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Department of Energy

Albuquerque Operations Office

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Albuquerque, New Mexico 87115

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(Return to WFO)

DEC 12 1984

Honorable Peterson Zah
Chairman, Navajo Tribal Council
P.O. Box 308
Window Rock, AZ 86515

Dear Chairman Zah:

Enclosed are copies of Cooperative Agreement No. DE-FC04-85AL26731 between the U.S. Department of Energy (DOE) and the Navajo and Hopi Tribes for remedial action at the Tuba City, Arizona, inactive uranium millsite. The agreement also requires the concurrence of the Nuclear Regulatory Commission (NRC) and the Navajo and Phoenix Area Offices of the Bureau of Indian Affairs (BIA).

It is my understanding that the Navajo Tribe must pursue the same formal internal approval process for this agreement as was the case with the DOE-Navajo Tribe cooperative agreement covering the Shiprock, Monument Valley, and Mexican Hat sites. It is my further understanding that the Chairmen of the Navajo and Hopi Tribes desire a formal signing ceremony in connection with the agreement. Consequently, the enclosed copies of the agreement are for your use in initiating the coordination of Tribe approvals.

By copies of this letter, I am providing copies of the agreement to the Hopi Tribe, the Navajo and Phoenix Area Offices of the BIA, and the Nuclear Regulatory Commission, so that all parties and concurring agencies will be aware of what is being executed and to provide some time for internal approvals prior to a signing ceremony.

I would appreciate it if you could take the lead in coordinating an agreeable date to the Tribes for a signing ceremony. John Themelis, Project Manager of the UMTRA Office is available to assist you on logistic requirements. Don Garcia (505-844-9325) may be contacted on any questions regarding the text of the agreement.

Sincerely,

R. G. Romatowski
Manager

Enclosure

cc w/encl:

See page 2

8501280559 841212
PDR WASTE
WM-5

PDR

DEC 12 1984

cc w/encl:

Michael C. Nelson, Navajo Tribe

John MacKinnon, Justice Department,
Navajo Tribe

Louise Linkin, Navajo Environmental
Protection Administration

Ivan L. Sidney, Chairman,
Hopi Tribe

Donald E. Ami, Hopi Tribe

Albert Keller, Acting Area

Director, Navajo Area Office, BIA

James Steven, Area Director,

Phoenix Area Office, BIA

Richard A. Marquez, Office of
Chief Counsel, AL

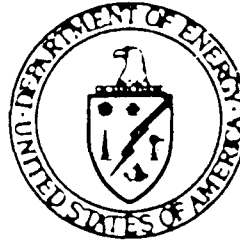
John Themelis, Project Manager,

UMTRA Project Office, DOE, AL

Leo B. Higginbotham, Nuclear
Regulatory Commission



Uranium
Mill
Tailings
Remedial
Action
Project



United States
Department of Energy
Albuquerque Operations Office

**COOPERATIVE AGREEMENT
BETWEEN
THE UNITED STATES
DEPARTMENT OF ENERGY,
THE NAVAJO TRIBE OF INDIANS
AND THE
HOPI TRIBE OF INDIANS**

**DOE COOPERATIVE AGREEMENT
NUMBER DE-FC04-85AL26731**

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COOPERATIVE AGREEMENT

This AGREEMENT, between the UNITED STATES OF AMERICA (hereinafter called the "Government"), acting through the Department of Energy (hereinafter called the "DOE"), the NAVAJO TRIBE OF INDIANS (hereinafter called the "Navajo Tribe"), acting through the Navajo Environmental Protection Administration (hereinafter called the "Navajo EPA"), and the HOPI TRIBE OF INDIANS (hereinafter called the "Hopi Tribe"), acting through the Office of Natural Resources, (hereinafter called the "Hopi ONR"),

WITNESSETH THAT:

WHEREAS, the Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95-604 (hereinafter called the "Act"), approved November 8, 1978, authorizes the Secretary of DOE, in consultation with the Secretary of the U.S. Department of Interior (DOI), to enter into agreements with affected Indian tribes to perform remedial action at certain inactive uranium mill tailings sites and associated vicinity properties designated as processing sites by the Secretary of DOE and located on lands of such Indian tribes; and

WHEREAS, pursuant to the Act, the Secretary of DOE, on November 8, 1979, designated four inactive uranium mill tailings sites located within the Navajo Reservation, including the site near Tuba City, Arizona, as processing sites, thus making such sites eligible for remedial action; and

WHEREAS, effective October 7, 1983, the DOE and the Navajo Tribe entered into Cooperative Agreement No. DE-FC04-83AL16258 for a joint program of assessment and remedial action at all of the processing sites except the Tuba City processing site; and

WHEREAS, the purposes of this Agreement are to establish a plan of assessment and remedial action at the Tuba City processing site and any vicinity properties associated with the Tuba City processing site, in order to stabilize and control such tailings in a safe and environmentally sound manner; and

WHEREAS, the parties hereto are mutually desirous of entering into this Agreement to establish the terms and conditions under which remedial action will be performed.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. DEFINITIONS

As used throughout this Agreement, the following terms shall have the meaning set forth below:

a. Secretary.

The term "Secretary" means the Secretary of Energy, or any duly authorized representative of such person.

b. DOE.

The term "DOE" means the United States Department of Energy, or any duly authorized representative thereof, including the Secretary and the Contracting Officer.

c. Navajo Tribe.

The term "Navajo Tribe" means the Navajo Tribe of Indians or any duly authorized representative thereof.

d. Hopi Tribe.

The term "Hopi Tribe" means the Hopi Tribe of Indians or any duly authorized representative thereof.

e. Tribe(s).

The term "Tribe" means the Navajo Tribe or the Hopi Tribe, as appropriate. The term "Tribes" means the Navajo Tribe and the Hopi Tribe.

f. Contracting Officer.

The term "Contracting Officer" means the person executing this Agreement on behalf of the Government, and any other officer or civilian employee who is properly designated as a Contracting Officer; and the term includes, except as otherwise provided in this Agreement, the authorized representative of a Contracting Officer acting within the limits of his authority.

g. NRC.

The term "NRC" means the United States Nuclear Regulatory Commission, or any duly authorized representative thereof.

h. Administrator.

The term "Administrator" means the Administrator of the United States Environmental Protection Agency, or any duly authorized representative thereof.

i. Navajo Site Representative.

The term "Navajo Site Representative" means the Director of the Navajo EPA, or any duly authorized representative thereof.

j. Hopi Site Representative.

The term "Hopi Site Representative" means the Director of the Hopi ONR or any duly authorized representative thereof.

k. Tribal Site Representative(s).

The term "Tribal Site Representative" means the Navajo Site Representative or the Hopi Site Representative, as appropriate.

l. Area Director(s).

The term "Area Director," means, as appropriate, the Area Director of the Navajo Area Office or the Phoenix Area Office, Bureau of Indian Affairs, United States Department of the Interior, or any duly authorized representative thereof.

m. Millsite.

The term "millsite" means the inactive uranium mill tailings site located near Tuba City, Arizona within an area now subject to litigation between the two Tribes, and included in the area described in 25 U.S.C. Sec. 640d-9(f), including any residual radioactive materials thereon, which the Secretary has designated (44 F.R. 74891 (1979)) pursuant to Section 102(a) of the Act as a processing site. The millsite is described in Appendix A of this Agreement.

n. Vicinity Property.

The term "vicinity property" means any real property or improvement thereon which: (i) is in the vicinity of the millsite; (ii) is determined by the Secretary, in consultation with the NRC, to be contaminated with residual radioactive materials derived from the millsite; and (iii) the Secretary includes with the millsite, prior to or during the term of this Agreement and pursuant to Section 102(e) of the Act, as a part of the processing site.

o. Residual Radioactive Materials.

The term "residual radioactive materials" means: (1) waste at the millsite or a vicinity property, which DOE determines to be radioactive, in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and (2) other waste, which DOE determines to be radioactive, at the millsite or a vicinity property which relates to such processing, including any residual stock of unprocessed ores or low grade materials.

p. Tailings.

The term "tailings" means the remaining portion of a metal-bearing ore after some or all of such metal, such as uranium, has been extracted.

q. EPA Standards.

The term "EPA Standards" means those standards (40 CFR Part 192), as amended from time to time, promulgated as final standards by rule of the Administrator pursuant to Section 275 of the Atomic Energy Act, as amended, of general application for the protection of the public health, safety, and the environment from radiological and non-radiological hazards associated with residual radioactive materials located at millsites, vicinity properties, and depository sites.

r. Depository Site.

The term "depository site" means any site or sites, other than the millsite or vicinity property, used for the long-term disposal, stabilization and control of residual radioactive materials in accordance with and pursuant to this Agreement and Title I of the Act.

s. Remedial Action.

The term "remedial action" means the assessment, design, construction, renovation, reclamation, decommissioning, and decontamination activities of DOE, or such person as it designates, in order to stabilize and control residual radioactive materials at a millsite, vicinity property or depository site in a safe and environmentally sound manner that will minimize or eliminate radiation health hazards to the public which may exist at the sites.

t. Environmental Document.

The term "environmental document" means a written public document, such as an environmental assessment or environmental impact statement, which contains an appropriate environmental analyses of the preferred remedial action and all reasonable alternatives, and which is prepared in such format and in accordance with such procedures as prescribed by the Council on Environmental Quality National Environmental Policy Act Regulations, 40 CFR Parts 1500-1508, and the DOE National Environmental Policy Act Guidelines, published at 45 FR 20694-20701 on March 28, 1980.

u. Contracting Officer's Representative.

The term "Contracting Officer's Representative" shall mean the Manager of DOE's Uranium Mill Tailings Remedial Actions Project Office, Albuquerque Operations Office.

2. PENDING TRIBAL CLAIMS

The Tribes enter into this Agreement pursuant to the authority for mutual consent expressed in the Navajo-Hopi Settlement Act, as amended in 1980, 25 U.S.C. Sec. 640d-9(f). This Agreement does not constitute an admission by either Tribe as to the merits of any claim to the land or property affected by this Agreement. In the event that it is determined by the United States District Court or an appellate court in a final judgment in Sidney v. Zah, No. Civ. 74-842, or any successor litigation, or by the United States Congress, that the lands and property subject to this Agreement are exclusively subject to the jurisdiction of one of the two Tribes, that Tribe shall be deemed the sole Tribal party to this Agreement and this Agreement shall be deemed terminated with respect to the other Tribe effective the date of written notice of same to all parties by the Contracting Officer; provided, that such termination is not in violation of such final judgment or Congressional action.

3. SELECTION, PERFORMANCE AND PROCUREMENT OF REMEDIAL ACTIONS

a. DOE Responsibility.

DOE is responsible for selecting and performing remedial actions at the Tuba City millsite and vicinity properties. As set forth in the article hereof entitled, DESCRIPTION OF REMEDIAL ACTION PROGRAM, it is mutually understood that the Tribes will participate in the selection and performance of such remedial actions. The parties agree that the nature or degree of a Tribe's claim to particular lands or property, whether exclusive or joint, adjudicated or unadjudicated, shall not be a consideration in determining the appropriate remedial action.

b. Procurement.

Unless otherwise agreed in writing by the Contracting Officer, or except as otherwise provided in this Agreement, DOE shall procure all remedial action supplies, equipment, construction and services in accordance with applicable Federal and DOE procurement regulations. The Contracting Officer may authorize either or both Tribes to procure remedial action supplies, equipment, construction and services, in which case the applicable standards and guidelines for such procurement shall be: (1) Attachment O, Office of Management and Budget Circular A-102, as that Attachment was revised by the Office of Management and Budget on August 1, 1979, and published in the Federal Register, Volume 44, No. 159, August 15, 1979,

pp. 47874-47878; and (ii) Appendix C - General Provisions, attached hereto and incorporated herein by reference.

c. Indian Preference.

- (1) It is the Government's policy, in performing remedial action under this Agreement, to make full use of any qualified members of the Indian tribes resident in the vicinity of the millsites.
- (2) DOE shall cause its prime remedial actions contractor (RAC) to accomplish any required construction tasks through the utilization, to the maximum extent possible, of competitively awarded firm fixed-price subcontracts. DOE shall cause the RAC, in the RAC's subcontracting program, to comply with Sections VIII and IX of the "Navajo Preference Plan of Operation," which is Exhibit A to Resolution ACN-145-81 of the Advisory Committee of the Navajo Tribal Council, dated November 17, 1981; provided, that: (1) such compliance shall be in such a manner as if the term "Navajo" was deleted and replaced with the term "Indian", (2) the RAC shall determine whether Indian-owned Economic Enterprises are qualified to perform subcontracts to be let by the RAC, (3) in the event only one Indian-owned Economic Enterprise is deemed by the RAC qualified to perform subcontracts to be let by the RAC, then the RAC shall solicit bids from such Indian-owned Economic Enterprise and other non-Indian firms, and in selecting a subcontractor the RAC shall utilize the preference formula contained in Sections VIII and IX of the Navajo Preference Plan of Operation referenced above; (4) the RAC shall determine whether Indian-owned Economic Enterprises or non-Indian firms are responsive and responsible bidders and have submitted reasonable bid prices; and (5) in lieu of any sanction provisions thereunder, DOE, the Tribes, and the RAC shall jointly resolve any issues of non-compliance.
- (3) The Tribes shall assist the RAC in its utilization of Indian-owned economic enterprises by, among other things, providing current lists of Indian-owned economic enterprises and pertinent information on file regarding same, and assisting in any training programs which the RAC may initiate.

d. Tribe Employees.

Any Tribe or Tribe contractor or subcontractor employee utilized by either Tribe in the performance of its responsibilities under this Agreement shall not by this Agreement be deemed a DOE employee for any purpose, including but not limited to hours of work, rates of compensation (including medical and accident insurance, as well as

income maintenance insurance) or other compensation for injury or death, employment benefits, or any other benefit.

4. PAYMENT

a. 100% DOE Payment.

DOE shall pay for all costs it incurs in performing remedial actions and otherwise performing its responsibilities under this Agreement.

b. Reimbursement to Tribes.

From time to time under this Agreement the Contracting Officer may authorize either or both Tribes to perform services or procure supplies, equipment or services in support of DOE remedial action activities hereunder. In such cases: (1) DOE and the Tribe or Tribes shall mutually agree upon the estimated costs and a statement of work in connection with such performance or procurement; and (2) the Tribe or Tribes shall submit such cost or pricing data requested by the Contracting Officer; and (3) DOE shall make payment to each Tribe for allowable costs such Tribe incurs in performing such services or procuring such supplies, equipment or services. Allowable costs are defined in the article hereof entitled, ALLOWABLE COSTS.

c. Request for Payment.

The Tribe shall submit quarterly, or at more frequent intervals by mutual agreement between the Tribal Site Representative and the Contracting Officer, OMB Standard Form 270, "Request for Advance or Reimbursement," to request payment from DOE for allowable costs incurred by the Tribe. The Tribe shall submit the OMB Standard Form 270, original and two copies, to the Contracting Officer. DOE shall promptly make advance payment by Treasury check (as provided in the article hereof entitled, ADVANCE PAYMENTS) or reimbursement by Treasury check, or a combination thereof, in full payment to the Tribe for allowable costs.

5. DESCRIPTION OF REMEDIAL ACTION PROGRAM

a. Designation and Priorities.

- (1) The Secretary, pursuant to Section 102 of the Act, has designated as a processing site the inactive uranium mill tailings sites located near Tuba City, Arizona. With the advice of the Administrator, DOE has established the relative priority for carrying out remedial action at the millsite as a medium priority.

- (2) From time to time during the term of this Agreement, DOE shall, pursuant to Section 102 of the Act, identify vicinity properties associated with the Tuba City site, at which time DOE shall provide the Tribes with a notice of such and a description of the vicinity property so identified.
- (3) Remedial action shall be carried out, to the greatest extent practicable, in accordance with the relative priorities established by DOE.

b. Remedial Action Plan.

DOE shall develop, in accordance with the relative priority of remedial action to the greatest extent practicable, a Remedial Action Plan for the stabilization and control of the residual radioactive materials which are currently located at the Tuba City millsite and its associated vicinity properties. The Remedial Action Plan shall not be implemented before DOE complies with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA).

The Remedial Action Plan shall be developed in accordance with the following general procedures:

- (1) When deemed appropriate by DOE, DOE shall: (a) perform initial site characterization and conduct an in-place stabilization analysis of the millsite; and (b) perform initial site characterization of potential depository sites; provided, that with respect to site characterization of potential depository sites the Contracting Officer may authorize either or both Tribes to perform initial site characterization of potential depository sites located on the Navajo and Hopi Reservations in which case the Tribal Site Representative or Representatives shall recommend to DOE in writing up to three candidate depository sites which meet the depository site-selection criteria previously furnished to the Tribes by DOE. Whether DOE or the Tribes perform site characterization of potential depository sites, DOE will evaluate such potential depository sites in such further detail as it deems necessary and shall, with the concurrence of the Tribal Site Representatives, select any or all of the candidate depository sites for further analysis in a DOE-prepared environmental document. If after such evaluation or analysis DOE determines that any candidate depository site is inadequate, then DOE, with the concurrence of the Tribal Site Representatives, may select a replacement candidate depository site.
- (2) DOE shall prepare and submit to the Tribal Site Representatives, the Area Directors, and the NRC a draft Environmental

Assessment (EA) for the millsite. The draft EA shall be utilized to coordinate initial planning of remedial action with the Tribes and the NRC. The draft EA shall include a brief evaluation of all reasonable remedial action options and a proposed remedial action option, a schedule for completion of remedial actions, a brief discussion of environmental, health and safety concerns, and a preliminary cost estimate. The Tribes (through the Tribal Site Representatives) and the NRC shall promptly review the draft EA and shall submit any comments to DOE. DOE shall use its best efforts to reconcile any such comments prior to finalization of the EA. DOE and the Tribes acknowledge that different remedial action options and a different proposed option may ultimately be chosen as a result of fully executing the requirements of the National Environmental Policy Act of 1969, as amended (NEPA).

The NRC shall be a "cooperating agency," as that term is defined in 40 CFR Section 1508.5, in connection with the preparation of any environmental impact statement, and coordinate with DOE in the development of environmental assessments. The Tribes shall assist DOE, to the extent agreed upon by the Contracting Officer and the Tribal Site Representative, in scoping, scoping meetings, draft environmental impact statement hearings, and in connection with other NEPA process matters. In connection with any environmental document, DOE and the Tribes shall encourage public participation by Tribe members and organizations.

In the event that preparation of an environmental impact statement (EIS) is necessary to fulfill the requirements of NEPA, DOE shall prepare and submit to the Tribal Site Representatives, the Area Directors and the NRC a draft EIS. The Tribes, the Area Directors, and the NRC shall promptly review the draft EIS and submit any comments to DOE. DOE shall use its best efforts to reconcile any such comments prior to finalization of the EIS.

- (3) After preparation of an environmental document, DOE shall prepare and submit to the Tribal Site Representatives, the Area Directors and the NRC a draft Remedial Action Plan (RAP). The Tribes (through the Tribal Site Representatives) and the Area Directors will be allowed a reasonable opportunity to provide comments to DOE regarding the draft RAP; DOE shall give all due consideration to such comments in preparing a final RAP for the concurrence of the Tribal Site Representatives and the NRC. Upon concurrence by the Tribal Site Representatives and the NRC, the final RAP shall be

incorporated into this Agreement as an attachment to Appendix B to this Agreement. DOE may revise each such RAP; Provided, that prior to such revision DOE shall: (a) advise the Tribal Site Representatives of any proposed revision; (b) provide the Tribes (through the Tribal Site Representatives) ample opportunity to comment on the proposed revision; and (c) obtain the concurrence of the Tribal Site Representatives prior to making revisions to the RAP. Revisions to the RAP deemed significant by DOE and the NRC shall be concurred with by the NRC.

c. Radiological and Engineering Assessments.

In addition to the requirements set forth above, for each vicinity property:

- (1) DOE shall develop and submit to the Tribal Site Representatives and the Area Directors a draft Radiological and Engineering Assessment (REA) of the vicinity property, based upon radiological measurement and design work performed in connection with the vicinity property.
- (2) The Tribes (through the Tribal Site Representatives) and the Area Directors will be provided a reasonable opportunity to review the draft REA and provide comments thereon to DOE; DOE shall consider such comments in preparing a final REA for the concurrence of the Tribal Site Representatives. DOE may revise an REA; Provided, that prior to such revision DOE shall: (a) advise the Tribal Site Representatives of such proposed revision; (b) provide the Tribes (through the Tribal Site Representatives) reasonable opportunity to comment on the proposed revision; and (c) obtain the concurrence of the Tribal Site Representatives for any revisions to the REA.
- (3) The NRC shall concur with the selection and performance of any vicinity property remedial action. The NRC shall concur with the REA only in those instances of an unusually significant vicinity property which may warrant, in the opinion of DOE and the NRC, an individual Remedial Action Plan or environmental document, or both, because of size, location, cost, remedial action feasibility, or schedule considerations.

d. DOE Remedial Actions.

After the preparation of a Remedial Action Plan or Radiological Engineering Assessment in accordance with Paragraphs b. and c. of this article, DOE shall perform remedial action. DOE shall use technology in performing the remedial action that will assure compliance with the EPA Standards and will assure the safe and environmentally sound stabilization of residual radioactive

materials consistent with existing applicable law. Remedial action on-site shall not be implemented until any necessary acquisition of the millsite, vicinity property or depository site, or an appropriate interest therein, has been made pursuant to the article hereof entitled, ACQUISITION, DISPOSITION AND USE OF PROPERTY.

6. ACQUISITION, DISPOSITION AND USE OF PROPERTY

a. Termination of Use Agreement.

The Tribes and DOE agree that the Use Agreement by and between DOE and the Tribes, numbered DE-AC04-84AL25273, effective November 1, 1983, is terminated and superseded by this Agreement.

b. Entry and Access.

To the extent they have the right, power and authority to do so, the Tribes, with the consent of the Area Directors as indicated by their concurrence with this Agreement, and at no cost to DOE:

- (1) hereby grant to DOE and its authorized representatives, contractors and subcontractors right of entry in, across and over the millsite and immediately adjacent land as mutually identified by the Contracting Officer's Representative and the Tribal Site Representatives, vicinity properties and candidate depository sites and candidate borrow sites to: survey; appraise; take soil, water, and uranium mill tailings samples; conduct test borings; drill water sample/monitor wells; collect environmental baseline data; conduct endangered species surveys; and perform remedial actions under this Agreement; and
- (2) hereby grant to DOE and its authorized representatives, contractors and subcontractors, the right to restrict access to, and post appropriate warning signs on, such parts of the millsite, vicinity properties or depository sites as may be necessary in order to facilitate remedial action and protect the health and assure the safety of the public, including but not limited to the right to erect fences or other barriers to access, provided, that such grant reserves to the Navajo and Hopi Tribes the right to use and enjoy said property to the extent that such use and enjoyment does not interfere with or abridge the rights hereby granted to DOE and its authorized representatives, contractors and subcontractors; and
- (3) hereby transfer to the Government, effective at such time as DOE determines remedial action is completed under this Agreement, custody of the residual radioactive materials removed from a vicinity property or millsite by DOE or stabilized in place at a millsite by DOE, reserving for the Tribes beneficial title to such residual radioactive materials.

c. Inspection.

For the purposes of carrying out this Agreement and enforcing the provisions of the Act the Tribes, with the appropriate approvals from the Area Directors, shall assure that the Government, including DOE, the NRC, and the Administrator shall have: (i) a permanent right of entry to inspect the millsite and any depository site on the Navajo and Hopi Reservations at any time; (ii) a temporary right of entry, from commencement through completion of remedial actions, to inspect the vicinity properties with the consent and at the convenience of the occupants; and (iii) a permanent right of entry to maintain and monitor any millsite or depository site where residual radioactive materials are stabilized under this Agreement. It is acknowledged that the permanent rights of entry provided for herein may exceed the term of this Agreement.

d. Consent or Acquisition of Property Interests.

If the millsite or a vicinity property is subject to any allotments, permits, leases, subleases, or other individual property interests, the Tribes upon the written request of the Contracting Officer shall:

- (1) Where such remedial action is removal of residual radioactive materials from a millsite to a depository site, assist DOE in obtaining, prior to remedial action, written consent to the remedial action, in a form prescribed by DOE, from the affected allottees, permittees, lessees and sublessees of, or other individuals with property interests in, the depository site, as appropriate.
- (2) Where the remedial action is stabilization of the residual radioactive materials on the affected millsite, assist DOE to the extent necessary in acquiring, prior to remedial action, the interests of allottees, permittees, lessees and sublessees of, or other individuals with property interests in, the millsite.
- (3) Where the remedial action is at a vicinity property, assist DOE in obtaining, prior to remedial action, an executed Vicinity Property Remedial Action Agreement, in a form prescribed by the Contracting Officer from affected allottees, permittees, lessees and sublessees of, or other individuals with property interests in, the vicinity property. The Vicinity Property Remedial Action Agreement shall:
(a) include a consent to the remedial action by such allottees, permittees, lessees, sublessees or other individuals and a right of entry of the type described in Paragraph c.(ii) of this article; (b) specify the remedial action to be performed by an appendix to the Vicinity Property

Remedial Action Agreement entitled Vicinity Property Remedial Action Plan; (c) provide that the remedial action shall be performed by DOE, its authorized representatives, contractors and subcontractors; (d) include as parties DOE, the Tribes, and affected allottees, permittees, lessees and sublessees of, or other individuals with property interest in, the vicinity property; (e) provide for transfer of title to residual radioactive materials to the Tribes; and (f) include a waiver by each such allottee, permittee, lessee, sublessees or other individuals, on behalf of themselves and their heirs, successors and assigns (i) releasing the Government of any liability or claim thereof concerning such remedial action; and (ii) holding the Government harmless against any claim arising out of the performance of any such remedial action, provided, that DOE, for the benefit of the affected allottees, permittees, lessees and sublessees, shall enforce any warranties which the Government or its prime contractors are entitled to in connection with failure of remedial action work caused by omission of materials, defective materials or poor workmanship, or improper workmanship. Whenever DOE and the Tribes are unable to obtain a Vicinity Property Remedial Action Agreement, DOE, with the advice of the Tribes, shall determine how to proceed in connection with the vicinity property. Such determination may include a determination that no remedial action shall be performed at the vicinity property.

DOE and the Tribes shall obtain any necessary approvals from the Area Directors in obtaining consents or extinguishing interests under this paragraph d.

e. Maintenance of Depository Site.

Where the remedial action selected under this Agreement requires utilization of a depository site:

- (1) The Tribes, upon written request of the Contracting Officer, shall assist DOE in acquiring an appropriate interest in any depository site on the Navajo or Hopi Reservations including the approval of the Area Directors, as necessary. It is acknowledged that the term of such interest may exceed the term of this Agreement.
- (2) DOE, or such other federal agency as the President may designate under Public Law 95-604, shall perform long-term maintenance and monitoring of the residual radioactive materials at the depository site in accordance with applicable law, including the conditions of any license which may be issued by the NRC for such maintenance and monitoring pursuant to the Act.

f. Maintenance of Millsite.

Where the remedial action selected under this Agreement requires stabilization-in-place of residual radioactive materials at a millsite;

- (1) The Tribes and DOE shall negotiate, in good faith, a long-term land withdrawal agreement transferring custody of the millsite to the Government from the Tribes, without affecting the trust status of the land. Any such agreement shall require the concurrence of the Area Directors.
- (2) DOE or such other Federal agency as the President may designate under Public Law 95-604, shall perform long-term maintenance and monitoring of the residual radioactive materials in accordance with applicable law, including the conditions of any license which may be issued by the NRC for such maintenance and monitoring pursuant to the Act.

g. Compliance with Public Law 91-646.

The Tribes, upon request of the Contracting Officer, shall assist DOE in complying with Public Law 91-646, as amended, and Federal Management Circular (FMC) 74-8.

h. Restoration.

DOE shall be responsible for loss or destruction of, or damage to, real and personal property owned by the Tribes or a Tribal member which is caused by the activities of DOE, its authorized representatives, contractors and subcontractors in performing remedial action at millsites, vicinity properties or depository sites under this Agreement; PROVIDED, that such responsibility shall be limited to restoration of such real and personal property to a condition reasonably comparable to its condition immediately prior to the performance of any remedial action by techniques of backfilling, seeding, sodding, landscaping, rebuilding, repair or replacement.

i. Government-Owned Property.

Except for personal property brought to the millsite, depository site or vicinity property by DOE, its authorized representatives, contractors or subcontractors pursuant to the appropriate remedial action plan or in order to restore the property pursuant to Paragraph h. of this article, title to all personal property brought to the millsite, depository site or vicinity property by DOE, its authorized representatives, contractors or subcontractors shall remain in the Government and such title shall not be affected by incorporation or attachment thereof to any property not owned by the Government, nor shall such personal property, or any part

thereof, become a fixture or lose its identity as personalty by affixation to any realty. Any utilization, management and disposition of Government-owned or Government-furnished property shall be in accordance with the DOE Property Management Regulations.

j. Notice to Subsequent Property Interests.

The Tribes and DOE shall take such action as may be necessary, pursuant to regulations of the Secretary, to assure that any Tribal member or person who acquires a property interest in the millsite or vicinity property after the removal of residual radioactive materials from such site or property shall be notified prior to acquiring such interest, through record notice or such other notice required by the regulations, of the nature and extent of residual radioactive materials removed from the site or property, including notice of the date when such action took place, and the condition of such property or site after such action.

k. Notice to Tribes of DOE Activities.

DOE, in conducting activities under this Agreement on the millsite, any vicinity property or depository site, shall use its best efforts to notify the Tribal Site Representatives, either orally or in writing, prior to commencement of any activity or related series of activities under this Agreement. Such notification shall include the name and phone number of the organization or individual going onto the millsite, vicinity property or depository site and the nature and approximate schedule of the activity or activities to be conducted. DOE shall furnish to and maintain for the Tribal Site Representatives a current list of DOE contractors and subcontractors who will be conducting activities at the millsite, any vicinity property or depository site located on the Navajo Reservation. Each Tribal Site Representative, shall have the right, at his or her own risk or at the risk of the Tribe, to accompany DOE, its authorized representatives, contractors and subcontractors during activities conducted at the millsite, or any vicinity property or depository site.

7. ALLOWABLE COSTS

Allowable costs shall be those costs, as determined by the Contracting Officer in accordance with Office of Management and Budget Circular A-87, incurred by the Tribe to: (a) perform any services related to remedial action or acquisition requested by the Contracting Officer in writing; and (b) procure remedial action supplies, equipment and services as authorized by the Contracting Officer.

8. COST LIMITATION AND OBLIGATION OF FUNDS

a. Cost Estimate Periods.

From time to time in performing responsibilities under this Agreement, the Tribes may incur costs which are allowable costs to be reimbursed or advance paid by DOE under this Agreement. Prior to the beginning of each Government fiscal year or such other period of time agreed to by DOE and the Tribes (hereinafter referred to as the "Cost Estimate Period"), DOE and the Tribes shall use their best efforts to estimate the costs the Tribes will incur during the forthcoming Cost Estimate Period. It is contemplated by DOE and the Tribes that DOE will obligate funds at such times and in such amounts as will insure payment of the estimated allowable costs to be incurred by the Tribes. DOE and the Tribes acknowledge that the Tribes, in incurring allowable costs, may in accordance with the article hereof entitled, PAYMENT, request advance payment from DOE for such allowable costs.

b. Total Navajo Estimated Costs.

The total of the estimated allowable costs that will be incurred by the Navajo Tribe from the effective date of this Agreement through September 30, 1985 ("Cost Estimate Period No. 1"), is -\$0- ("Total Estimated Costs"). At such time as either party (Navajo Tribe or DOE) has reason to believe that the allowable costs the Navajo Tribe will incur will be greater than the Total Estimated Costs, then such party shall notify the other in writing to that effect, giving its revised estimate of allowable costs, after which the Contracting Officer may issue a unilateral modification to this Agreement appropriately revising the Total Estimated Costs.

c. Total Hopi Estimated Costs.

The total of the estimated allowable costs that will be incurred by the Hopi Tribe from the effective date of this Agreement through September 30, 1985 ("Cost Estimate Period No. 1") is \$-0- ("Total Estimated Costs"). At such time as either party (Hopi Tribe or DOE) has reason to believe that the allowable costs the Hopi Tribe will incur will be greater than the Total Estimated Costs, then such party shall notify the other in writing to that effect, giving its revised estimate of allowable costs, after which the Contracting Officer may issue a unilateral modification to this Agreement appropriately revising the Total Estimated Costs.

d. Obligation of Funds.

DOE, for the period from the effective date of this Agreement through the latest Cost Estimate Period shown in Paragraph b. hereof, has obligated: (1) funds in the amount of -\$0- for payment

to the Navajo Tribe for allowable costs the Navajo Tribe may incur under this Agreement; and (2) funds in the amount of \$-0- for payment to the Hopi Tribe for allowable costs the Hopi Tribe may incur under this Agreement. Notwithstanding any other provision of this Agreement, DOE shall not be liable to either Tribe in an amount in excess of the amount of funds it has obligated herein for payment to that Tribe. If necessary prior to each Cost Estimate Period, or from time to time during this Agreement, DOE shall increase the amount of funds obligated by unilateral modification to this Agreement, which modification, as a minimum, appropriately amends this Paragraph.

e. Tribe Requirement.

The Tribe shall not incur costs to be paid by DOE under this Agreement in excess of the amount of funds obligated by DOE for such Tribe in Paragraph d. hereof. The Tribe shall use its best efforts to perform its cost-reimbursable activities within the Total Estimated Cost for such Tribe; however, the Tribe does not guarantee the correctness of any such estimate of allowable costs and there shall be no liability on the part of the Tribe by reason of errors in the computation of estimates or the difference between such estimates and the actual allowable costs.

9. CONCURRENCES AND CONSULTATIONS

- a. Wherever in this Agreement a concurrence from the Tribal Site Representatives or the Tribes is required: (a) such concurrence shall not be unreasonably withheld; (b) a written concurrence or nonconcurrence shall be given within a reasonable amount of time and in any case no later than 60 days from the date of request for such concurrence or such right of concurrence shall be deemed waived; and (c) any written non-concurrence shall be considered appropriate for resolution under the Disputes article of this Agreement.
- b. Wherever in this Agreement or in the Act a concurrence or approval from, or consultation with, NRC or the Administrator is required, DOE shall seek such concurrence and be responsible for undertaking such consultation. Whenever in this Agreement a consent or approval from, or consultation with, the Area Directors is required, DOE and the Tribes shall jointly seek such consent or approval and be responsible for such consultation.

10. RELEASE AND HOLD HARMLESS

Each Tribe, to the extent it holds any interest in the millsite or any vicinity property or depository site where remedial actions are performed under this Agreement, on its own behalf hereby: (a) releases the Government from, and holds the Government harmless against, any liability or claim thereof by the Tribe arising out of the performance of any remedial

action on such millsite, vicinity property or depository site; and (b) releases contractors and subcontractors of the Government, and holds contractors and subcontractors harmless against, any liability or claim thereof by the Tribe arising out of the performance of any remedial action on such millsite, vicinity property or depository site, if the Government, by virtue of its contractual relationships with said contractors and subcontractors, would be ultimately financially responsible for such liability or claim; provided, that DOE, for the benefit of the Tribe, shall enforce any warranties or guarantees, express or implied, which the Government or its prime contractors are entitled to in connection with failure of remedial action caused by omission of materials, defective materials or poor workmanship, or improper workmanship. For purposes of this Agreement, the term "subcontractors" includes all tiers of subcontracts.

11. TRIBE FINANCIAL MANAGEMENT SYSTEM

The Tribes shall assure that their respective financial management systems provide for:

a. Disclosure.

Accurate, current and complete disclosure of the financial results of the Tribe's participation in the remedial action program, carried out pursuant to this Agreement and the Remedial Action Plan.

b. Records.

Records that identify adequately the source and application of funds for activities supported pursuant to this Agreement. These records shall contain information pertaining to authorizations, obligations, unobligated balances, assets, liabilities, outlays, and program income.

c. Accountability.

Effective control over and accountability for all funds, property, and other assets. The Tribe shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

d. Comparability.

Comparison of actual outlays with budgeted or otherwise authorized amounts.

e. Prompt Disbursement.

Procedures to minimize the time elapsing between transfer of funds from the U.S. Treasury and the disbursement by the Tribe, whenever funds are advanced by the Government.

f. Reasonableness.

Procedures for identifying the reasonableness of costs.

g. Accounting Records.

Accounting records that are supported by adequate and reasonable source documentation.

h. Audits.

Examinations in the form of audits which meet the requirements set forth in Office of Management and Budget (OMB) Circular A-102, Attachment P, as that Attachment was revised by OMB effective October 22, 1979, and published in the Federal Register, Volume 45, No. 65, April 2, 1980, pp. 21875-21878, and which are in accordance with the "Guidelines for Financial and Compliance Audits of Federal Assisted Programs," issued by the United States General Accounting Office.

i. Method.

A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

12. ADVANCE PAYMENTS

a. Payment.

At the request of either Tribe, in accordance with the article hereof entitled, PAYMENT, and subject to the conditions hereinafter set forth, DOE shall make an advance payment, or advance payments from time to time, by Treasury check, to the Tribe. No advance payment shall be made: (1) without the approval of the Contracting Officer as to the financial necessity therefor; and (2) without the submission by the Tribe of OMB Standard Form 270 and properly certified invoice or invoices.

b. Use for Allowable Costs.

Funds advanced to either Tribe by DOE under this Agreement may be used by the Tribe solely for the purposes of making payments for items of allowable cost as defined in the article hereof entitled,

ALLOWABLE COSTS, or to reimburse the Tribe for such items of allowable costs, and for such other purposes as the Contracting Officer may approve in writing. Any interpretation required as to the proper use of such funds shall be made in writing by the Contracting Officer.

c. Repayment.

The Tribes may at any time repay all or part of the funds advanced hereunder. Whenever so requested in writing by the Contracting Officer, the Tribes shall repay to the Government such part of the unliquidated balance of advance payments as shall, in the opinion of the Contracting Officer, be in excess of current requirements.

d. Liquidation and Deficiency.

If upon completion or termination of this Agreement all advance payments have not been fully liquidated, the balance thereof shall be deducted from any sums otherwise due or which may become due to the Tribe from the Government, and any deficiency shall be paid by the Tribe to the Government upon demand.

e. Deposit.

Funds advanced hereunder must be deposited in a member bank of the Federal Reserve System, or an "insured" bank within the meaning of the act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935), 49 Stat. 684, as amended; 12 U.S.C. 264).

f. Lien.

Any and all advance payments made under this Agreement shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, upon all material and other property acquired for or allocated to the performance of this Agreement, except to the extent that the Government, by virtue of any other provision of this Agreement, or otherwise, shall have valid title to such property as against other creditors of the Tribe. The Tribe shall identify, by marking or segregation, all property which is subject to a lien in favor of the Government by virtue of any provision of this Agreement in such way to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this Agreement.

g. Government Rights Upon Tribe's Failure.

Under a finding by the Contracting Officer that either Tribe has failed to observe any of the covenants, conditions or warranties of this article; the Government, without limiting any rights which it may otherwise have, may, in its discretion and upon written notice

to such Tribe, withhold further payments on this Agreement. Upon the continuance of any such failure for a period of thirty (30) days after such written notice to such Tribe, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional actions as it may deem appropriate in the circumstances:

- (1) Demand immediate repayment of the unliquidated balance of advance payments hereunder; or
- (2) Take possession of and, with or without advertisement, sell at public or private sale, at which the Government may be the purchaser, all or any part of the property on which the Government has a lien under this Agreement, and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of any other claims of the Government against the Tribe under this Agreement.

h. Non-Transferability.

Notwithstanding any other provision of this Agreement, the Tribes shall not transfer, pledge, or otherwise assign this Agreement, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

i. Security.

The terms of this Agreement shall be considered adequate security for advance payments hereunder, except that if at any time the Contracting Officer deems the security furnished by the Tribes to be inadequate, the Tribes shall furnish such additional security as may be satisfactory to the Contracting Officer, to the extent that such additional security is available.

13. REPORTING REQUIREMENTS

a. DOE Status.

DOE shall inform the Tribal Site Representatives of the status of activities under this Agreement as major milestones are reached but in no event less frequently than quarterly.

b. Tribe Status.

Upon the request of the Contracting Officer, the Tribes shall submit to the Contracting Officer progress and financial reports of their reimbursable activities under this Agreement.

c. Annual Report.

Each Tribe shall submit annually, commencing one year from the effective date of this Agreement, to the Contracting Officer, OMB Standard Form 269, "Financial Status Report," to report the status of funds paid to the Tribe by DOE pursuant to this Agreement. DOE shall request that the reports be either on a cash or accrual basis. If DOE requests accrual information and the Tribe's accounting records are not normally kept on the accrual basis, the Tribe shall not be required to convert its accounting system but shall develop such accrual information through an analysis of the documentation on hand. Each Tribe shall submit a final Financial Status Report upon closeout of this Agreement in accordance with the article hereof entitled, CLOSEOUT PROCEDURES. The Tribes shall submit the OMB Standard Form 269, original and two copies, to the Contracting Officer no later than 90 days after the end of the specified reporting period for the annual and final reports. Reasonable extensions to reporting due dates may be granted by the Contracting Officer upon written request of the Tribe.

d. Congressional Requirements.

The Tribes shall use their best efforts to supply to DOE such additional information as is requested in writing by DOE to comply with Congressional requirements.

14. AUDIT OF TRIBE RECORDS BY DOE

a. Examination of Costs.

Each Tribe shall maintain - and the Contracting Officer or representatives of the Contracting Officer shall have the right to examine and audit - books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all allowable costs claimed to have been incurred or anticipated to be incurred in performing this Agreement. This right of examination shall include inspection at all reasonable times of the Tribe's offices, or such parts of them, engaged in performing this Agreement as to cost or pricing data submitted by the Tribe; provided, that such inspection shall be preceded by prior written notice to the Tribe from the Contracting Officer.

b. Cost or Pricing Data.

If, pursuant to law, either Tribe has been required to submit cost or pricing data in connection with pricing this Agreement or any modification to this Agreement, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit all books,

records, documents, and other data of such Tribe (including computations and projections) related to negotiating, pricing, or performing the Agreement or modification, in order to evaluate the accuracy, completeness and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used.

c. Reports.

If either Tribe is required to furnish cost, funding, or performance reports, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit books, records, other documents, and supporting materials for the purpose of evaluating (1) the effectiveness of the Tribe's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

d. Availability.

The Tribe shall make available at its office at all reasonable times the materials described in Paragraphs a. and b. of this article, for examination, audit or reproduction, until three years after closeout of this Agreement, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisitions Regulation or for any longer period required by statute or by other articles of this contract. In addition, records which relate to appeals under the Disputes article or litigation or the settlement of claims arising under or relating to this Agreement, shall be made available until such appeals, litigation, or claims are disposed of.

- e. The Tribes shall insert a clause containing all the provisions of this article, including this Paragraph e., in all subcontracts over \$10,000 under this Agreement, altering the article only as necessary to identify properly the contracting parties and the Contracting Officer under this Agreement.

15. EXAMINATION OF RECORDS

a. Comptroller General.

Each Tribe agrees that the Comptroller General of the United States or a duly authorized representative from the General Accounting Office (GAO) shall, until three years after closeout of this Agreement or for any shorter period specified in the Federal Acquisition Regulation (FAR Subpart 4.7, Contractor Records Retention), have access to and the right to examine any directly pertinent books

documents, papers, or other records of the Tribe involving transactions related to this Agreement.

b. Subcontracts.

Each Tribe agrees to include in first-tier subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General or a duly authorized representative from the GAO shall, until three years after final payment under the subcontract or for any shorter period specified in FAR Subpart 4.7, have access to and the right to examine any directly pertinent books, documents, papers, or other records involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (i) purchase orders not exceeding \$10,000, and (ii) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

c. Periods of Access.

The periods of access and examination described in Paragraphs a. and b. of this article for records relating to (i) appeals under the Disputes article, (ii) litigation or settlement of claims arising from the performance of this Agreement, or (iii) costs and expenses of this Agreement to which the Comptroller General or a duly authorized representative of the GAO has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.

d. Evidence in Event of Suit.

In the event of any claim or suit against the Government, on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed hereunder, each Tribe shall furnish to the Government, when requested by the Secretary, all evidence and information in possession of the Tribe pertaining to such suit or claim.

e. Transfer of Records.

Upon DOE's request, the Tribes shall, transfer to the custody of DOE copies of certain records maintained by the Tribe pursuant to this Agreement when DOE determines that the records possess long-term retention value. In order to avoid duplicate recordkeeping, DOE may make arrangements with the Tribes to retain any records that are continuously needed for joint use.

16. DISPUTES

a. Questions of Fact.

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail, or otherwise furnish a copy thereof to the Tribe or Tribes, as appropriate. The decision of the Contracting Officer shall be final and conclusive unless within 60 days from the date of receipt of such copy, the Tribe mails, or delivers a written notice of appeal to the DOE Financial Assistance Appeals Board in accordance with 10 CFR Part 1024 (see Rule 1). The decision of the DOE Financial Assistance Appeals Board shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessary to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause the Tribe or Tribes shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Tribe or Tribes and the Government shall proceed diligently with the performance of this Agreement and in accordance with the Contracting Officer's decision.

b. Questions of Law.

This "Disputes Clause" does not preclude consideration of law questions in connection with decisions provided for in Paragraph a. of this article; provided, that nothing in this Agreement shall be construed as making final the decision of any administrative official, representative, or board, based on a question of law.

17. TERM AND TERMINATION

a. Period of Performance.

The period of performance of this Agreement shall expire at the earlier effective date that: (1) DOE and the Tribes mutually agree in writing, with the concurrence of the NRC, that the objectives of the remedial action program have been met and that all work to be performed under this Agreement, or any modification or amendment hereto, has been completed; or (2) the date seven years from the date of promulgation (March 7, 1983) of the EPA Standards or such other date as Congress shall establish, after the date of enactment of the Act, as the date of termination of the Secretary's authority to perform remedial action under the Act.

b. DOE Termination for Default.

DOE, upon written Notice of Termination to the Tribes, may terminate this Agreement, in whole, or from time to time, in part, whenever the Contracting Officer determines that either or both Tribes have failed to comply with the conditions of this Agreement and such non-compliance continues for 60 days after receipt of a written Notice of Default from DOE. If such failure is by only one of the Tribes, the termination shall be solely with respect to that Tribe's participation in this Agreement.

c. Tribe Termination for Default.

The Tribes, upon written Notice of Termination to DOE, may terminate this Agreement, in whole, or from time to time, in part, whenever the Tribes mutually determine that DOE has failed to comply with the conditions of this Agreement and such non-compliance continues for 60 days after receipt of a written Notice of Default to the Contracting Officer from the Tribes. For purposes of this Article, failure by the United States Congress to appropriate funds shall not constitute failure by DOE to comply with the conditions of this Agreement.

d. Closeout and Unilateral Performance.

After receipt of a Notice of Termination by any party, DOE and the Tribes shall close out this Agreement in accordance with the terms and conditions of the article hereof entitled, CLOSEOUT PROCEDURES; provided, that DOE may, in its discretion, continue unilateral performance of this Agreement, including performance of the Tribes' responsibilities, until such time as the remedial action contemplated by this Agreement is completed.

e. Force Majeure.

Neither DOE nor the Tribes shall be considered in default of this Agreement because of delay in performance for reasons beyond its control including, but not restricted to, acts of God or the public enemy, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather.

f. Closeout.

In the event appropriated funds are not available to DOE to carry out the Act or this Agreement, DOE and the Tribes shall close out this Agreement pursuant to the article hereof entitled, CLOSEOUT PROCEDURES, and such other procedures as mutually agreed to in writing by the parties.

18. CLOSEOUT PROCEDURES

As of the date of receipt of a Notice of Termination pursuant to the article hereof entitled, TERM AND TERMINATION, or on the date of expiration of the period of performance or failure of the Government to appropriate funds as provided in the article hereof entitled, TERM AND TERMINATION, and except as otherwise directed by the Contracting Officer:

- a. DOE, unless it is continuing unilateral performance of this Agreement pursuant to Paragraph d. of the article hereof entitled, TERM AND TERMINATION, and the Tribes shall:
 - (1) Stop performance under this Agreement on the date and to the extent specified in the Notice of Termination or on the date when the period of performance expires;
 - (2) Place no further orders and make no further subcontracts or other agreements, for materials, services, or property except as may be necessary for completion of such portion of the work under this Agreement as is not terminated by any Notice of Termination;
 - (3) Terminate all orders, subcontracts or other agreements entered into in performing this Agreement, to the extent that they relate to the performance of work terminated by the Notice of Termination or terminated by the expiration of the period of performance of this Agreement;
 - (4) Settle all outstanding liabilities and all claims arising out of such termination of orders, subcontracts and agreements, the cost of which would be reimbursable, in whole or in part, as an allowable cost in accordance with the provisions of this Agreement;
 - (5) In the event of termination of performance in part, complete performance of such part of the work as shall not have been terminated by the Notice of Termination;
 - (6) Arrange for an appropriate disposition of property and property interests acquired by the Tribe under this Agreement;
- b. DOE shall, upon written request by either Tribe, make prompt payment to the Tribe pursuant to the article hereof entitled, PAYMENT, for any outstanding allowable costs incurred by the Tribe and not yet paid by DOE as required by this Agreement.
- c. The Tribes shall immediately refund to DOE any balance of funds advanced to the Tribes that is not authorized by the Contracting Officer to be retained by the Tribes.

- d. The Tribes shall provide to DOE, within ninety (90) days after either the date of expiration of the period of performance or the date of termination of performance, or at such time designated by the Contracting Officer, all financial, performance, and other reports required pursuant to this Agreement. The Contracting Officer shall grant extensions when requested by the Tribes if such extensions are reasonable.

19. PUBLIC PARTICIPATION AND INFORMATION

a. Public Participation Plan.

The DOE shall be primarily responsible for formulating and implementing a public participation plan in connection with this Agreement. The Tribal Site Representatives shall cooperate with the Contracting Officer in formulating and implementing a public participation plan in order to encourage public participation in carrying out the provisions of the Act, this Agreement and the Remedial Action Plan.

b. Information Releases.

Procedures for timely release of information to the public regarding activities by the Tribes and DOE in carrying out this Agreement shall be those established by mutual agreement between the Contracting Officer's Representative and the Tribal Site Representatives.

20. LOCAL ADVISORY COMMITTEES

The Tribes may, in such fashion as they deem appropriate, establish advisory committees and consult with local committees such as Tribal Chapters or grazing districts in connection with the remedial action to be performed under this Agreement for the purposes of: (a) providing information to and receiving information from the Tribal members affected by such remedial action; and (b) evaluating candidate depository sites for recommendation to DOE. DOE shall not be a member of any such committee. DOE shall, however, make every reasonable effort to interface with any such committee to the extent requested by the Tribes or the committee. No costs associated with any committee so established shall be allowable costs under this Agreement.

21. CONTRACTING OFFICER'S REPRESENTATIVE

The work to be performed by DOE under this Agreement will be managed for DOE by the Manager, Uranium Mill Tailings Remedial Actions (UMTRA) Project. The work to be performed by the Tribes under this Agreement is subject to the monitoring of the Manager, Uranium Mill Tailings Remedial Actions (UMTRA) Project Office, who has been designated by the Contracting Officer as "Contracting Officer's Representative" (COR). A copy of such designation shall be furnished to each Tribe. Said designation

shall set forth the COR's responsibilities regarding this Agreement. The COR shall not make any commitments or authorize any changes which affect this Agreement scope, price, terms or conditions; any request for such changes shall be referred to the Contracting Officer for action.

22. TECHNICAL DATA

The Government shall have unlimited rights in all technical data first produced or specifically used in the performance of this Agreement. Further, technical reports from DOE contractors or subcontractors shall be required for delivery to the Government and shall be made available to the public, including the Tribes, without restriction. For the purposes of this Agreement, the terms "Technical Data" and "Unlimited Rights" shall have the same meaning as provided in DOE Acquisition Regulations Subpart 927.401.

23. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

24. LIMITATION ON DOE PERFORMANCE AND FINANCIAL RESPONSIBILITY

The obligations of the DOE under this Agreement to perform and to make payments or to otherwise incur costs are subject to advance annual authorization and appropriation acts of Congress. In the event that Congress fails to make such advance authorization and appropriation, then the parties shall, unless otherwise agreed to in writing, close out this Agreement in accordance with the article hereof entitled, CLOSEOUT PROCEDURES.

25. NOTICE ADDRESS

Any notice, letter, or grievance given pursuant to the terms of this Agreement shall be sent to the respective party at its address designated below:

Navajo Tribe

Director, Navajo Environmental
Protection Administration
P.O. Box 308
Window Rock, AZ 86515

DOE

Manager, Uranium Mill Tailings Remedial
Action Project
U.S. DOE, Albuquerque Operations Office
P.O. Box 5400
Albuquerque, NM 87115

Hopi Tribe

The Hopi Tribe
Contracts and Grants Administration
P.O. Box 123
Kykotsmovi, AZ 86039
ATTN: ONR Director

26. APPLICABLE LAW

All activities under this Agreement shall be carried out pursuant to applicable federal, state, and Tribal law, including but not limited to such rules and regulations promulgated or to be promulgated by the Secretary pursuant to Section 109 of the Act. In the event of conflicting applications of federal, state and Tribal law, the subject activity will be carried out pursuant to the following order of priority in application: (a) federal; (b) Tribal; and (c) state.

27. COVENANT AGAINST CONTINGENT FEES

Each Tribe warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Tribe for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability or in its discretion to recover the full amount of such commission, percentage, brokerage or contingent fee.

28. STANDARD FORMS

All standard forms required to be submitted by the Tribes pursuant to this Agreement shall be provided to the Tribes by the Contracting Officer upon request.

29. EFFECTIVE DATE

The Agreement shall take effect upon the date of concurrence by the Commission with the terms and conditions hereof, or the date of execution by the Contracting Officer, whichever is the later date.

30. APPENDICES

The following appendices are attached to and made a part of this Agreement:

- Appendix A - Site Description and Ownership;
- Appendix B - Remedial Action Plan;
- Appendix C - General Provisions.

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement in several counterparts.

THE UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY

BY:

R. G. Romatowski
Manager
Albuquerque Operations Office
P.O. Box 5400
Albuquerque, NM 87115

NAVAJO TRIBE

BY:

Peterson Zah
Chairman, Navajo Tribal Council
P.O. Box 308
Window Rock, AZ 86515

HOPÍ TRIBE

BY:

Ivan L. Sidney
Chairman, Hopi Tribal Council
P.O. Box 123
Kykotsmovi, AZ 86039

U.S. Department of Energy
Agreement No. DE-FC04-85AL2673.

CONCURRENCES:

NUCLEAR REGULATORY COMMISSION

DEPARTMENT OF INTERIOR

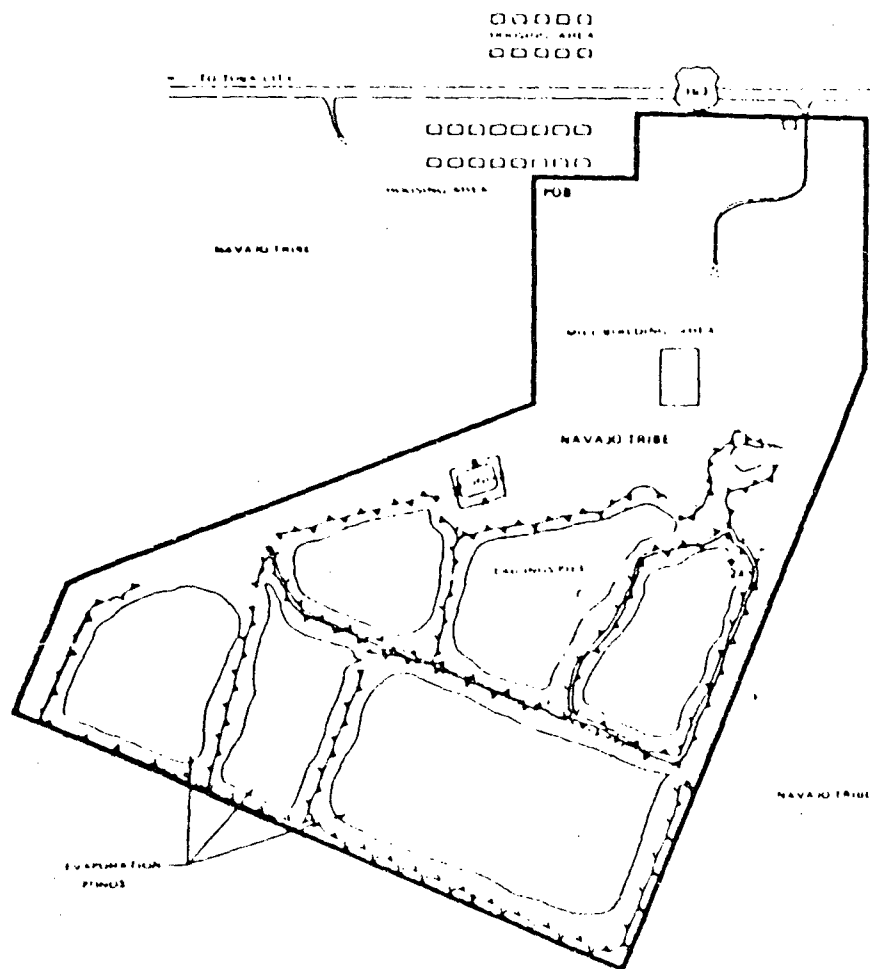
BY: _____

BY: _____
Area Director
Navajo Area Office
Bureau of Indian Affairs

TITLE: _____

BY: _____
Area Director
Phoenix Area Office
Bureau of Indian Affairs

APPENDIX A
SITE DESCRIPTION AND OWNERSHIP



TUBA CITY SITE

BEGINNING AT A POINT WHICH IS SOUTH 96.87 FT AND N 64.411
1295.75 FT FROM THE NW CORNER OF SECTION 26 T12N R12E SALT
RIVER MERIDIAN AND RUNNING THENCE N 64.411 372 FT THENCE
N 26.17 W 726 FT MORE OR LESS TO THE SOUTHERLY RAIL LINE OF
U.S. HIGHWAY 163 THENCE N 64.411 ALONG SAID RAIL LINE 887.8 FT
THENCE S 24.75 E 808 FT THENCE SOUTH 23.21 FT THENCE WEST
2794.25 FT THENCE NORTH 482.8 FT THENCE N 64.36 W 8174.81 FT
THENCE N 26.17 W 808 FT TO THE POINT OF BEGINNING

CONTAINS 106 ACRES MORE OR LESS

Prepared for
United States Department of Energy

SITE DESCRIPTION & OWNERSHIPS

Inactive Mill Telling Sites

TUBA CITY, ARIZONA

15/79

U.S. Department of Energy
Agreement No. DE-FC04-85AL267

APPENDIX B

REMEDIAL ACTION PLAN

(To be developed at a later date.)

APPENDIX C

GENERAL PROVISIONS

To the extent that either Tribe is authorized by the Contracting Officer to procure supplies, equipment, construction, or services under this Agreement the following clauses are applicable:

1. Inspection.

DOE through any authorized representative, has the right at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder the premises in which it is being performed. If any inspection, or evaluation is made by DOE on the premises of the Tribe or a subcontractor, the Tribe shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of DOE representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

2. Convict Labor.

In connection with the performance of work under this Agreement, the Tribe agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c)(2)) and Executive Order 11755, December 29, 1973.

3. Clean Air and Water.

a. The Tribe agrees as follows:

- (1) To comply with all requirements of Section 1145 of the Clean Air Act, as amended (42 U.S.C. 1857, et. seq., as amended by Public Law 91-604 and Public Law 95-95) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, et. seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 115 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this Agreement.
- (2) That no portion of the work required by this Agreement will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this Agreement was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.

- (3) To use its best efforts to comply with clean air standards and clean water standards at the facility in which the Agreement is being performed.
- (4) To insert the substance of this clause into any nonexempt contract, including this Paragraph 5.a.(4).

b. The terms used in this provision have the following meanings:

- (1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857, et. seq., amended by Public Law 91-604 and Public Law 95-95).
- (2) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, et. seq., as amended by Public Law 92-500).
- (3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in Section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively, of the Air Act (42 U.S.C. 1857(c)-6(c) or (d), or an approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).
- (4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).
- (5) The term "compliance" means compliance with clean air or water standards during and after remedial action. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an air or water pollution control agency in accordance with the requirements of the Air Act or Water and regulations issued pursuant thereto.
- (6) The term "facility" means any building, plant, installation, structure, mine, vessel, or other floating craft, location, or site of operations, owned, leased, or supervised by a

participant or subcontractor, to be utilized in the performance of an agreement or subcontractor. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

4. Flood Insurance.

The Tribe will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, '87 Stat. 975, approved December 31, 1970. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The Tribe will comply with provisions prescribed by the Federal Insurance Administrator in 24 CFR, Chapter X, Subchapter B.

5. Permits and Licenses.

Except as otherwise agreed to by the Contracting Officer, the Tribe shall procure all necessary permits or licenses and abide by all applicable laws, regulations and ordinances of the United States, and of the State, territory, and political subdivision in which the work under this Agreement is performed.

6. Authorization and Consent.

DOE hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this Agreement or any part hereof or any amendment hereto or any subcontract hereunder (including all lower-tier subcontracts).

7. Safety and Health.

- a. The Tribe shall take all reasonable precautions in the performance of the work under this Agreement to protect the health and assure the safety of employees and the public. The Tribe shall comply with all applicable federal, state, and local health and safety regulations and requirements including but not limited to those established pursuant to the Occupational Safety and Health Act and with any additional safety and health standards and requirements (including reporting requirements) established by DOE which is to

include compliance with DOE Order 5481.1, Safety Analysis and Review System.

Upon request of the Contracting Officer, the Tribe shall submit a management program and implementation plan to the Contracting Officer for review and approval.

- b. In the event that the Tribe fails to comply with said regulations and requirements, the Contracting Officer may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work; thereafter a start order for resumption of work may be issued at the discretion of the Contracting Officer. In the event of a final determination that the Tribe has failed to comply with said regulations and requirements, the Tribe shall make no claim for an extension of time or for an equitable adjustment, compensation or damages by reason of or in connection with such work stoppage.