



Nevada Division of
Environmental Protection
(NDEP)



National Nuclear
Security Administration
(NNSA)



Defense Threat
Reduction Agency



Office of Legacy
Management (LM)

Federal Facility Agreement and Consent Order (FFACO)



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Appendix I	Description of Facilities
Appendix II	Corrective Action Sites/Units
Appendix III	Corrective Action Investigations/ Corrective Actions
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1 THE STATE OF NEVADA
2 DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES,
3 DIVISION OF ENVIRONMENTAL PROTECTION
4

5 AND
6

7 THE UNITED STATES DEPARTMENT OF ENERGY
8

9 AND
10

11 THE UNITED STATES DEPARTMENT OF DEFENSE
12

13 IN THE MATTER OF:
14

15 FEDERAL FACILITY AGREEMENT
16

17 AND
18

19 CONSENT ORDER
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34 MARCH 15, 1996
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FEDERAL FACILITY AGREEMENT AND CONSENT ORDER

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1 **INTRODUCTION**

2
3 This Federal Facility Agreement and Consent Order (Agreement) is made
4 and entered into by and among the State of Nevada, acting by and
5 through the Department of Conservation and Natural Resources,
6 Division of Environmental Protection (NDEP), the United States
7 Department of Energy (DOE), and the United States Department of
8 Defense (DoD). The NDEP enters into this Agreement pursuant to its
9 statutory authority to protect the public health and the environment
10 (article modified by August 2006 Letter Agreement).

11
12 The facilities for which DOE has assumed responsibility and which
13 are subject to this Agreement include the Nevada Test Site (NTS),
14 parts of the Tonopah Test Range, parts of the Nellis Air Force
15 Range, the Central Nevada Test Area, and the Project Shoal Area
16 (hereinafter collectively referred to as the facilities). DoD's
17 responsibilities are limited to those areas at the NTS where DoD has
18 conducted activities. The legal description of each facility is
19 provided in Appendix I, Description of Facilities (article modified
20 by February 2008 Letter Agreement).

21
22 The NTS as defined herein does not include those portions of Area
23 25 (see [Appendix I, Description of Facilities, for area location](#))
24 being used to conduct activities under the Nuclear Waste Policy
25 Act. The parties agree to negotiate in good faith to address any
26 needed environmental restoration for contamination that predates
27 the enactment of the Nuclear Waste Policy Act within the areas
28 excluded from the definition of the NTS as identified in Appendix
29 I, Description of Facilities. This Agreement is not intended to
30 impact or limit the ongoing site characterization of the Yucca
31 Mountain site, which is proposed for spent nuclear fuel and high-
32 level radioactive waste disposal. The parties agree that any
33 activities undertaken by DOE or successor agencies to characterize
34 Yucca Mountain, or to construct, operate, or close a spent nuclear
35 fuel and high-level radioactive waste repository at Yucca Mountain
36 are specifically excluded from this Agreement.

37 **PART I. PARTIES**

38
39 I.1. The parties to this Agreement are persons as defined in
40 [paragraph IV.34](#) and include the NDEP, DOE, and DoD. NDEP, DOE, and
41 DoD are referred to collectively herein as the parties (parties) to
42 this Agreement.

43
44 I.2. DOE and DoD shall provide notice of this Agreement (including
45 all appendices and any amendments) to every successor in interest and
46 to any successor agency prior to any transfer of ownership or
47 operation of the real property subject to this Agreement. The
48 provisions of this Agreement shall be binding on all successors in

1 interest and on any successor agency.

2
3 I.3. DOE and DoD shall be responsible for ensuring that their
4 respective contractors conduct their activities in conformance with
5 the requirements of this Agreement. Contractors of each party are
6 not considered parties to this Agreement.

7
8 I.3.a. DOE and DoD shall provide copies of this Agreement
9 to all their respective prime contractors presently
10 retained to perform work related to any part of this
11 Agreement within thirty (30) calendar days of execution of
12 this Agreement.

13
14 I.3.b. DOE and DoD shall provide copies of this Agreement
15 to all additional prime contractors retained to perform
16 work related to any part of this Agreement within ten (10)
17 calendar days following their retention.

18
19 I.3.c. Copies of this Agreement shall be made available
20 to all other contractors and subcontractors retained to perform
21 work under this Agreement.

22 **PART II. STATEMENT OF PURPOSE**

23
24 II.1. The purposes of this Agreement include, but are not
25 limited to:

26
27 II.1.a. Identifying sites of potential historic contamination
28 and implementing proposed corrective actions based on public
29 health and environmental considerations as
30 follows to:

31
32 II.1.a.i. Ensure that the impacts and potential impacts at
33 the facilities, as defined in [paragraph IV.26](#), associated
34 with the releases or threatened releases of hazardous
35 substances, pollutants, solid wastes, and/or hazardous
36 wastes into the environment and discharges and/or potential
37 discharges of pollutants into the waters of the state are
38 thoroughly investigated by DOE and/or DoD under the
39 regulatory authority and oversight of NDEP.

40
41 II.1.a.ii. Ensure that hazardous substances, pollutants,
42 solid wastes, and/or hazardous wastes which have been, are,
43 or may be discharged into waters of the state or released
44 into the environment at, on, or from the facilities are
45 subject to corrective actions and closure requirements,
46 under the oversight of NDEP.

47
48

1 II.1.a.iii. Ensure that all elements of the investigations
2 and corrective actions provided for in this Agreement
3 consider public input.
4

5 II.1.b. Establishing specific sampling and monitoring
6 requirements, including drilling and subsurface sampling, designed
7 to:
8

9 II.1.b.i. Ensure the health and safety, at all times, of NDEP
10 personnel, site workers at the facilities, and any members of
11 the public present at the facilities, including during
12 corrective action activities;
13

14 II.1.b.ii. Determine whether releases of pollutants and/or
15 hazardous wastes or potential releases of pollutants and/or
16 hazardous wastes are migrating or potentially could migrate,
17 and if so, identify the constituents, their concentration(s),
18 and the nature and extent of that migration;
19

20 II.1.b.iii. Facilitate the undertaking of appropriate
21 corrective actions;
22

23 II.1.b.iv. Demonstrate that corrective actions have achieved
24 the degree of closure defined as acceptable in the approved
25 corrective action plan.
26

27 II.1.c. Providing all parties with sufficient information to
28 enable adequate evaluation of appropriate remedies by specifying
29 the radioactive and hazardous constituents for each corrective
30 action unit.
31

32 II.1.d. Ensuring that the parties work together in a cooperative
33 manner which enables cost effective corrective action
34 investigations and corrective actions and minimizes the
35 likelihood of litigation among the parties.
36

37 II.1.e. Substantially reducing the costs of cleanup activities
38 at the facilities through coordinated project management,
39 involvement of NDEP in DOE's and DoD's planning and budgeting
40 processes as set forth in [Part XV, Obligations of DOE and DoD](#),
41 NDEP's oversight of cleanup, efficient use of consultative
42 approaches, and elimination or streamlining of duplicative or
43 unnecessary procedures.
44

45 II.1.f. Satisfying the corrective action requirements of 40 CFR
46 264.101 and Sections 3004(u) and 3004(v) of the Resource
47 Conservation and Recovery Act (RCRA), 42 U.S.C. §6924 (u) and
48 (v), and through incorporation by reference into DOE's RCRA
permit number NEV HW009 (article modified by February 2008 Letter Agreement).

ement

1 II.2. This Agreement is not intended to fulfill the Federal
2 Facility Compliance Act requirement for a compliance order
3 addressing the Land Disposal Restriction prohibition for mixed
4 wastes. Land disposal restricted mixed wastes generated as a
5 result of actions taken under this Agreement will be managed in
6 accordance with the Mutual Consent Agreement Between the State of
7 Nevada and the Department of Energy for the Storage of Low-Level
8 Land Disposal Restricted Mixed Waste signed on June 6, 1995, or
9 subsequent permitted treatment, storage, or disposal unit
10 operational requirements, including all applicable requirements of
11 the RCRA, 42 U.S.C. §6901 et seq. The Mutual Consent Agreement
12 covers storage of environmental restoration generated mixed waste,
13 and schedules for treatment of environmental restoration-generated
14 land disposal restricted mixed waste will be established and
15 enforced in accordance with the Mutual Consent Agreement and not as
16 part of this Agreement.

17
18 **PART III. LEGAL AUTHORITY**

19
20 III.1. DOE enters into this Agreement pursuant to Section
21 120(a)(4) of the Comprehensive Environmental Response, Compensation
22 and Liability Act (CERCLA), 42 U.S.C. §9620(a)(4); Sections 6001 and
23 3004(u) and 3004(v) of RCRA, 42 U.S.C. §6901 et seq.; the
24 Atomic Energy Act, 42 U.S.C. §2011 et seq.; and Executive Order
25 12580 "Superfund Implementation." _____

26
27 III.2. DoD enters into this Agreement pursuant to Section 120 of
28 CERCLA, 42 U.S.C. §9620; Sections 6001 and 3004(u) and 3004(v) of
29 RCRA, 42 U.S.C. §6901 et seq.; Executive Order 12580, "Superfund
30 Implementation"; the National Contingency Plan; Section 311 (c) of
31 the Federal Water Pollution Control Act, 33 U.S.C. §1321; and the
32 Defense Environmental Restoration Program, 10 U.S.C. §2701.

33
34 III.3. The parties enter into this Agreement pursuant to their
35 applicable authorities and responsibilities, including the Solid
36 Waste Disposal Act, which includes both RCRA and the Hazardous and
37 Solid Waste Act; Chapters 444, 445, and 459 of the Nevada Revised
38 Statutes (NRS) including the Nevada Water Pollution Control Law,
39 NRS 445A.300 et seq., the Nevada Hazardous Waste Law, NRS 459.400 et
40 seq., Chapters 444, 445, and 459 of the Nevada Administrative
41 Code (NAC), the Nevada Administrative Procedure Act, NRS Chapter
42 233B, as these laws may be amended from time to time, and all other
43 applicable provisions of state and federal law. NDEP specifically
44 retains all of its hazardous waste and clean water authorities and
45 legal rights, both substantive and procedural, both under the
46 authorities delegated by the U.S. Environmental Protection Agency,
47
48

1 and under its own laws and regulations as well. DOE does not waive
2 any claim of jurisdiction over matters which may be reserved to DOE
3 by law, including the Atomic Energy Act, 42 U.S.C. §2011 et seq.
4

5 III.4. To the extent not inconsistent with federal law, the laws of
6 the state of Nevada shall be applied when interpreting and construing
7 this Agreement. Compliance with the terms and conditions of this
8 Agreement does not relieve DOE or DoD of any responsibility for
9 complying with all applicable federal and state
10 laws and regulations.
11

12 **PART IV. DEFINITIONS**
13

14 IV.1. Except as noted in Part IV of this Agreement, the definitions
15 provided in RCRA, the Nevada Water Pollution Control Law, NRS 445.131
16 et seq., the Nevada Hazardous Waste Law, NRS 459.400 et seq., and
17 their implementing regulations, as appropriate, shall control the
18 meanings of the terms contained in this Agreement.
19

20 IV.2. "Administrator" shall have the meaning given in NRS 445.134.
21

22 IV.3. "Agreement" shall refer to this Federal Facility Agreement and
23 Consent Order (FFACO) and includes all attachments, addenda,
24 appendices, amendments, and modifications.
25

26 IV.4. "Agreement coordinator" shall refer to the individual
27 designated by each party to this Agreement responsible for the
28 overall implementation of the Agreement.
29

30 IV.5. "Authorized representative(s)" shall include a party's
31 contractor(s) or agent(s) acting in specifically designated or
32 defined capacities.
33

34 IV.6. "Central Nevada Test Area" shall mean the property so described
35 in Appendix I, Description of Facilities.
36

37 IV.7. "Clean closure" shall mean the removal of pollutants, hazardous
38 wastes, and solid wastes released into the environment or discharged
39 and/or having the potential of being discharged into waters of the
40 state in accordance with corrective action plans.
41

42 IV.8. "Closure in place" shall mean the stabilization or isolation of
43 pollutants, hazardous wastes, and solid wastes, with or without
44 partial treatment, removal activities, and/or post-closure
45 monitoring, in accordance with corrective action plans.
46

47 IV.9. "Community Advisory Board" shall mean that formally constituted
48 and chartered board created under the Federal Advisory Committee Act
established to provide site-specific recommendations for

1 environmental restoration and waste management activities on the
2 facilities.

3
4 IV.10. "Contaminant" shall have the meaning given in NRS 445A.325.
5 DOE asserts that this definition is subject to [Part III, Legal](#)
6 [authority](#).

7
8 IV.11. "Corrective action" shall mean an action or series of actions
9 taken to correct deficiencies in the disposal or containment of
10 pollutants, hazardous wastes, and solid wastes to prevent releases
11 and/or potential releases into the environment or discharges and/or
12 potential discharges of such materials into waters of the state in
13 accordance with the approved corrective action plan. A corrective
14 action may range from no action to clean closure.

15
16 IV.12. "Corrective action coordinator(s)" shall mean the
17 individual(s) responsible for overseeing daily activities required by
18 this Agreement.

19
20 IV.13. "Corrective action decision document" (CADD) shall mean a
21 document that describes the corrective action that is selected as the
22 result of investigation activities and the rationale for its
23 selection. The rationale consists of an analysis of the possible
24 alternatives and may reflect a decision ranging from no action to
25 clean closure.

26
27 IV.14. "Corrective action investigation" (CAI) shall mean an
28 investigation conducted by DOE and/or DoD to gather data sufficient
29 to characterize the nature, extent, and rate of migration or
30 potential rate of migration from releases or discharges of pollutants
31 or contaminants and/or potential releases or discharges from
32 corrective action units identified at the facilities.

33
34 IV.15. "Corrective action investigation plan" (CAIP) shall mean a
35 document that provides or references all of the specific information
36 for planning investigation activities associated with corrective
37 action units or corrective action sites. A CAIP may reference
38 information in the optional CAU work plan or other applicable
39 documents. If a CAU work plan is not developed, then the CAIP must
40 include or reference all of the management, technical, quality
41 assurance, health and safety, public involvement, field sampling, and
42 waste management information needed to conduct the investigations in
43 compliance with established procedures and protocols.

44
45 IV.16. "Corrective action plan" (CAP) shall mean a plan which is
46 prepared when the corrective action decision document requires a
47 corrective action.

1 IV.17. "Corrective action sites" (CASs) shall refer to the sites
2 potentially requiring corrective action(s) and may include solid
3 waste management units, or individual disposal or release sites.

4
5 IV.18. "Corrective action unit" (CAU) shall mean one or more
6 corrective action sites grouped geographically, by technical
7 similarity, agency responsibility, or for other appropriate reasons,
8 for purposes of determining corrective actions.

9
10 IV.19. "Corrective action unit work plan" (CAU work plan) shall mean
11 an optional planning document that provides information for a CAU or
12 a collection of CAUs where significant commonality exists. This plan
13 may be developed to eliminate redundant CAU documentation and may
14 contain management, technical, quality assurance, health and safety,
15 public involvement, field sampling, and waste management information.
16 This common information will be referenced in the appropriate CAIPs.

17
18 IV.20. "Days" shall mean calendar days unless business days are
19 specified. Any submittal that, under the terms of this Agreement,
20 would be due on a Saturday, Sunday, or state of Nevada or federal
21 holiday shall be due on the following business day.

22
23 IV.21. "Deadline" shall mean the date by which an enforceable
24 milestone established by this Agreement or other actions or
25 activities specifically identified in this Agreement shall be met.
26 Stipulated penalties may be assessed for failure to meet an
27 established deadline.

28
29 IV.22. "Department of Defense" (DoD) shall mean the Office of the
30 Secretary of Defense, Defense Nuclear Agency and/or any predecessor
31 or successor agency(ies) and/or their authorized representatives so
32 designated in writing.

33
34 IV.23. "Department of Energy" (DOE) shall mean the U.S. Department of
35 Energy and/or any predecessor or successor agency(ies) and/or their
36 authorized representatives(article modified by August 2006 Letter
37 Agreement).

38
39 IV.24. "Due date" shall mean the date by which a nonenforceable
40 milestone is due.

41
42 IV.25. "Enforceable milestone" shall mean a milestone which is
43 enforceable and for which a deadline has been assigned.

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1 IV.26. "Facilities" shall include the Nevada Test Site (NTS), parts
2 of the Tonopah Test Range, parts of the Nellis Air Force Range, the
3 Central Nevada Test Area, and the Project Shoal Area. The NTS as
4 defined herein does not include those areas being used to conduct
5 activities under the Nuclear Waste Policy Act (article modified by
6 February 2008 Letter Agreement).

7
8 IV.27. "Fiscal year" (FY) shall mean the federal fiscal year unless
9 otherwise specified.

10
11 IV.28. "Hazardous substance" shall have the meaning given in
12 CERCLA §101, 42 U.S.C. §9601(14), and NRS 459.429. DOE asserts
13 that this definition is subject to [Part III, Legal Authority](#).

14
15 IV.29. "Hazardous waste" shall have the meaning given in
16 42 U.S.C. §6903(5) and NRS 459.430.

17
18 IV.30. "Milestone" shall mean an important or critical event, goal,
19 task, and/or activity that must occur in order to achieve the
20 objective(s) for that corrective action unit.

21
22 IV.31. "Mixed waste" shall have the meaning given in 42 U.S.C. §6903
23 (41).

24
25 IV.32. "Nellis Air Force Range" shall mean the property so described
26 in [Appendix I, Description of Facilities](#) (article modified by
27 February 2008 Letter Agreement).

28
29 IV.33. "Nevada Test Site" (NTS) shall mean the property so described
30 in Appendix I, Description of Facilities.

31
32 IV.34. "Parties" shall mean the parties named in [Part I, Parties](#), to
33 this Agreement.

34
35 IV.35. "Person" for the purposes of this Agreement shall include DOE,
36 DoD, and NDEP within the definitions of "person" contained in the
37 Nevada Water Pollution Control Law, NRS 445A.300 et seq., and the
38 Nevada Hazardous Waste Law, NRS 459.400 et seq.

39
40 IV.36. "Pollutant" shall have the meaning given in NRS 445A.400. DOE
41 asserts that this definition is subject to [Part III, Legal Authority](#).

42
43 IV.37. "Project Shoal Area" shall refer to the locality so described
44 in [Appendix I, Description of Facilities](#).

45
46 IV.38. "RCRA" shall mean the Resource Conservation and Recovery Act
47 of 1976, Public Law 94-580, 42 U.S.C. Section 6901 et seq., as
48 amended by the Hazardous and Solid Waste Amendments of 1984, P.L. 98-

1 616, as amended by the Federal Facility Compliance Act of 1992, P.L.
2 102-386, and any other amendments thereto.

3
4 IV.39. "RCRA Permit" shall mean a permit issued by NDEP for hazardous
5 waste treatment, storage, and/or disposal units including, as
6 required, post-closure monitoring of such units.

7
8 IV.40. "Release" (including past releases) shall have the meaning
9 given in NAC 459.9526 and NAC 445A.345.2 as related to constituents
10 identified in NAC 445A.347.2.

11
12 IV.41. "Solid waste" shall have the meaning given in 42 U.S.C. §6903
13 (27) and NRS 444.490. IV.42. "State of Nevada Department of
14 Conservation and Natural Resources, Division of Environmental
15 Protection" (NDEP) shall have the meaning given in NRS 445A.350 and
16 NAC 444.576.

17
18 IV.43. "Submittal" shall mean every document, report, schedule
19 deliverable, work plan, or other written item to be provided to NDEP
20 pursuant to this Agreement.

21
22 IV.44. "Timeframe" shall mean an interval of time over which some
23 action is planned to occur, with or without reference to a beginning
24 or ending date.

25
26 IV.45. "Tonopah Test Range" shall mean the property so described in
27 Appendix I, Description of Facilities.

28
29 IV.46. "Waters of the state" shall have the meaning given in NRS
30 445A.415.

31 **PART V. DESCRIPTION OF APPENDICES**

32
33 V.1. Appendices I-VI are incorporated by reference into this
34 Agreement. Any ambiguity resulting from different language used in an
35 appendix versus the body of this Agreement shall be resolved in favor
36 of terms and conditions found in the body of this Agreement.

37
38 V.2. [Appendix I, "Description of Facilities,"](#) contains the
39 descriptions of each of the facilities covered by this Agreement.

40
41 V.3. [Appendix II, "Corrective Action Sites/Units,"](#) contains a list of
42 all CAUs which have been identified to date and which have not yet
43 been transferred to subsequent appendices or CASs which have not yet
44 been grouped into CAUs. A CAU shall consist of one or more CASs, and
45 each CAS in each CAU will be identified. New CASs/CAUs identified by
46 any of the parties shall be added to Appendix II on a quarterly
47 basis. CAUs shall be grouped in categories and subcategories in
48 accordance with [Appendix VI, Corrective Action Strategy](#). The CAU

1 categories may include:

- 2 V.3.a. Industrial sites;
- 3 V.3.b. Underground test areas;
- 4 V.3.c. Contaminated soil sites; and
- 5 V.3.d. Offsites.

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7
8
9
10 V.4. Appendix III, "Corrective Action Investigations/Corrective
11 Actions," shall list those CAUs that have been identified and
12 prioritized for CAIs and/or for corrective actions as described in
13 Part XII, Corrective Action Investigations/Corrective Actions. This
14 appendix shall also contain CAU milestones with associated due dates
15 and deadlines.
16

17 V.5. Appendix IV, "Closed Corrective Action Units," shall list those
18 CAUs for which all corrective actions have been completed and
19 approved by NDEP in accordance with Part XII, Corrective Action
20 Investigations/Corrective Actions.
21

22 V.6. Appendix V, "Public Involvement Plan," is described in Part
23 XVII, Public Involvement. A draft of this appendix shall be submitted
24 within 60 days of the effective date of the Agreement.
25

26 V.7. Appendix VI, "Corrective Action Strategy," contains the process
27 for implementing corrective actions pursuant to this Agreement.
28 Processes described in greater detail in Appendix VI, Corrective
29 Action Strategy, than in the body of this Agreement may be in
30 addition to those described herein but shall not be in conflict with
31 the provisions contained in the body of this Agreement.
32

33 **PART VI. ENFORCEABILITY/RESERVATION OF RIGHTS**

34
35 VI.1. Except as described in paragraph VI.2 and paragraph VIII.6,
36 compliance with the terms and conditions of this Agreement shall
37 stand in lieu of any administrative or judicial remedies that may be
38 taken for matters covered by this Agreement.
39

40 VI.2. NDEP reserves the right to bring any enforcement action against
41 DOE and/or DoD for noncompliance with the terms and conditions of
42 this Agreement, including actions for the sole purpose of compelling
43 completion of a deficient activity whether or not stipulated
44 penalties are sought.
45

46 VI.3. For all matters outside the scope of this Agreement, NDEP,
47 within the scope of its authority, reserves the right to bring
48 enforcement actions against any person.

1 VI.4. DOE and DoD intend to be legally bound by this Agreement and
2 agree that the terms and conditions of this Agreement are enforceable
3 as provided herein. DOE and DoD consent to NDEP's jurisdiction for
4 the purpose of executing and enforcing the terms and conditions of
5 this Agreement.

6
7 VI.5. Nothing in this Agreement shall be construed to affect any
8 criminal investigations or criminal liability of any person(s) for
9 activities at any of the facilities described in [Appendix I,](#)
10 [Description of Facilities.](#)

11
12 VI.6. Nothing in this Agreement shall constitute, or be construed as
13 a release from any claim, cause of action, or demand in law or equity
14 against any individual, firm, partnership, or corporation not
15 directly identified in this Agreement for any liability it may have
16 arising out of, or relating in any way, to the generation, storage,
17 treatment, handling, transportation, release, or disposal of any
18 hazardous substances, hazardous wastes, solid waste or pollutants,
19 found at, taken to, or taken from, any of the facilities that are the
20 subject of this Agreement.

21
22 VI.7. The parties reserve their appeal rights as set forth in [Part](#)
23 [IX, Informal Dispute Resolution and Appeal Procedure.](#)

24
25 VI.8. In the event of administrative or judicial action, all parties
26 reserve all rights, claims, and defenses available under law.

27 **PART VII. PROGRESS REPORTS**

28
29 VII.1. Following the effective date of this Agreement, DOE and
30 DoD shall, on or before the 30th calendar day following the end of
31 each calendar quarter, submit a written or electronic progress
32 report to NDEP that describes the actions taken during the calendar
33 quarter just ended. This information will serve as a partial basis
34 for the discussions at the quarterly meetings discussed in [paragraph](#)
35 [XII.4](#) (article modified by January 2007 Letter Agreement).

36
37 VII.2. Each progress report shall include:

38
39 VII.2.a. Sufficient detail to clearly and accurately convey
40 to NDEP the manner and extent to which the requirements and
41 schedules set forth in the work plans and other terms and
42 conditions of this Agreement are being met;

43
44 VII.2.b. Any known cost and schedule variances exceeding the
45 established thresholds will be reported along with the cause
46 of the variances and any actions which may be implemented to
47 correct the variances;

1 VII.2.c. Actions and issues of concern, where additional
2 communication is necessary.
3

4 VII.3. DOE and/or DoD shall, within sixty (60) calendar days of
5 NDEP's request, which is hereby established as the deadline for this
6 activity, provide NDEP with budgets and costs for activities covered
7 by this Agreement.
8

9 VII.4. DOE and DoD shall include in their quarterly reports a three-
10 month advance schedule outlining field activities (including the
11 field activities of their respective contractors, subcontractors,
12 operators, and agents), proposed to be implemented under this
13 Agreement. A more detailed schedule shall be provided to NDEP on a
14 bi-weekly basis, and shall provide the specific dates for conducting
15 these activities for the subsequent two-week period, thereby enabling
16 NDEP to select those activities it deems appropriate to observe
17 (article modified by April 2004 Letter Agreement).
18

19 VII.5. The National Defense Authorization Act for 1994, 42 U.S.C.
20 §7274k, (P.L. 103-160, Section 3153) requires DOE to prepare and
21 submit an annual environmental restoration report. DOE shall submit
22 to NDEP a copy of the portions of that report that define the
23 conditions or otherwise relate to the activities being undertaken by
24 the DOE Nevada Operations Office within thirty (30) calendar days of
25 the report's submittal to Congress (article modified by February
26 2008 Letter Agreement).
27

28 VII.6. Quarterly meetings will be held in part to discuss any issues
29 raised in or by the quarterly progress reports. These meetings will
30 also serve to initiate the prioritization discussions identified in
31 Part XII, Corrective Action Investigations/Corrective Actions.
32 Parties will attempt to resolve issues during the quarterly meetings.
33 Resolution of issues will be documented, and unresolved issues will
34 be discussed at or before the next quarterly meeting (article
35 modified by January 2007 Letter Agreement).
36

37 VII.7. Parties may meet at times other than the quarterly meetings as
38 required, for example if there are events, such as changes in
39 available funding, that might affect milestones, especially if those
40 milestones are in the current fiscal year (article modified by
41 January 2007 Letter Agreement).
42

43 **PART VIII. STIPULATED PENALTIES**

44 VIII.1. Stipulated penalties shall be incurred by DOE and/or DoD in
45 the event that DOE and/or DoD fails to meet an established deadline.
46

47 VIII.2. In the event DOE or DoD fails to meet an established deadline
48 contained herein, NDEP may assess a stipulated penalty in the amount

1 of \$5,000.00 per week for the first week or part thereof of such
2 failure, \$10,000.00 per week for the following week or part thereof
3 of such failure, and \$15,000.00 per week for the third and each
4 succeeding week for which the failure to meet an established deadline
5 occurs.

6
7 VIII.3 NDEP shall notify DOE and/or DoD in writing of any alleged
8 failure to meet an established deadline.

9
10 VIII.3.a. If NDEP's written notice of a missed deadline
11 cites that the specified deadline was not met, evidence
12 supporting any alleged defense must be submitted to NDEP
13 within thirty (30) calendar days from the date of receipt
14 of NDEP's written notice unless otherwise agreed. No
15 penalty shall be assessed if NDEP accepts the DOE's and/or
16 DoD's defense. If NDEP rejects the defense, DOE and/or DoD
17 shall be assessed the stipulated penalty from the date of
18 the missed deadline, and DOE and/or DoD may initiate the
19 appeal procedure in accordance with [paragraph IX.2](#) of this
20 Agreement.

21
22 VIII.3.b. If a milestone for which a deadline has been
23 established is construed by NDEP to be substantially
24 deficient, and therefore not complete, NDEP shall issue a
25 written Notice of Deficiency to DOE and/or DoD that cites
26 the alleged deficiencies. If DOE and/or DoD accept(s)
27 NDEP's position, DOE and/or DoD shall, within twenty-one
28 (21) calendar days of receipt of the Notice of Deficiency
29 or such longer time period as specified by NDEP, correct
30 the deficiencies and resubmit or otherwise complete the
31 milestone for which the deadline was established. Any
32 stipulated penalty(ies) connected to failure to meet the
33 established deadline shall begin upon DOE's and/or DoD's
34 receipt of the Notice of Deficiency. The penalty(ies)
35 shall accrue during such twenty-one (21) calendar days, or
36 otherwise specified period, and may, at NDEP's discretion,
37 be waived unless the resubmitted deliverable or completed
38 milestone is determined by NDEP to remain substantially
39 deficient. If DOE and/or DoD is aggrieved by either NDEP's
40 original or subsequent determination of substantial
41 deficiency, DOE and/or DoD may initiate the appeal
42 procedure in accordance with [paragraph IX.2](#).

43
44
45 VIII.4. Stipulated penalties will continue to accrue and may be
46 assessed at NDEP's discretion during pursuit of remedies contained in
47 [Part IX, Informal Dispute Resolution and Appeal Procedure](#), except
48

1 accrual of such penalties shall be suspended during any period of
2 time in excess of fourteen (14) calendar days required by NDEP to
3 render its decision under [paragraph VIII.3](#). DOE and/or DoD are
4 responsible for stipulated penalties only for the time ultimately
5 determined to be deficient, and stipulated penalties are to be paid
6 within thirty (30) days of a final determination of deficiency unless
7 the parties agree to a different schedule.

8
9 VIII.5. The provisions of this Part shall not affect DOE's and/or
10 DoD's ability to petition NDEP for an extension of a deadline as
11 appropriate as set forth in [Part X, Extensions](#).

12
13 VIII.6. Stipulated penalties for failure to meet established
14 deadlines contained herein are in lieu of statutory penalties
15 otherwise available under the law. For statutory or regulatory
16 violations for actions for which deadlines are not established or
17 outside the scope of this Agreement, all remedies available to NDEP
18 may be invoked while DOE and DoD reserve their authority to use all
19 available defenses.

20
21 VIII.7. Payment of any stipulated penalty does not relieve DOE
22 and/or DoD of any other requirements imposed by this Agreement.

23
24 VIII.8. Any failure of DOE to remit a stipulated penalty within
25 thirty (30) calendar days after the stipulated penalty is due and
26 payable, unless the affected parties agree to a different payment
27 schedule, shall, to the extent allowed by law, cause the addition of
28 interest on the unpaid balance compounded daily at a rate equal to
29 the rate of interest fixed for 1-year United States treasury bills on
30 the date of the commencement of the action, as reported in the
31 "Federal Reserve Bulletin" published by the Board of Governors of the
32 Federal Reserve System or other commonly used business or financial
33 publication. In the event payment of interest is not allowed by law,
34 DOE shall, to the satisfaction of NDEP, establish the basis of this
35 position.
36

37
38 VIII.9. NDEP's position is that the DoD is required to pay interest
39 in accordance with [paragraph VIII.8](#). DoD's position is that absent
40 express Congressional authorization the United States is immune from
41 paying interest. If, however, a court of proper jurisdiction holds
42 that the DoD is required to pay interest, interest shall be paid in
43 accordance with [paragraph VIII.8](#).

44
45 VIII.10. Stipulated penalties that are due and payable shall be paid
46 to the state of Nevada, Division of Environmental Protection.
47
48

1 **PART IX. INFORMAL DISPUTE RESOLUTION AND APPEAL PROCEDURE**

2
3 IX.1. All parties to this Agreement shall make reasonable efforts to
4 informally resolve outstanding issues and/or disputes. During the
5 informal dispute resolution process, the parties shall meet as many
6 times as necessary to discuss and attempt resolution of the dispute.
7 If resolution at the agreement coordinator level cannot be reached,
8 efforts may be elevated to immediate supervisors of the agreement
9 coordinators or, if necessary, to the agency executive level. If
10 resolution cannot be achieved informally, the appeal procedures of
11 this Part may be implemented.

12
13 IX.2. In the event DOE and/or DoD are aggrieved by a written
14 determination by the NDEP agreement coordinator or his designee,
15 DOE and/or DoD may appeal the matter as follows:

16 IX.2.a. Within fifteen (15) calendar days following DOE
17 and/or DoD receipt of the NDEP determination being
18 appealed, DOE and/or DoD shall request an informal
19 administrative hearing. Seven calendar days prior to the
20 informal administrative hearing, DOE and/or DoD shall
21 provide NDEP with a witness list, list of exhibits, and
22 summary of evidence intended to be presented. The informal
23 administrative hearing shall be held in the NDEP offices
24 within thirty (30) calendar days of the request, unless
25 otherwise agreed. Following the informal administrative
26 hearing, the NDEP administrator shall issue the final
27 decision.
28

29 IX.2.b. If the informal administrative hearing fails to
30 resolve the issue, DOE and/or DoD may, within twenty (20)
31 calendar days following receipt of the NDEP administrator's
32 final decision, appeal the administrator's decision to the
33 Nevada State Environmental Commission (SEC). An appeal is
34 made by filing SEC Form #3 with the Secretary of the SEC.
35 SEC Form #3 will be enclosed with the decision document
36 referenced in [paragraph IX.2.a.](#)
37

38 IX.2.c. A hearing before the SEC shall be conducted within
39 twenty (20) calendar days pursuant to the Nevada
40 Administrative Procedure Act, NRS 233B.010 et seq. and the
41 Rules of Practice and Procedure of the SEC, NAC 445B.875
42 through 445B.897.
43

44 IX.3. Any of the parties may appeal the final decision of the SEC as
45 provided for in paragraph IX.2.c by filing a petition for judicial
46 review pursuant to NRS 233B.010 et seq.
47
48

1 **PART X. EXTENSIONS**

2
3 X.1. NDEP shall grant a reasonable extension of a deadline upon
4 receipt of a timely written request from DOE and/or DoD and when NDEP
5 determines that good cause exists for the requested extension. Any
6 request for extension shall specify:

7 X.1.a. The deadline that is sought to be extended;

8
9 X.1.b. The length of the extension sought;

10
11 X.1.c. The good cause(s) for the extension; and

12
13 X.1.d. Any and all related schedule(s) or deadline(s) that
14 would be affected if the extension were granted.

15
16 X.2. Good cause may exist for an extension for:

17
18 X.2.a. An event included in [Part XXII, Force Majeure](#);

19
20 X.2.b. A delay caused by, or likely to be caused by, the
21 granting of an extension in regard to another deadline or
22 milestone;

23
24 X.2.c. Any event or series of events mutually agreed to by
25 DOE and/or DoD and NDEP as constituting good cause.

26
27 X.3. NDEP, in writing, shall grant or deny a written request for
28 an extension within thirty (30) calendar days from the date
29 of receipt of the written request.

30
31 X.4. NDEP may grant the extension for less time than originally
32 requested if it determines that the shorter extension is reasonable
33 in light of the good cause.

34
35 X.5. If NDEP denies the requested extension, or approves an extension
36 but modifies the length of time requested for the extension, it will
37 include in its written statement of denial or modification an
38 explanation of the basis for its decision.

39 **Part XI. AMENDMENTS AND MODIFICATIONS**

40
41 XI.1. Amendments to this Agreement may be proposed by any of the
42 parties.

43
44 XI.2. Amendments may be purposed for the following reasons, among
45 others:

46 XI.2.a. To assure that this Agreement remains consistent
47 with applicable laws and regulations;

1 XI.2.b. To assure that this Agreement is consistent with
2 changed circumstances.
3

4 XI.3. This Agreement shall not be modified unless such modification
5 is in writing and signed by all affected parties. Changes to [Appendix](#)
6 [V, Public Involvement Plan](#), and the movement of CAUs between
7 appendices as specified in [Part V, Description of Appendices](#), and as
8 specified in [Part XII, Corrective Action Investigations/ Corrective](#)
9 [Actions](#), shall not be considered modifications of this Agreement
10 (article modified by July 2000 Letter Agreement).
11

12 **PART XII. CORRECTIVE ACTION INVESTIGATIONS/CORRECTIVE ACTIONS**
13

14 XII.1. Within sixty (60) calendar days following the signing of this
15 Agreement by the last party to do so, the parties shall meet to
16 review Appendices II-IV and concur on the classification of all
17 presently identified CAUs to insure all known CAUs are placed in the
18 appropriate appendix, and where appropriate, due dates and deadlines
19 established for existing and proposed activities. Following this
20 initial meeting, the quarterly meeting process outlined in [paragraphs](#)
21 [XII.3](#) and [XII.4](#) will begin (article modified by January 2007 Letter
22 Agreement)
23

24 XII.2. [Appendix III, Corrective Action Investigations/Corrective](#)
25 [Actions](#), will initially reflect current prioritization of CAUs based
26 on previous discussions with NDEP and/or the Community Advisory Board
27 in developing the budgets and priorities for FY 96 and FY 97.
28 Following the initial prioritization, new CAUs will be prioritized
29 based on assessment of risk, as well as agency, regulator, and
30 stakeholder input (including the Community Advisory Board), according
31 to the process described in [Appendix VI, Corrective Action Strategy](#).
32

33 XII.3. The parties shall review and update Appendices II through IV
34 as required at quarterly meetings. The appendices shall be updated
35 at each meeting to (article modified by January 2007 Letter
36 Agreement):
37

38 XII.3.a. Add newly identified sites to [Appendix II, Corrective](#)
39 [Action Sites/Units](#) (article modified by January 2007 Letter
40 Agreement);
41

42 XII.3.b. Incorporate any approved schedule changes to the
43 milestones in [Appendix III, Corrective Action](#)
44 [Investigations/Corrective Actions](#). Move CAUs from [Appendix III,](#)
45 [Corrective Action Investigations/Corrective Actions](#), to [Appendix](#)
46 [IV, Closed Corrective Action Units](#), after NDEP has issued a
47 notice or notices of completion (article modified by January
48 2007 Letter Agreement).

1 XII.4. Following the transfer of a CAU from [Appendix II, Corrective](#)
2 [Action Sites/Units](#), to [Appendix III, Corrective Action](#)
3 [Investigations/Corrective Actions](#) milestones, associated due dates
4 and deadlines may be proposed by DOE and/or DoD but shall be
5 established by NDEP according to the following quarterly meeting
6 schedule listed in [paragraphs XII.4.a through XII.4.c](#). Except as
7 noted in [paragraph XII.5](#), deadlines may be established for the
8 submittal of work plans, CADDs, CAPs, and completion of corrective
9 actions within the FY+2 planning window. For those work plans, CADDs,
10 CAPs, and corrective actions for which completion may fall outside
11 the planning window (FY+2), interim deadlines may be established
12 within the FY+2 planning window. All deadlines other than those set
13 forth explicitly in this Agreement shall be established pursuant to
14 paragraphs XII.4 and XII.5 (article modified by January 2007 Letter
15 Agreement).

16
17 XII.4.a. During the quarterly meeting held during the fiscal
18 year first quarter, the parties shall review and reconsider
19 established priorities, milestones, and associated due dates and
20 deadlines for the current fiscal year, taking into consideration
21 the Approved Funding Program and the factors listed in section
22 1.3 of [Appendix VI, Corrective Action Strategy](#). If the parties
23 cannot agree on deadlines, then [Part IX, Informal Dispute](#)
24 [Resolution and Appeal Procedure](#), may be invoked (article
25 modified by January 2007 Letter Agreement).

26
27 XII.4.b. During the quarterly meeting held during the fiscal
28 year second quarter, the parties shall initiate the process to
29 establish priorities, milestones, and
30 associated due dates for CAUs for FY+2. At this meeting,
31 DOE will propose CAU milestones for target and planning
32 funding levels, as appropriate. DOE may choose to develop
33 milestones above the target funding level, but shall
34 identify which proposed milestones are above the target
35 case. NDEP, under its authority, may establish deadlines
36 for any milestones for DOE and DoD activities subsequent
37 to the prioritization process established in [Appendix VI,](#)
38 [Corrective Action Strategy](#). DoD asserts it is not able to
39 commit to these FY+2 enforceable dates. Prioritized CAUs
40 with their associated milestones, due dates, and/or
41 deadlines shall be listed in [Appendix III, Corrective](#)
42 [Action Investigations/Corrective Actions](#). Parties reserve
43 the right to invoke [paragraph IX.1](#) if an issue is not
44 resolved. Subsequent to this meeting, input on the
45 proposed priorities will be sought from the public and the
46 Community Advisory Board. DOE and DoD, in cooperation
47 with NDEP, will develop a final prioritization of CAUs for
48 CAIs and corrective actions with the setting of deadlines

1 by NDEP by March 15 (article modified by January 2007 Letter
2 Agreement).

3
4 XII.4.c. During the quarterly meeting held during the
5 fiscal year fourth quarter, the parties shall review and
6 reconsider established priorities, milestones, and associated
7 due dates and deadlines for CAUs considering factors established
8 in Appendix VI, Corrective Action Strategy, and the President's
9 budget for FY+1. Parties reserve the right
10 to invoke paragraph IX.1 if an issue is not resolved
11 (article modified by January 2007 Letter Agreement).

12
13 XII.5. One (1) milestone, with an associated due date or deadline,
14 beyond FY+2 will be established for the completion of UGTA. In
15 addition, at any one time, one (1) other milestone, with an
16 associated due date or deadline, besides the completion milestone can
17 be established for UGTA beyond the FY+2 window. Once this other
18 milestone moves into the FY+2 window, an additional milestone beyond
19 FY+2 can be established such that two out year milestones (one of
20 which is the completion milestone) can always exist for UGTA. These
21 milestones, established beyond the FY+2 window, will be based on
22 assumptions used for planning and understandings of the CAUs at the
23 time of their establishment. If the assumptions or understandings
24 change, the milestones may be reevaluated. The parties recognize
25 that current assumptions, as stated in Appendix VI, Corrective Action
26 Strategy, are preliminary and may change as additional technical
27 information is acquired (article modified by February 2008 Letter
28 Agreement).

29
30 XII.6. The timeframes for submittals, activities, and tasks shall
31 be established in the appropriate planning documents and may be
32 bounded by the deadlines established in Appendix III, Corrective
33 Action Investigations/Corrective Actions.

34
35 XII.7. Once a CAI has been completed, DOE or DoD shall submit a
36 CADD, which includes evaluation of alternatives, to NDEP for its
37 evaluation. Prior to approving proposed actions, NDEP may seek
38 public comment which includes input from the Community Advisory
39 Board. If a corrective action is required, a CAP will be prepared
40 to guide the subsequent corrective action.

41
42 XII.8. NDEP shall, within thirty (30) calendar days of receipt of a
43 submittal, unless otherwise specified in this Agreement, provide:

44 XII.8.a. Approval, with or without comments on the
45 submittal;

46
47 XII.8.b. Disapproval with comments; or
48

1 XII.8.c. A timeframe within which NDEP's review will be
2 completed.

3
4 XII.9. Upon completion and NDEP approval of the corrective actions,
5 Notices of Completion shall be transmitted to DOE and/or DoD as
6 appropriate and the CAU will move to [Appendix IV, Closed Corrective](#)
7 [Action Units](#). Appendix IV will also identify which CASS or CAUs
8 require long-term monitoring.

9
10 **PART XIII. SAMPLING AND DATA/DOCUMENT AVAILABILITY**

11
12 XIII.1. The timeframes for the initial availability of any quality-
13 assured results from sampling and monitoring shall be identified in
14 the CAU plans and CAP schedules for each CAU. DOE and/or DoD shall
15 make available existing quality-assured data from sampling, tests,
16 and other activities generated pursuant to this Agreement within
17 thirty (30) calendar days following a request. This requirement is
18 hereby established as the deadline pursuant to this Agreement. NDEP
19 may request all sampling data (including raw data), to be
20 incorporated into the submittal.

21
22 XIII.2. NDEP, at its request, shall be provided split or duplicate
23 samples of all samples collected by DOE and/or DoD pursuant to this
24 Agreement. NDEP shall provide, upon request of any party's
25 corrective action coordinators, split or duplicate samples of all
26 samples collected by NDEP pursuant to this Agreement. Any party
27 requesting split or duplicate samples from another party shall
28 provide its own sample container(s) at the time of the sampling event
29 and is responsible for the management and analysis of any such
30 samples.

31
32 XIII.3. NDEP may inspect and have copies provided, subject to
33 restrictions relating to classification and other applicable
34 privileges, any and all records, files, photographs, documents, and
35 other writings (including sampling and monitoring data), pertaining
36 to work undertaken, or planned to be undertaken, pursuant to this
37 Agreement. Originals shall remain in the custody of DOE, DoD, and
38 their respective contractors.

39
40 **PART XIV. ACCESS**

41
42 XIV.1. Subject to DOE and/or DoD security requirements, applicable
43 health and safety plans, and health and safety officers'
44 instructions, NDEP personnel, with appropriate safety and security
45 clearances, shall have authority to enter CAU work sites and DOE and
46 DoD locations during normal business hours with or without advance
47 notification. Following notification of DOE and/or DoD, NDEP shall to
48 the extent authorized by law have authority to enter contractor

1 locations to review applicable records and information. Access may be
2 sought for the following purposes among others:

3
4 XIV.1.a. Inspection of records, operating logs, contracts,
5 and other documents related to implementation of this
6 Agreement;

7
8 XIV.1.b. Reviewing the progress of DOE and/or DoD in
9 implementing the terms and conditions of this Agreement;

10
11 XIV.1.c. Verification of data related to implementation of
12 this Agreement; and

13
14 XIV.1.d. Observation of Agreement-related work in progress.

15 XIV.2. Escorts of NDEP personnel to restricted areas where work is
16 ongoing at a CAU shall not be required where facility/locality-
17 specific security, health, and safety requirements are understood and
18 adhered to by the unescorted NDEP personnel. Unescorted NDEP
19 personnel shall sign a release of liability before undertaking any
20 unescorted visit of a restricted site.

21
22 XIV.3. No reasonable access shall be denied NDEP personnel with
23 appropriate certifications and clearances on Agreement-related
24 business. If access is denied, the stated reasons for any denial of
25 access to NDEP personnel to any of the facilities or to any of the
26 localities of any of the CAUs shall be provided to NDEP within one
27 (1) business day.

28
29 XIV.4. To the extent that compliance with this Agreement requires
30 access to property administered or owned by parties other than DOE,
31 such as the Air Force, other federal entities, and private parties,
32 DOE shall use the maximum extent of its influence and authority to
33 obtain access agreements for DOE, NDEP, and the authorized employees
34 and contractors of each of the parties. DOE shall provide a
35 certified copy of any such signed access agreements to NDEP within
36 ten (10) calendar days of DOE receipt of the document. As
37 appropriate, DOE may negotiate the inclusion of such access
38 agreements as provisions to existing Memoranda of Understanding
39 with other federal entities. Activities conducted under this
40 Agreement on Air Force-administered lands will be scheduled on a on-
41 interference basis with ongoing Air Force activities.

42
43 XIV.5. With respect to non-DOE property upon which monitoring wells,
44 pumping wells, treatment units, or other related systems are to be
45 located, DOE shall use its best efforts to obtain access agreements
46 that provide:

1 XIV.5.a. That no conveyance of title, easement, or other
2 interest in the property shall be consummated without
3 provisions for the continued operation of such wells,
4 treatment units, or other Agreement-related action on the
5 property;

6
7 XIV.5.b. That owners of any property where monitoring wells,
8 pumping wells, treatment units, or other installations are
9 located shall notify DOE by certified mail, at least ninety
10 (90) calendar days prior to any conveyance, of the property
11 owner's intent to convey any interest in the property;

12
13 XIV.5.c. That DOE shall notify NDEP of the provisions made
14 for the continued operation of the monitoring wells,
15 treatment units, or other systems installed pursuant to this
16 Agreement;

17
18 XIV.5.d. DOE shall provide NDEP with a certified copy of each
19 agreement for the continued operation of any monitoring
20 wells, treatment units, or other systems installed pursuant
21 to this Agreement within ten (10) calendar days of the
22 receipt of the final agreement.

23
24 **PART XV. OBLIGATIONS OF DOE AND DoD**

25
26 XV.1. DOE and DoD shall take all necessary steps as set forth in
27 paragraphs XV.8 through XV.11 to obtain timely funding to meet their
28 obligations under this Agreement through consultation with the
29 parties and the submission of timely budget requests.

30
31 XV.2. Such obligations include, but are not limited to, updates to
32 Appendix II, Corrective Action Sites/Units, the corrective action
33 investigation/corrective action activities identified in Appendix
34 III, any monitoring required pursuant to Appendix IV, the Public
35 Involvement Plan activities required pursuant to Appendix V, and
36 support of NDEP's administrative and regulatory activities to be
37 performed in conjunction with oversight of corrective action
38 activities required by this Agreement.

39
40 XV.3. The base obligation of DOE and DoD required for NDEP to oversee
41 activities related to this Agreement shall be determined by NDEP on a
42 yearly basis, and transmitted to DOE and DoD in a timely manner prior
43 to the start of each state fiscal year as authorized by NRS 459.565
44 and NDEP implementing policy and procedure(s). In addition, NDEP
45 shall at the same time transmit estimates of its base obligations for
46 the four succeeding out years to assist DOE and/or DoD in their
47 respective long-range planning. In accordance with sections XV.4 and
48 XV.5, DOE and DoD agree to pay fees and service charges, consistent

1 with §6001 of RCRA (42 U.S.C. §6961), at a rate which would be
2 assessed for similar activities on any person for which NDEP provides
3 oversight of corrective action activities under applicable state law.
4 If the parties disagree on the fees and service charges, [Part IX,](#)
5 [Informal Dispute Resolution and Appeal Procedure](#), may be invoked.

6
7 XV.4 On an annual basis, NDEP shall submit its estimated fee(s) for
8 its obligations to be incurred to DOE. DOE shall in turn, within
9 thirty (30) calendar days after October 1 of each year unless
10 otherwise agreed, make a deposit with NDEP sufficient to meet that
11 obligation for NDEP oversight of DOE activities.

12
13 XV.5. Reimbursement of costs/fees associated with services/oversight
14 of DoD's corrective action investigation and/or corrective action
15 activities shall be recoverable by NDEP through the Defense/State
16 Memorandum of Agreement and Cooperative Agreement (DSMOA/CA). These
17 services/oversight and accounting procedures, including procedures
18 for NDEP reimbursement, will be in accordance with the DSMOA/CA. In
19 the event that the DSMOA/CA Program is modified, altered, ended or it
20 fails to meet services/oversight costs/fees, DoD shall remain liable
21 for payment of these costs/fees with appropriated Defense
22 Environmental Restoration Act (DERA) funds.

23
24 XV.6. NDEP's estimate of its regulatory oversight obligational
25 requirements for each successive year shall take into account any
26 projected differences between the previous year's estimated
27 obligational requirements and the actual regulatory oversight
28 obligations incurred by NDEP that year and will be submitted on or
29 before April 1 of each year to the appropriate party. By
30 September 1 of each year, all reconciliation for the prior state FY
31 will have been accomplished.

32
33 XV.7. In accordance with the DOE and/or DoD's respective rules and
34 policies applicable to the release of budgetary/contracting
35 information in effect at the time of the signing of this Agreement,
36 DOE and DoD shall make the scope of work and the budgets to be used
37 in implementing the terms of this Agreement available to NDEP.
38 Submittal of the scope of work and budgets will occur in conjunction
39 with the establishment of milestones and priorities as identified in
40 [Part XII, Corrective Action Investigations/Corrective Actions](#). Upon
41 request by NDEP and in accordance with applicable restrictions, DOE
42 and DoD shall also provide to NDEP the identity, scope of work, and
43 Agreement-related restoration budgets of any entity or agency
44 performing work related to this Agreement.

45
46 XV.8. Prior to the annual submission of DOE/NV's and DoD/NV's budget
47 requests to their respective Headquarters, DOE for its FY+2 budget,
48 and DoD for its five-year planning budget, NDEP shall be given the

1 following:

2
3 XV.8.a. Briefings on the proposed budget requests for
4 environmental management for the facilities, any supporting
5 documents, and target funding levels for environmental
6 management for the facilities, including an assessment of any
7 impacts on this Agreement.

8
9 XV.8.b. The opportunity to review, comment, and make
10 recommendations on the priorities and budget request.

11
12 XV.9. DOE shall, to the extent it deems appropriate, revise its FY+2
13 budget requests and supporting documents to address or resolve NDEP's
14 comments and recommendations prior to transmittal to the
15 Headquarters. DOE shall forward to its Headquarters in its budget
16 requests any comments not fully resolved to the satisfaction of all
17 parties and any additional activities identified by NDEP along with
18 the projected budget requirements for such activities.

19
20 XV.10. DOE Headquarters shall forward to the Office of Management and
21 Budget for consideration, its FY+2 budget requests along with any
22 unresolved comments and additional activities with related budget
23 requirements identified by NDEP pursuant to [paragraph XV.9](#).

24
25 XV.11. In accordance with established Department of Defense policy as
26 of the date of the signing of this Agreement, DoD Headquarters shall
27 forward its FY+2 restoration budget requests, which will identify
28 activities mandated by regulatory considerations to the Deputy Under
29 Secretary of Defense, Environmental Security (DUSD)(ES) for
30 consideration. DUSD(ES) is responsible for consolidating Defense
31 Agency submissions and forwarding this along with all other Defense
32 Service requests to the Under Secretary of Defense Comptroller for
33 incorporation into the President's Budget Request.

34
35 XV.12. NDEP agrees not to release confidential budget information to
36 anyone prior to submission by the President of his Budget Request to
37 Congress, unless authorized by DOE or required to do so by court
38 order. DOE may seek to intervene in any proceeding brought to compel
39 or enjoin release of this information. If allowed to intervene, DOE
40 shall assert its interest in and the legal basis for maintaining the
41 confidentiality of this information.

42
43 XV.13. DOE and DoD will provide to NDEP sections of the President's
44 Budget Request to Congress pertaining to the facilities'
45 environmental restoration programs in a timely manner after submittal
46 by the President to Congress. DOE and DoD shall notify NDEP of any
47 differences between the proposed budget requests submitted in
48 accordance with [paragraph XV.9](#) and the actual requests included in
the President's Budget Request to Congress.

1 XV.14. If funding has been requested as described in paragraphs XV.8
2 through XV.11 and in the event that the U.S. Congress has failed to
3 appropriate the funds so requested for Agreement milestones, the
4 parties shall review the level of presently available appropriated
5 funds and the estimated cost of meeting all obligations and
6 requirements under this Agreement. DOE and/or DoD shall transmit to
7 NDEP for its review a proposed alternate schedule and level of
8 activities to satisfy the terms and conditions of this Agreement. If
9 agreement cannot be reached on an alternate schedule and if NDEP does
10 not approve a modified alternate schedule and level of activity,
11 should DOE and/or DoD choose to appeal, the appeal procedure
12 contained in paragraph IX.2 will be followed.
13
14

15 XV.15. If DOE and/or DoD fail to comply with the terms of this
16 Agreement (including payment of NDEP oversight costs), NDEP may
17 pursue all available remedies to ensure performance and compliance.
18

19 **PART XVI. NOTIFICATION AND AGENCY COORDINATION**

20
21 XVI.1. Documents shall be sent to NDEP in a manner designed to be
22 received by the date due in either the Carson City or Las Vegas
23 office. Formal requests by any party to this Agreement of any other
24 party to this Agreement shall be in writing (article modified by
25 February 2008 Letter Agreement).
26

27 XVI.2. Unless otherwise specified by written notice to the agreement
28 coordinators of DOE and DoD, any report, document, or submittal
29 provided to NDEP, pursuant to a milestone or deadline identified in
30 or developed under the provisions of this Agreement, shall be sent
31 to (article modified by February 2008 Letter Agreement):
32

33 Chief
34 Bureau of Federal Facilities
35 Division of Environmental Protection
36 333 West Nye Lane
37 Carson City, Nevada 89710

38 with an additional copy provided concurrently to:
39

40 Bureau of Federal Facilities
41 Division of Environmental Protection
42 555 E. Washington, Suite 4300
43 Las Vegas, Nevada 89101
44

45 XVI.3. Unless otherwise specified by written notice from DOE to the
46 agreement coordinators of the other parties, documents sent to DOE
47 relating to this Agreement shall be sent to (article modified by
48 February 2008 Letter Agreement):

1 Director, Environmental Restoration Division
2 U.S. Department of Energy
3 Nevada Operations Office
4 P. O. Box 98518
5 Las Vegas, Nevada 89193-8518
6

7 with an additional copy provided concurrently to:

8
9 Director, Environmental Protection Division
10 U. S. Department of Energy
11 Nevada Operations Office
12 P. O. Box 98518
13 Las Vegas, Nevada 89193-8518
14

15 XVI.4. Documents sent to DoD shall be sent to the attention of the
16 DoD agreement coordinator as follows, unless DoD specifies otherwise
17 by written notice to the corrective action coordinators of the other
18 parties (article modified by February 2008 Letter Agreement):
19

20 Chief, Technical Compliance Division
21 Defense Nuclear Agency
22 Field Command, Nevada Operations Office
23 P.O. Box 208
24 Mercury, Nevada 89023
25

26 with an additional copy provided concurrently to:

27
28
29 Director, Environmental Protection Division
30 U.S. Department of Energy
31 Nevada Operations Office
32 P. O. Box 98518
33 Las Vegas, Nevada 89193-8518
34

35 XVI.5. Within thirty (30) calendar days of the effective date of this
36 Agreement, the parties shall notify each other in writing of the
37 names and addresses of their respective agreement coordinators and
38 corrective action coordinators and their designees who shall be the
39 usual day-to-day points of contact for DOE and DoD respectively.
40

41 XVI.6. Each corrective action coordinator shall be responsible for
42 overseeing the day-to-day implementation of the provisions of this
43 Agreement for his/her respective party.
44

45 XVI.7. Each agreement coordinator works with the party's corrective
46 action coordinator(s) and shall be responsible for assuring that all
47 communications from the other parties are appropriately disseminated
48 and processed within his/her own organization.

1 XVI.8. Changes in any of the parties' Agreement coordinators or
2 corrective action coordinators and their designees shall be followed
3 by written notification to the other parties within ten (10) calendar
4 days following the change(s).

5
6 XVI.9. The NDEP corrective action coordinator and his/her designees
7 shall have the authority to, among other things:

8
9 XVI.9.a. Take, or cause to be taken, samples, duplicate
10 samples, split samples, and/or sub-samples of samples
11 collected by DOE and/or DoD;

12
13 XVI.9.b. Ensure, so far as possible, that field and
14 laboratory work are performed pursuant to NDEP-approved
15 CAI work plans;

16
17 XVI.9.c. Observe, and/or cause to be observed, all activities
18 performed pursuant to this Agreement; take and/or cause to be
19 taken, photographs consistent with security restrictions, for
20 which purpose DOE consents that DOE "Q" clearances,
21 photographer's permits/official photographer designations
22 shall be issued to qualified NDEP personnel as required by
23 NDEP for this purpose;

24
25 XVI.9.d. Review and/or cause to be reviewed, all records,
26 files, and documents relevant to this Agreement, with the
27 determination as to what constitutes relevance made by NDEP.

28
29 XVI.10. The DOE and/or DoD corrective action coordinators and
30 their representatives may implement modifications to the field work
31 to be performed pursuant to an approved work plan and will notify
32 NDEP of such action. This does not relieve either DOE or DoD of their
33 respective requirements to meet the performance objectives of the
34 approved work plan.

35 **PART XVII. PUBLIC INVOLVEMENT**

36
37 XVII.1. [Appendix V, Public Involvement Plan](#), shall contain a
38 mechanism for continually providing information and for actively
39 seeking public input (including input from the Community Advisory
40 Board), concerning DOE and DoD activities undertaken pursuant to this
41 Agreement.

42
43 XVII.2. The Public Involvement Plan's objectives include, among
44 others:

45
46 XVII.2.a. Identifying and considering the public's concerns,
47 needs, and values prior to making decisions;

1 XVII.2.b. Providing an outline of activities and materials which
2 offer accurate, timely, and understandable information to
3 stakeholders (including the general public);
4

5 XVII.2.c. Fulfilling all applicable state and federal regulatory
6 requirements regarding public involvement;
7

8 XVII.2.d. Planning public involvement activities to reflect
9 current schedules and priorities contained in this Agreement.

10 XVII.3. At a minimum, public reading rooms shall be located within
11 the two major population centers in the state, one in the north and
12 one in the south. Based on continuing public input, the parties
13 shall annually evaluate the need for additional public reading rooms.
14

15
16 XVII.4. The public reading rooms shall contain the following, when
17 prepared:
18

19 XVII.4.a. CAI work plans and reports;
20

21 XVII.4.b. Corrective action work plans and reports;
22

23 XVII.4.c. CADDs;
24

25 XVII.4.d. Health assessments;
26

27 XVII.4.e. Risk assessments;
28

29 XVII.4.f. Comments and information submitted by the public;
30

31 XVII.4.g. National Environmental Policy Act documents;
32

33 XVII.4.h. Public Involvement Plan;
34

35 XVII.4.i. Public notices;
36

37 XVII.4.j. This Agreement;
38

39 XVII.4.k. RCRA Permit for NTS;
40

41 XVII.4.l. DOE/NDEP Mutual Consent Agreement; and
42

43 XVII.4.m. Index of the environmental restoration documents
44 in the public reading room and information on how to
45 acquire further environmental restoration information from
46 NDEP, DOE, or DoD.
47
48

1 **PART XVIII. RETENTION OF RECORDS**

2
3 XVIII.1. DOE and DoD shall establish and maintain a compilation of
4 all work plans, data reports, numerical models, numerical model
5 results, monitoring results, and other writings generated pursuant to
6 this Agreement in accordance with DOE and DoD records retention
7 procedures.

8
9 XVIII.2. Such information shall be available to NDEP upon request and
10 will form part of the basis for information to be included in the
11 NDEP's Administrative Record, which includes, but is not limited to,
12 those documents cited in [paragraph XVII.4](#). NDEP shall maintain the
13 Administrative Record in accordance with the requirements of NRS
14 Chapter 239.

15
16 XVIII.3. DOE and DoD shall notify NDEP at least one hundred eighty
17 (180) calendar days prior to the proposed destruction or disposal of
18 any documents or records described in this part.

19 **PART XIX. CONVEYANCE OF TITLE**

20
21 XIX.1. No conveyance of title, easement, or other interest in any of
22 the facilities on which any containment system, treatment system,
23 monitoring system, or other construct is installed or implemented or
24 may be installed or implemented pursuant to this Agreement, shall be
25 consummated by DOE and/or DoD and/or any contractor and/or
26 subcontractor to DOE and/or DoD respectively, without provision for
27 continued maintenance of any such system or other response action(s).
28

29 XIX.2. At least one hundred twenty (120) calendar days prior to any
30 such proposed conveyance, DOE and/or DoD shall notify NDEP of the
31 provisions made for the continued operation and maintenance of any
32 system(s) installed or implemented pursuant to this Agreement.
33

34 **PART XX. SEVERABILITY**

35
36 XX.1. If any provision of this Agreement (which may include any
37 activity conducted pursuant to this Agreement) is ruled invalid,
38 unenforceable, unlawful, or unconstitutional by a court of competent
39 jurisdiction, the remainder of this Agreement (including other
40 activities taken thereunder) shall not be affected by such ruling.
41

42 **PART XXI. CLASSIFIED AND CONFIDENTIAL INFORMATION**

43
44 XXI.1. Personnel designated by NDEP as requiring DOE "Q" clearances
45 who have subsequently been issued such "Q" clearances by the DOE
46 shall be eligible for access to classified information on a "need to
47 know" basis. Only responsible DOE/DoD officials, with the authority
48 to do so, may make the determination of the "need to know."

1 Recipients of the information are responsible for protecting all
2 classified information to which they have access or custody. DOE
3 and/or DoD shall provide within ten (10) business days of such
4 refusal a written response to NDEP requests for information related
5 to the Agreement for which they have determined
6 that a "need to know" is not justified. This requirement is hereby
7 established as a deadline. The response shall be complete and
8 specific as to the information that is nondisclosable.

9
10 XXI.2. Analytical data and the results of numerical modeling, with
11 the exception of data and modeling results determined to be
12 classified for reasons of National Security, shall not be claimed as
13 nondisclosable.

14
15 XXI.3. Those data, documents, records, or files that are
16 nondisclosable pursuant to applicable privileges and laws including
17 the Freedom of Information Act, 5 U.S.C. §552, and the Privacy Act
18 of 1972, 5 U.S.C. §552(a), unless expressly authorized for release by
19 the originating party, shall be handled in accordance with those
20 provisions of law and any implementing regulations. Upon submission
21 of reports, letters, or other Agreement-related writings to NDEP, DOE
22 or DoD shall identify any materials determined by DOE or DoD to be
23 exempt from public disclosure pursuant to the Freedom of Information
24 Act and to the extent required by state law, such materials shall be
25 handled as exempt from public disclosure by NDEP. NDEP will notify
26 the appropriate party within 30 days of its intent to release the
27 information should a determination to release the information be
28 made.

29
30 **PART XXII. FORCE MAJEURE**

31
32 XXII.1. A Force Majeure shall mean an event arising from
33 unforeseeable factor(s) that is (are) beyond the control of DOE
34 and/or DoD and/or their respective contractors, subcontractors,
35 and/or operators, which causes delay, or prevents the performance
36 of any task specified under this Agreement. Force Majeure may
37 include:

38
39 XXII.1.a. Adverse weather conditions, natural disasters, or
40 events that affect the site or non-site locations, preventing
41 or delaying the transportation or delivery of materials or
42 the availability of labor, that could not reasonably be
43 anticipated;

44
45 XXII.1.b. Unanticipated breakage or accident to machinery,
46 equipment, or lines of pipe despite reasonably diligent
47 maintenance;

1 XXII.1.c. Restraint by court order or order of public
2 authority;

3
4 XXII.1.d. Inability to obtain, consistent with statutory
5 requirements and after exercise of reasonable diligence, any
6 necessary authorizations, approvals, permits, or licenses due
7 to action or inaction of any governmental agency or authority
8 other than the DOE or DoD;

9
10 XXII.1.e. Delays caused by compliance with applicable
11 statutes or regulations governing contracting, procurement or
12 acquisition procedures, despite the exercise of reasonable
13 diligence; and

14
15 XXII.1.f. Any strike or other labor dispute not within the
16 control of the parties thereby affected.

17
18
19 XXII.2. DOE and DoD assert that their ability to meet obligations
20 under this Agreement is subject to the Anti-Deficiency Act, 31 U.S.C.
21 §1341, such that unavailability of funding provides a defense
22 pursuant to this Part. Nothing in this Agreement shall be construed
23 to require a DOE or DoD official to violate the Anti-Deficiency Act.
24 NDEP does not recognize that the Anti-Deficiency Act constitutes a
25 Force Majeure or in any way constitutes a defense or an excuse for
26 failure to comply with the terms and conditions of this Agreement and
27 applicable state and federal laws and requirements. Nothing in this
28 Agreement shall be construed to authorize a DOE or DoD official to
29 violate environmental laws and regulations.

30
31 XXII.3. DOE and/or DoD shall bear the burden of establishing that a
32 delay was caused by an unforeseen or unexpected event or occurrence;
33 that the event was beyond the control of DOE and/or DoD; that the
34 event could not have been avoided or overcome by due diligence; and
35 that the event delayed or prevented performance by a date or in the
36 manner required by this Agreement.

37
38 XXII.4. To assert a claim of Force Majeure, DOE and/or DoD shall
39 provide verbal notification to the state agreement coordinator after
40 DOE and/or DoD becomes aware of the effect of the event on DOE's
41 and/or DoD's ability to perform the obligations of the Agreement
42 creating the claim of Force Majeure, followed by written
43 confirmation. Failure to assert a claim of Force Majeure shall
44 constitute a waiver of DOE's and/or DoD's right to dispute any denial
45 of an extension request or assessment of stipulated penalties on the
46 basis of the event giving rise to the alleged Force Majeure.

47
48 XXII.5. NDEP shall transmit to DOE and/or DoD its written acceptance,

1 acceptance in part, or rejection of DOE's and/or DoD's claim of Force
2 Majeure within fourteen (14) calendar days of receipt of the written
3 notice of claim. If DOE and/or DoD disagree with NDEP's rejection on
4 such claim, the dispute resolution and appeal process contained in
5 Part IX, Informal Dispute Resolution and Appeal Procedure, may be
6 initiated. For disputes on Force Majeure issues, if the dispute is
7 not resolved during the dispute resolution process set forth in
8 paragraph IX.2, the parties agree that the DOE and DoD may seek
9 judicial review of the decision of the SEC in Federal District Court
10 for Nevada.

11
12 **PART XXIII. MUTUALITY TO DRAFT OF AGREEMENT**

13
14 XXIII.1. All terms of this Agreement have been negotiated and
15 mutually drafted by the parties hereto, including consultation with
16 and review by counsel.

17
18
19 **PART XXIV. EFFECTIVE DATE OF AGREEMENT**

20
21 XXIV.1. The effective date of this Agreement shall be the date on
22 which the last party to do so becomes a signatory to this Agreement.

23
24 **PART XXV. DURATION/TERMINATION**

25
26 XXV.1. Upon satisfactory completion, as determined by NDEP, of a
27 given milestone in Appendix III, Corrective Action
28 Investigations/Corrective Actions, NDEP shall issue a Notice of
29 Completion to DOE and/or DoD for completion of enforceable
30 milestones.

31
32 XXV.2. When a corrective action has been carried out in accordance
33 with the CAP NDEP will issue a Notice of Completion to DOE and/or DoD
34 as appropriate. Following the issuance of a Notice of Completion, the
35 CAU for which the corrective action was carried out shall be listed
36 in Appendix IV, Closed Corrective Action Units, with the list of
37 related CASs.

38
39 XXV.3. When all the terms and conditions of this Agreement shall be
40 considered, by NDEP, to have been satisfied by DOE and/or DoD,
41 including satisfactory completion of corrective actions for all
42 CAUs identified for and during the tenure of this Agreement, written
43 notice of the same will be forwarded from NDEP to DOE and/or DoD and
44 such written notice will terminate this Agreement.

45
46
47
48

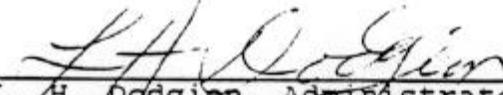
1 **PART XXVI. MERGER AND INTEGRATION**
2

3 XXVI.1. This Agreement merges all prior written and oral
4 communications among the parties concerning this Agreement and
5 contains the final and complete agreement reached by the parties
6 unless subsequently amended in accordance with Part XI, Amendments
7 and Modifications.
8
9

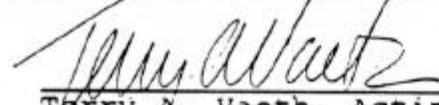
10 **PART XXVII. SIGNATORIES**
11

12 XXVII.1. The undersigned representatives certify that they are
13 fully authorized to enter into this Agreement and to execute and
14 legally bind their respective parties hereto.
15

16
17 FOR THE STATE OF NEVADA: -
18

19
20 BY:  3/26/96
21 L. H. Dodgion, Administrator Date
22 Nevada Division of Environmental Protection
23
24

25 FOR THE DEPARTMENT OF ENERGY:
26

27
28 BY:  4/4/96
29 Terry A. Vaeth, Acting Manager Date
30 Nevada Operations Office
31

32
33 FOR THE DEPARTMENT OF DEFENSE
34

35
36 BY:  5/10/96
37 ~~Paul S. Kaminski~~ Date
38 ~~Under Secretary of Defense Acquisition Technology~~
39 GARY L. CURTIN
40 Major General, USAF
41 Director, Defense Nuclear Agency
42
43
44
45
46
47
48