determines that the delay has been or will be caused by circumstances constituting a *force majeure* event, the time for performance of the obligations under this AOC that are affected by the *force majeure* event will be extended by the Division in writing for such time as the delay that was occasioned by that *force majeure* event. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation, unless NPC can demonstrate to the Division's satisfaction that more than one obligation was affected by the *force majeure* event.

4. In the event that the Division and NPC cannot agree that any delay or failure has

been or will be caused by circumstances constituting a *force majeure*, or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with the dispute resolution provisions set forth in Section XX ("Dispute Resolution") of this AOC.

XX. DISPUTE RESOLUTION

1. The Parties agree that the procedures contained in this Section are the sole and exclusive procedures for resolving disputes arising under this AOC. If NPC fails to follow any of the requirements contained in this Section, then they shall have waived its rights to further consideration of the dispute in issue.

2. If NPC disagrees with any determination by the Division pursuant to this AOC, for which NPC has reserved its right to dispute resolution, NPC shall notify the Division in writing of the dispute ("Notice of Dispute") within fifteen (15) Days.

3. Any dispute that arises under or with respect to this AOC shall in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed fifteen (15) Days following the date the dispute arises, unless such period is extended by written agreement of the Parties. The dispute shall be considered to have arisen when the Division receives a "Notice of Dispute."

4. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the Division shall be considered binding unless, within ten (10) Days after the conclusion of the informal negotiation period, NPC invokes the formal dispute resolution procedures of this Section by serving on the Division Administrator a written "Statement of Position" which shall set forth the specific points of the dispute, the position NPC claims should be adopted as consistent with the requirements of this AOC, the basis for NPC's position, any factual data, analysis or opinion supporting that position, any supporting documentation relied upon by NPC, and any matters which it considers necessary for the Administrator's determination. The "Statement of Position" also may include a request for an opportunity to make an oral presentation of factual data, supporting documentation and expert testimony to the Administrator and to answer questions that the Administrator may pose. It is within the sole discretion of the Administrator to grant or deny a request for an oral presentation.

5. Within fifteen (15) days following receipt of a Statement of Position, or after any

oral presentation by NPC, the Administrator shall issue his/her decision. The Administrator's written decision shall include a response to NPC's arguments and evidence. The written decision of the Administrator shall be incorporated into and become an enforceable element of this AOC, and shall be considered the Division's final decision as provided in Paragraph 6 of this Section.

6. As to any final Division decision, NPC may, as appropriate, pursue the dispute before the State Environmental Commission ("SEC") as a "contested case" pursuant to NRS §§ 233B.010 *et seq.* and NAC §§ 445B.875 – 445B.899, and shall be entitled to judicial review as provided therein.

XXI. STIPULATED PENALTIES

1. The Division may assess stipulated penalties in the amounts set forth in Paragraph 3 for failure to comply with the requirements of this AOC specified below, unless excused under Section XIX (such section titled "Force Majeure").

2. "Compliance" by NPC shall include completion of the activities under this AOC or any Work plan or other plan approved under this AOC identified below in accordance with all applicable requirements of law, this AOC, the Scope of Work, and any plans or other documents approved by the Division pursuant to this AOC and within the specified time schedules established by and approved under this AOC.

3. Stipulated Penalty Amounts - The following stipulated penalties shall accrue per violation per Day for any noncompliance identified:

<u>Maximum Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 3,500.00	1st through 14th Day
\$ 5,500.00	15th through 30th Day
\$11,000.00	31st Day and beyond

4. All penalties shall begin to accrue on the Day after the complete performance is due or the Day a violation occurs, and shall continue to accrue through the final Day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this AOC.

5. Following the Division's determination that NPC has failed to comply with a requirement of this AOC, the Division shall give NPC written notification of the same and

describe the noncompliance. If stipulated penalties are assessed, the Division shall send NPC a written demand for the payment of the penalties. Failure to pay Division Oversight Costs pursuant to Section XVII ("Reimbursement of Division Oversight Costs") can be included as a determination of failure to comply pursuant to this Section.

6. All penalties accruing under this Section shall be due and payable to the Division within sixty (60) Days of NPC's receipt from the Division of a demand for payment of the penalties, unless NPC invokes the dispute resolution procedures under Section XX. The amount of the stipulated penalty is not subject to appeal. NPC can only appeal the underlying violation or act of non-compliance forming the basis for the stipulated penalty, including but not limited to the Day a violation is alleged to have occurred and the Day when correction of the noncompliance was completed. All payments to the State under this Section shall be paid by certified or cashier's check(s) made payable and mailed as detailed in Section XVII (such section titled "Reimbursement of Division Oversight Costs") and shall indicate that the payment is for stipulated penalties, and shall reference the Division, the Site and the name and address of the Company making payment.

7. The payment of penalties shall not alter in any way NPC's obligation to complete the performance of the Work required under this AOC.

8. Except as provided in Paragraph 10 below, penalties assessed by the Division shall continue to accrue as provided in Paragraph 4 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of the Division that is not appealed to the Environmental Commission, accrued penalties determined to be owing shall be paid to the Division within sixty (60) Days of the agreement or the receipt of the Division's decision or order;

b. If the dispute is appealed to the Environmental Commission and the State prevails in whole or in part, NPC shall pay all accrued penalties determined to be owed to the Division within sixty (60) Days of receipt of the decision or order, except as provided in Subparagraph c below;

c. If the Environmental Commission's decision is appealed by any Party, NPC shall pay all accrued penalties determined to be owing to the State into an interest-

bearing escrow account within sixty (60) Days of receipt of the Commission's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) Days. Within sixty (60) Days of receipt of the final District court decision, the escrow agent shall pay the balance of the account to the Division or to NPC to the extent that they prevail.

9. Stipulated penalties shall not accrue with respect to a decision by the Administrator under Paragraph 3 of Section XX ("Dispute Resolution"), during the period, if any, beginning on the 16th Day after the receipt of a Statement of Position by the Administrator until the date that the Administrator issues a decision.

10. If NPC fails to pay stipulated penalties when due, the State may institute proceedings to collect the penalties, as well as Interest. NPC shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 6.

11. If the Division chooses to assess stipulated penalties for a violation by NPC, such assessment shall be the exclusive remedy of the Division with respect to the payment of penalties.

12. Notwithstanding any other provision of this Section, the Division may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this AOC.

XXII. COVENANTS BY THE DIVISION AND RESERVATION OF RIGHTS

1. **Covenants Not to Sue.** In consideration of the actions that will be performed and the payments that will be made by NPC under the terms of the AOC, and except as specifically provided in Paragraph 5 of this Section, the Division covenants not to sue or to take administrative action against the Company pursuant to Environmental Laws, including but not limited to, Nevada State Law, CERCLA § 107(a), the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k, or the Clean Water Act, 33 U.S.C. §§ 1251-1387 for matters addressed by this AOC. These covenants not to sue shall take effect upon the receipt by the Division of the payments required by Paragraph 3 of Section XVII (such section titled "Reimbursement of Division Oversight Costs"). These covenants not to sue are conditioned upon the satisfactory performance by NPC of its obligations under this AOC.

2. **The Division's Pre-Determination of Completion Reservations.** Notwithstanding any other provision of this AOC, the Division reserves, and this AOC is without prejudice to,

the right to institute civil or administrative proceedings, or to issue an administrative order seeking to compel NPC:

a. to perform further Response Actions relating to the Site for matters not the subject of Work approved by the Division and being performed by NPC; or

b. to reimburse the Division for additional costs of response; if prior to determination of completion of the Work under Section XV:

(1) conditions at the Site, previously unknown to the Division, are discovered, or

(2) information, previously unknown to the Division, is received, in whole or in part, and these previously unknown conditions or information together with any other relevant information indicates that the Corrective Action (s) are not protective of human health or the Environment.

3. The Division's Post-Determination of Completion Reservations. Notwithstanding any other provision of this AOC, the Division reserves, and this AOC is without prejudice to, the right to institute civil or administrative proceedings, or to issue an administrative order seeking to compel NPC:

a. to perform further Response Actions relating to the Site; or

b. to reimburse the Division for additional costs of response; if subsequent to determination of completion of the Work under Section XV:

(1) conditions at the Site, previously unknown to the Division, are discovered, or

(2) information, previously unknown to the Division, is received, in whole or in part, and these previously unknown conditions or this information together with other relevant information indicate that the Remedy(ies) is/are not protective of human health or the Environment.

4. For purposes of Paragraph 2, the information and the conditions known to the Division shall include only that information and those conditions known to the Division as of the date the appropriate Work plans are approved. For purposes of Paragraph 3, the information and the conditions known to the Division shall include only that information and those conditions known to the Division as of the date of determination of completion of the Work as

set forth in a "No Further Action" letter, the administrative record supporting the determination of "No Further Action", or the post-"No Further Action" administrative record.

5. General Reservations of Rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 1 of this Section. The Division reserves, and this AOC is without prejudice to, all rights against NPC with respect to all other matters, including but not limited to, the following:

- a. claims based on a failure by NPC to meet a requirement of this AOC;
- b. liability arising from the past, present, or future disposal, Release, or threat of Release of Waste Materials outside of the Site;
- c. liability for future disposal of Waste Material at the Site, other than as provided in the Work or otherwise ordered by the Division;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. criminal liability;
- f. liability for violations of federal or state law which occur during or after implementation of the Corrective Action; and
- g. liability, prior to issuance of a NFA letter, for additional response actions that the Division determines are necessary to achieve Corrective Action Standards, but that cannot be required pursuant to Section XXIX (such section titled "Modification"), Paragraph 4.

6. The Division reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to NPC's failure to comply with any of the requirements of this AOC or of any requirement of federal or state laws, regulations, or permit conditions. Except as otherwise provided in this Section, this AOC shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which the Division has under any applicable Environmental Law or common law authority of the State. This AOC in no way relieves NPC of its responsibility to comply with any federal, State or local law or regulation.

7. The Division reserves the right to disapprove Work performed by NPC pursuant to this AOC subject to the dispute resolution provisions in Section XX.

8. The Division reserves any and all legal rights and equitable remedies available to

enforce (1) the provisions of this AOC, or (2) any applicable provision of State or federal law.

9. If the Division determines that activities in compliance or noncompliance with this AOC have caused a Release of Environmental Contaminant that may present an imminent and substantial hazard to human health, welfare, and/or the Environment, the Division may order NPC to stop further implementation of this AOC for such period of time as the Division determines may be needed to abate any such Release and/or to undertake any action which the Division determines is necessary to abate such Release.

10. This AOC is neither a permit nor a modification of a permit. NPC acknowledges and agrees that the Division's approval of any Work plan hereunder does not constitute a warranty or representation that the Work plan will achieve the required or appropriate Corrective Action Standards.

11. Notwithstanding any other provision of this AOC, except as provided in Section XX, no action or decision by the Division pursuant to this AOC including without limitation, decisions by the Administrator, shall constitute final agency action giving rise to any right of judicial review prior to the Division's initiation of a judicial action to enforce this AOC, including an action to collect penalties or an action to compel NPC's compliance with the terms and conditions of this AOC.

12. In any subsequent administrative or judicial proceeding initiated by the State for injunctive or other appropriate relief relating to the Site, NPC shall not assert, and may not maintain, any defense or claims based upon the principles of waiver, claim-splitting, or other defenses based upon any contention that the claims raised by the State of Nevada in the subsequent proceeding were or should have been raised in this AOC, except as to claims based on information known to the Division as of the Effective Date that relate to the subject matter of this AOC.

13. Work Takeover. In the event the Division determines that NPC has ceased implementation of any required portion of the Work, are seriously or repeatedly deficient or late in its performance of the Work, or are implementing the Work in a manner, which may cause an endangerment to human health or the Environment, the Division may assume the performance of all or any portions of the Work as the Division determines necessary. Costs incurred by the State in performing the Work pursuant to this Paragraph shall be considered

Oversight Costs that NPC shall pay pursuant to Section XVII (such section titled "Reimbursement of Division Oversight Costs") and NPC will be subject to the stipulated penalties set forth in Section XXI.

14. Notwithstanding any other provision of this AOC, the Division retains all authority and reserves all rights to take any and all response actions authorized by law.

XXIII. COVENANTS BY THE NEVADA POWER COMPANY AND RESERVATION OF RIGHTS

1. Covenant Not to Sue. Subject to the reservations in Paragraph 2, NPC hereby covenants not to sue and agrees not to assert any claims or causes of action against the State with respect to the Site, for past Response Actions, and Oversight Costs as defined herein, or this AOC, including, but not limited to:

- a. any direct or indirect claim for reimbursement; or
- b. any claims arising out of response activities at the Site, including claims based on the Division's selection of Response Actions, oversight of response activities or approval of plans for such activities.

2. NPC reserves, and this AOC is without prejudice to, claims against the State of Nevada, subject to the limitations of NRS Chapter 41, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the State, relating to implementation of this AOC, while acting within the scope of his office or employment. However, any such claim shall not include a claim based on the Division's selection of Response Actions, or the oversight or approval of NPC's plans or activities. To the extent permitted by law, the Division shall indemnify, hold harmless, and defend, not excluding NPC's right to participate, NPC, its officers, agents, employees, Contractors, subcontractors and representatives for, from and against any and all claims, causes of action, costs and expenses (including but not limited to reasonable attorneys' fees and costs), arising out of the alleged negligent or willful acts or omissions of the Division or its employees, agents and Contractors in implementing this AOC.

3. General Reservations of Rights. NPC reserves all rights, claims and/or defenses they may have in any action brought or taken by or against the Division, the EPA or any third party pursuant to applicable law, with respect to the specific claims that can be asserted at the Site.

4. Nothing in this agreement shall be construed as an admission of liability by NPC.

XXIV. CONFIDENTIAL BUSINESS INFORMATION

1. All information required by this AOC will be deemed public information upon submittal to the Division unless NPC requests in writing at the time of submittal that specific information be treated as confidential, business information in accordance with NRS §§ 459.555 or 445A.665, and such regulations adopted there under, and the Division grants the request. Pending such determination and any appeals thereof, the Division shall treat such information as confidential. NPC shall adequately substantiate any assertion of confidentiality in writing when the request is made. NPC may assert business confidentiality claims covering part or all of the documents or information submitted to the Division under this AOC to the extent permitted. If no claim of confidentiality accompanies a document or information when it is submitted to the Division, or if the Division has notified NPC that the document or information is not confidential, the public may be given access to such documents or information without further notice to NPC.

2. No documents, reports or other information created or generated or submitted pursuant to the requirements of the AOC shall be withheld on the grounds that they are privileged.

3. No claim of confidentiality shall be made with respect to any data including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data or any other documents or information evidencing conditions at or around the Site.

XXV. NOTICES AND DELIVERABLES

1. Whenever, under the terms of this AOC, written notice is required to be given or a report, Deliverable or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or its successors give notice of a change of individual or address to the other Party in writing. All notices and Deliverables shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the AOC with respect to the Division and NPC, respectively.

As to the State:

Nevada Division of Environmental Protection
2030 E Flamingo Road, Suite 230

Las Vegas, NV 89119
Attn: Project Coordinator (Nevada Power)

Remediation Branch Supervisor
Nevada Division of Environmental Protection
2030 E Flamingo Road, Suite 230
Las Vegas, NV 89119
Attn: Alternate Project Coordinator (Nevada Power)

As to NPC:

Nevada Power Company
Reid Gardner Generating Station
P.O. Box 279
501 Wally Kay Way
Moapa, NV 89025
Attn: Supervisor, Environmental Services, MS #77

Nevada Power Company
6226 West Sahara Avenue
Las Vegas, NV 89146
Attn: Manager, Environmental Services, Coal Generation, MS #30

XXVI. COOPERATION IN REVIEW

1. With respect to any action by NPC or the Division contemplated by this AOC (including without limitation the provisions of Section VII (such section titled "Performance of the Work by the Nevada Power Company") for which a time period is not specified herein or in any relevant Work plan, NPC and the Division agree to perform such actions within a reasonable time under the circumstances, so as to not prejudice the other party.

XXVII. INCORPORATION AND ENFORCEABILITY OF APPENDICES OR REFERENCED MATERIALS

1. Any and all AOC amendment(s) or modification(s), Work plan(s) (including each schedule contained therein and attachments thereto), and Deliverable(s) required hereunder shall, upon execution or Division approval as submitted or developed by the Division, be deemed incorporated into and made fully enforceable under this AOC as if fully set forth herein. It is contemplated that from time to time, additional documents shall be executed or approved by the Division and shall, as such, be incorporated herein. The following appendices are incorporated into, and made fully enforceable under this AOC as if fully set forth herein:

- a. "Appendix A" is the description of the Site subject to this AOC, and
- b. "Appendix B" is the Scope of Work.

XXVIII. COMMUNITY RELATIONS

1. Subject to the provisions of Section XXIV (“Confidential Business Information”), all Deliverables received by the Division may be made available to the public in accordance with applicable law. The Division may, at its discretion, conduct a public notice or comment procedure with respect to any Deliverable submitted pursuant to this AOC. The Division shall notify NPC in writing of its determination to provide for, or legal requirement governing, public notice or comment with respect to such document as well as the corresponding adjustment that shall be made to any affected Work or Deliverable submittal or approved schedule. Following any such notice and comment period, the Division may require NPC to revise the Deliverable and/or perform reasonable additional Work necessary to address appropriately any issue regarding such document identified by the public during such comment period.

2. Within one hundred twenty (120) Days of the Effective Date, NPC shall submit and/or update a Community Relations Plan for the dissemination of information to the interested public regarding the activities to be conducted pursuant to this AOC. Any such plan shall, at a minimum, address the following:

- a. provide for the periodic development and distribution of fact sheets summarizing current and/or proposed activities;
- b. provide for the development of a mailing list for distribution of the fact sheets;
- c. Identify a community liaison for NPC with respect to activities to be conducted pursuant to the AOC.

XXIX. MODIFICATION

1. This AOC may be modified or amended only upon the mutual agreement of NPC and the Division. Any agreed upon amendment or modification shall be in writing, shall be signed by all Parties, shall have as its Effective Date the date on which it is signed by the Division as the last Party executing the amendment or modification, and shall, upon that date, be incorporated into and made enforceable under this AOC.

2. Any requests for a compliance date modification or revision of an approved Deliverable requirement must be made in writing. Such requests must be timely and provide justification for any proposed compliance date modification or Deliverable revision. The

Division has no obligation to approve such requests, but if it does so, such approval must be in writing. Any approved compliance date or Deliverable modification shall be incorporated by reference into and made enforceable under this AOC.

3. No informal advice, guidance, suggestions, or comments by the Division regarding any matter associated with this AOC shall be construed as relieving NPC of its obligation to obtain written approval regarding any Deliverable, if and when required by this AOC provided; however, that the Division shall consider the good faith reliance by NPC on such advice in the exercise of its prosecutorial discretion.

4. No material modifications shall be made to the Scope of Work without written notification to and written approval of the Division and NPC.

5. Nothing in this Agreement shall be deemed to alter the State's authority to enforce, supervise, or approve modifications to this AOC.

XXX. COMPUTATION OF TIME

1. For purposes of computing due dates set forth in this AOC, the Effective Date or the Day of the act, event, or default from which the designated period of time begins to run, shall be designated and counted as Day zero (0). Calendar Days shall be utilized in computing due dates. The last Day of the period so computed shall be included, unless it is a Saturday, Sunday, or State or federal holiday, in which event the period runs until the end of the next Day which is not one of the aforementioned Days.

XXXI. GOVERNING LAW

1. The provisions and interpretation of this AOC shall be governed by the law of the State of Nevada without regard to choice of law statutes thereof. This agreement shall be interpreted to effectuate the intent and purpose of all relevant Environmental Laws.

XXXII. OTHER APPLICABLE LAWS

1. All actions required to be taken pursuant to this AOC shall be undertaken in accordance with the requirements of all applicable local, State, and federal laws and regulations. NPC shall obtain or cause its representative(s) to obtain all permits and approvals necessary under such laws and regulations.

XXXIII. SEVERABILITY

1. If any provision or authority of this AOC or the application of this AOC to any Party or

circumstances is held by any judicial or administrative authority to be invalid, and such holding does not result in a material change in the rights or obligations of the Parties, the application of such provisions to the other Party or circumstances and the remainder of the AOC shall remain in force and shall not be affected thereby.

XXXIV. EFFECTIVE DATE

1. This AOC shall become effective on the date upon which it is executed by the Division as the last Party executing this AOC, after it having previously been signed by NPC ("Effective Date"). This AOC may be executed in separate counterparts.

XXXV. TERMINATION

1. After completion of the obligations created by this AOC, including but not limited to the Work, NPC shall submit to the Division a Statement of Completion, as discussed in Section XV (such section titled "Determination of Completion") Part C (such part titled "Completion of the Work") which certifies that NPC has fulfilled all obligations under this AOC, including the performance of any additional Work and the payment of any costs and stipulated penalties to the Division. Within a reasonable time after receipt of the Statement of Completion, not to exceed one hundred-eighty (180) Days, the Division shall issue a written notice to NPC that either: (a) all obligations under this AOC have been fulfilled, or (b) all obligations have not been fulfilled. Such notice shall specify the obligations the Division believes must be fulfilled in order to satisfy this AOC. Except for the confidential business information obligations in Section XXIV of this AOC, any and all obligations of NPC created by the terms of this AOC shall be deemed satisfied and shall terminate upon issuance by the Division of written notice that NPC has fulfilled all obligations under this AOC.

XXXVI. MERGER

1. This AOC is the complete agreement between the Division and NPC. This AOC is the result of negotiations between the Parties over each provision contained herein. Each provision shall therefore be construed to have been mutually drafted and neither of the Parties shall be deemed to have solely drafted this entire AOC or any single provision herein.

XXXVII. SIGNATORIES/SERVICE

1. Each undersigned representative to this AOC certifies that he or she is fully authorized by the Party whom he or she represents to enter into the terms and conditions of

this AOC and to execute and legally bind such Party to this document. Additionally, NPC states that, under the Participation Agreement between CDWR and NPC, NPC has authority—as Operating Agent of Unit No. 4—to enter into this AOC with respect to Unit No. 4.

[signatures on the following page]

IN WITNESS WHEREOF, The Parties execute this AOC by their duly authorized representatives as of the date set forth above.

It is so agreed and ordered.

THE STATE OF NEVADA:

By: Leo M. Drozdoff
Leo M. Drozdoff, P.E.

Date: 2/20/08

Administrator

For the State of Nevada, by and through its Department of Conservation & Natural Resources, Division of Environmental Protection

Approved as to form:

By: William Frey
William Frey
Senior Deputy Attorney General
State of Nevada

Date: 2.22.08

NEVADA POWER COMPANY:

By: Michael W. Young
Name: Michael W. Young
Title: CEO

Date: 4/21/08

For NPC as the owner and operator of RGS Units No. 1, 2, and 3 and as Operating Agent of RGS Unit No. 4

Appendix "A"
Site Description

The Site consists of all that certain land, structures, other appurtenances, and improvements comprising NPC's Reid Gardner Station (RGS) as shown in Figure 1, located at 501 Wally Kay Way, Moapa, NV in Section 05, Township 15 South, Range 66 East, together with adjacent private and public properties, including the Muddy River, that have been impacted by the Release of Environmental Contaminants from RGS as shown by characterization results and/or Corrective Action activities carried out under this AOC. Figure 1 illustrates the initial boundaries of the Site as the property boundary of the RGS plus those portions of Areas 1 – 7 lying outside of the RGS property boundary.

Appendix “B”

Scope of Work

ND: 4811-3478-1186, Ver 1

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ADMINISTRATIVE ORDER ON CONSENT

Reid Gardner Station

Scope of Work

1.0 Introduction

The Administrative Order on Consent (AOC) to which this Scope of Work (Scope) is attached and incorporated therein provides for the continuation of Environmental Contaminant characterization activities, allows for the identification and/or screening of Corrective Actions, and allows for the implementation and long-term Operation and Maintenance of Division-approved Corrective Actions at or associated with Reid Gardner Station (Site).

2.0 Objectives for the Scope of Work

The overall objective for the Scope is to provide a framework for the completion of characterization activities for groundwater and soil within the Site boundaries and for the identification and implementation of Corrective Actions applicable to each media as necessary. The common objective of all parties is to seek permanent Remedies for all media that address current and future risks to human health and the Environment.

2.1 Deliverables and Division Decision Documents

This Scope defines specific Deliverables and Division decision documents that provide a framework and sequence for activities to be completed. The list of these documents is described in Section 3.0. It should be noted that this Scope cannot anticipate every scenario that may unfold during the course of investigation, characterization, and remediation of the Site. Additional Deliverables may be required to complete the project. Similarly, some of the Work products may be combined or eliminated at the discretion of the Division as the project progresses.

Detailed Work Plans are required for submittal to the Division for review and approval prior to the start of any field or study activities. It is expected that technical issues will be discussed and resolved in meetings prior to formal document submittal.

2.2 Definitions

Any capitalized term used in this Scope that is defined in Section 2.0 of the AOC shall have the meaning assigned to the term in the AOC. Any other capitalized term shall have the meaning assigned to the term in the Scope.

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3.0 Work To Be Performed

3.1 Deliverables to be Prepared by NPC

3.1.1 Encyclopedia of Supporting Documentation

This encyclopedia will be a list of the titles and locations of supporting documents that pertain to all projects and sub-areas with the Site. Examples include: Health and Safety Plan (as described in 3.1.4); Dust Mitigation Work Plan; Perimeter Air Monitoring Plan; Field Standard Operating Procedures (SOPs); Field Screening Methods and Equipment; Quality Assurance Project Plan (QAPP); the Document Numbering and Tracking System (see also Section 3.1.2); and field logs.

3.1.2 Document and Response to Comments Tracking System

The Division may provide NPC comments to draft submittals. Formal response-to-comments letters are required to such comments. The response to comments letters shall clearly address each comment and state where the comment has been addressed in the re-submittal. In addition, NPC is required to document a process to track and address the Division's historic comments concerning the Site. Through this mechanism, the Division is hereby incorporating the historic comments and the requirement for NPC to respond to these comments as part of this AOC. This Deliverable must be submitted and obtain Division approval prior to proceeding with document submittal.

3.1.3 Closure Plan

The Closure Plan is a "road map" that describes the process by which the Site and/or specific sub-areas of the Site will be closed. The Closure Plan should identify applicable or relevant and appropriate requirements (ARARs) for all applicable media at the Site. In addition, the Closure Plan includes the risk assessment Work Plan. This Deliverable must obtain Division approval.

3.1.4 Health and Safety Plan (HASP)

The HASP shall conform to applicable federal and state Occupational Safety and Health Administration requirements including, but not limited to, 29 CFR § 1910.120 and NRS Chapter 618. The Division's review will not constitute approval of the plan. However, this work is being conducted within the boundaries of a site for which the Division has jurisdiction; therefore, the Division reserves the right to review the general content of the HASP and may have comments to be considered by NPC. This Deliverable must be completed prior to the implementation of field activities conducted under this AOC. This Deliverable does not need to obtain Division approval.

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3.1.5 Progress Reports

These reports shall be submitted in accordance with Section XII (Reporting Requirements), Paragraphs 1 and 2 of this AOC. These Deliverables must obtain Division approval.

3.1.6 Assessment of Background Conditions

The assessment of background conditions may be submitted through a series of Work plans and reports. Background conditions may be developed for various soils and water-bearing zones. All Work plans and reports regarding background conditions must obtain Division approval prior to implementation.

3.1.7 Site-Related Chemicals (SRC) Document

The SRC document is a description of all of the chemicals (including degradation by products) that are known to likely to exist in soils and groundwater at the Site based on available information. This Deliverable must obtain Division approval prior to submittal of the Site-Wide Conceptual Site Model.

3.1.8 Site-Wide Conceptual Site Model (CSM)

The site-wide CSM is a comprehensive description of the conditions at the Site. This report may result in the generation of other Work plans to address data gaps identified in the CSM. At a minimum, the CSM must include the following:

- a. Comprehensive list of Site-related chemicals and/or surrogate indicator chemicals with proposed analytical methods (under separate cover as described above in Section 3.1.7),
- b. Evaluation of background conditions (as described above in Section 3.1.6),
- c. Delineation of known or potential source areas,
- d. Presentation of the three dimensional nature and extent of contamination including on-Site and off-Site soils contamination, vadose zone contamination, groundwater contamination, surface water, and air.
- e. Detailed evaluation of hydrogeological conditions including: cross-sections; evaluation of the interconnectivity of water-bearing zones; descriptions and illustrations regarding the thickness of saturated zones; and other descriptions and/or illustrations that fully describe the hydrogeological conditions of the Site, and
- f. Steps 1 and 2 of the USEPA DQO process for site-wide DQOs, which must be submitted and obtain Division approval prior to submittal of specific sub-area Work plans.
- g. Historical growth and/or retreat of the groundwater plume.

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- h. Parameters controlling contaminant fate and transport (e.g. groundwater velocity).
- i. Designation of sub-areas.
- j. Identification of data gaps.
- k. Known or potential routes of migration.
- l. Known or potential human and ecological receptors.

This Deliverable must obtain Division approval prior to submittal of the Groundwater Corrective Action Alternative Study.

3.1.9 Sub-Area Specific Work

As requested by the Division, the Site will be delineated into sub-areas with adequate justification for each delineation. For each sub-area, a number of documents may be required depending on the circumstances of each sub-area and may require Division approval prior to implementation. Examples of documents that may need to be produced for Division approval include Data Usability Assessment, sub-area CSM, sub-area DQOs (steps 3-7, as necessary), baseline risk determination report, data quality assessment, sub-area Corrective Action Plan, implementation of Corrective Action(s), data validation, and risk assessment (human health and ecological), etc.

3.1.10 Data Validation Reports

Data validation reports will need to be generated for data that are proposed to be used at the Site. It is recommended that these reports be submitted on specific data sets and not on the entire database in one report. These Deliverables must obtain Division approval.

3.1.11 Groundwater Modeling

Groundwater, air, and soil to groundwater leaching modeling may need to be completed as part of the evaluation of fate and transport mechanisms on the Site. The specific models and scenarios to be evaluated are currently under discussion but remain indefinite at this time. A Work Plan and a report must obtain Division approval for each instance and the models will be refined as additional data is collected. The types of modeling to be conducted will be negotiated with the Division as necessary. Modeling may be implemented to supplement the information in the CSM or may be implemented to satisfy data gaps identified in the CSM.

3.1.12 Corrective Action Alternative Study (CAAS)

Following characterization of the Site conditions, NPC must complete a CAAS for groundwater at the Site. Corrective Action alternatives should be evaluated using appropriate feasibility studies. Site characterization activities that remain should be fully

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integrated with the development and evaluation of alternatives in the feasibility study. This Deliverable must obtain Division approval prior to submittal of a Corrective Action Plan. (Note: more than one Corrective Action Plan may be submitted for the Site on a sub-area basis.)

3.1.13 Corrective Action Plan (CAP)

This Deliverable shall describe methods, procedures, and activities by which NPC will implement the Division-approved Corrective Action(s). Additionally, this document must obtain Division approval prior to Implementation of the CAP. (Note: more than one Corrective Action Plan may be submitted for the Site on a sub-area basis.)

3.1.14 Implementation of CAP

Once the CAAS has been developed and the Division approves a CAP, several Work plans and reports will be generated to detail the implementation of the Division-approved Corrective Action(s). Once approved by the Division, the CAP must be implemented according to the schedule. (Note: more than one Corrective Action Plan may be submitted for the Site on a sub-area basis.)

3.1.15 CAP Completion Document

This Deliverable shall be submitted when NPC determines that the Corrective Action(s) implemented for the Site (or a specific sub-area of the Site) has been completed in accordance with Section XV (Determination of Completion), Paragraph C (Completion of Work) of this AOC or is no longer efficient. The CAP Completion Document should recommend either closure of the Site (or specific sub-area of the Site) or the submittal of a revised CAAS for the Site (or specific sub-area of the Site). The CAP Completion Document shall include technical discussion, analytical data, and risk assessment for the presented recommendation. This Deliverable must obtain Division approval.

3.2 Approval Documents to be Prepared by the Division

3.2.1 Comments Tracking System Approval

3.2.2 Closure Plan Approval

3.2.3 Progress Report Approval

3.2.4 Assessment of Background Conditions Work Plan(s) and Report Approval

3.2.5 SRC Approval

3.2.6 CSM Approval

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3.2.7 Sub-area Specific Work Plan(s) and other sub-area Work Approval

3.2.8 DVSR Approval

3.2.9 Groundwater Modeling Deliverable Approval

3.2.10 CAAS Approval

3.2.11 CAP Approval

3.2.12 CAP Completion Document Approval

4.0 Schedule for Scope Implementation and Deliverables

The Implementation of the Scope shall begin upon the Effective Date of the AOC. Pursuant to the AOC, NPC agree to perform the work included in this Scope by the milestones specified herein, within the AOC or within an approved Deliverable. All dates calculated herein shall be in accordance with the Computation of Time section of the AOC.