

COOPERATIVE AGREEMENT

between

UNITED STATES DEPARTMENT OF ENERGY

and

**NEW YORK STATE
ENERGY RESEARCH AND DEVELOPMENT AUTHORITY**

on the

**WESTERN NEW YORK NUCLEAR SERVICE CENTER
at WEST VALLEY, NEW YORK**

*Effective October 1, 1980
as amended
September 18, 1981*

EXPLANATORY STATEMENT

This is a conformed copy of the Cooperative Agreement, effective October 1, 1980, as amended effective September 18, 1981, between the United States Department of Energy and the New York State Energy Research and Development Authority.

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COOPERATIVE AGREEMENT

THIS AGREEMENT, effective as of October 1, 1980,* between THE UNITED STATES OF AMERICA, acting by and through the UNITED STATES DEPARTMENT OF ENERGY (the "Department"), Washington, D.C., and the STATE OF NEW YORK (the "State"), acting by and through the NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, a public benefit corporation organized and existing under the Laws of the State of New York (the "Authority"), Albany, New York.

W I T N E S S E T H:

WHEREAS the West Valley Demonstration Project Act, Pub. L. 96-368 (the "Act"),** provides that the United States Secretary of Energy (the "Secretary") shall carry out a high level radioactive waste management project at the Western New York Nuclear Service Center (the "Center"), in West Valley, New York; and

WHEREAS the Act provides that the Secretary and the State shall enter into a Cooperative Agreement, pursuant to the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95-244, for the purpose of implementing such project; and

WHEREAS pursuant to Section 1856 of the Public Authorities Law of the State of New York, the Authority has assumed jurisdiction over the Center and holds the Center in the name of the State, subject to (a) a Lease and a Waste Storage Agreement (the "West Valley Agreements"), each dated as of May 15, 1963, between the New York State Atomic Research and Development Authority (the Authority's predecessor) and Nuclear Fuel Services, Inc. ("NFS") and (b) License CSF-1, originally issued to the New York State

* As amended effective September 18, 1981.

**See Appendix G

Atomic Research and Development Authority and NFS by the United States Atomic Energy Commission; and

WHEREAS Section 1854(6) of the Public Authorities Law of the State of New York authorizes the Authority to take such actions as it deems necessary or appropriate with respect to the Center in furtherance of the public interest in safe, reliable and economical energy supplies; and

WHEREAS the Congress and the New York State Legislature have appropriated funds to the Department and the Authority, respectively, portions of which have been expended and obligated in furtherance of such project;

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements set forth herein, the Department and the Authority hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. As used herein, the following terms have the respective meanings set forth below:

Additional Facilities: as defined in Section 4.04.

Annual Authority Facility Credit: as defined in Section 5.03.

Annual Budget: as defined in Section 8.01.

Annual Project Costs: as defined in Section 5.03.

Annual Project Plan: as defined in Section 8.01.

Authority: as defined in the Preamble to this Agreement.

Authority Representatives: as defined in Section 8.07.

Authority Services: as defined in Section 5.03.

Board: as defined in Section 8.07.

Burial Facility: that portion of the Project Premises identified on Map 2 (annexed to Exhibit B) as the Commission-Licensed Burial Area.

Center: as defined in the Preamble to this Agreement.

Commission: the United States Nuclear Regulatory Commission and any Federal agency succeeding (by statute, regulation, agreement or otherwise) to the functions of such Commission.

Department: as defined in the Preamble to this Agreement.

Fuel Receiving and Storage Area: the area of the Process Plant at the Center used for the receipt and temporary storage of irradiated nuclear fuel elements, together with all fixtures, machinery, equipment, and apparatus affixed thereto or installed in connection therewith.

Legal Requirements: all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Federal, state, county, municipal and other governmental departments, commissions, boards, courts, authorities, agencies, officials and officers, whether foreseen or unforeseen, ordinary or extraordinary, now or hereafter enacted or in force, which shall be applicable to the Project or any portion thereof.

Process Plant: the existing facility at the Center used for the receipt, storage and reprocessing of irradiated nuclear fuel elements, including all personal property, equipment, supplies, and materials (including, without limitation, all radioactive materials) located therein.

Project: all activities undertaken in carrying out the solidification of the liquid high level radioactive wastes at the Center, including, without limitation, (a) solidification in a form suitable for transportation and disposal of the liquid high level radioactive wastes at the Center by vitrification or such other technology as the Department determines to be most effective for

solidification; (b) preparation of the Project Premises and Project Facilities to accommodate the foregoing, including such decontamination of facilities and equipment as may be necessary or appropriate; (c) development of containers suitable for the permanent disposal of the high level radioactive wastes solidified at the Center; (d) transportation, as soon as feasible after solidification and in accordance with applicable provisions of law, of the wastes solidified at the Center to an appropriate Federal repository for permanent disposal; (e) decontamination and decommissioning of the tanks, other facilities at the Center in which the solidified wastes were stored and all Project Facilities and other facilities, material, and hardware used in carrying out the solidification of the high level radioactive wastes at the Center; (f) disposal, in accordance with applicable licensing requirements, of low level and transuranic wastes produced by or as a result of the foregoing; and (g) all other activities necessary to carry out the foregoing.

Project Completion Date: the date upon which (a) the Project shall have been completed; (b) all other obligations of the Department hereunder shall have been performed in full; and (c) the Commission shall have issued or granted all licenses and approvals necessary for the Authority to resume possession and control of the Project Premises and Project Facilities; provided, however, that if the Department transports the high level radioactive wastes solidified under the Project from the Center for storage or disposal in a Federal repository other than a repository for the permanent disposal of such wastes and accepts title to, and all responsibility for, such wastes without payment by the Authority other than expressly provided in Section 3.05, then the failure of the Department to transport such wastes to an appropriate Federal repository for permanent disposal shall not prevent completion of the Project for the purposes of this definition.

Project Costs: each of the following: (a) those costs which have been or are incurred by the Department in carrying out the Project, consistent with the appropriation of funds for the Project; (b) the value to the Project of the Center as provided in Article V; and (c) the value of services performed by or on behalf of the Authority, its contractors, employees or agents as provided in Article V.

Project Facilities: the facilities described in Section 4.01 which the Authority is making available to the Department, in accordance with the Act and Article IV of this Agreement, to be used in the solidification of the high level radioactive wastes at the Center.

Project Premises: the land specified in Exhibit B and Map 2 appended thereto.

Project Term: the period commencing on the effective date of this Cooperative Agreement and ending at midnight on the Project Completion Date.

Retained Premises: the land specified in Exhibit A and Map 1 appended thereto.

RFP: as defined in Section 8.07.

Total Project Costs: the sum of all Project Costs.

Unavoidable Delay: delays due to strikes, acts of God, governmental restrictions, fire, unavoidable casualty or other causes beyond the Department's reasonable control.

West Valley Agreements: as defined in the Preamble to this Agreement.

ARTICLE II
PURPOSE, OBJECTIVES AND BENEFITS

Section 2.01. Purpose. The purpose of this Agreement is to establish a cooperative framework for the implementation of the Project by the Department and the Authority as contemplated by Section 2(b)(4) of the Act. The purpose of the Project is to develop and demonstrate technology for the removal, processing, solidification, and transportation of alkaline or acidic high level radioactive wastes in a manner which protects the public health and safety both during and after the completion of the Project. The Project is consistent with Federal policy that high level radioactive wastes be solidified and transferred to a Federal repository for permanent disposal.

Section 2.02. Objectives. The objectives of the Project, to be carried out in a manner which protects public health and safety, include:

- (a) decontamination of the Project Facilities at the Center to accommodate the solidification process;
- (b) development and implementation of technology for the removal of the high level radioactive wastes, including sludges, from the tanks at the Center;
- (c) solidification of the high level radioactive wastes at the Center;
- (d) development of containers for the disposal of the wastes solidified at the Center;
- (e) transportation of the solidified wastes to an appropriate Federal repository for permanent disposal;
- (f) decontamination and decommissioning of the tanks and other facilities in which the solidified wastes were stored, together with the Project Facilities and other facilities, material and

- hardware used in carrying out the Project, in accordance with such requirements as the Commission may prescribe; and
- (g) disposal of radioactive wastes (other than the high level radioactive wastes solidified at the Center) produced by or as a result of the foregoing activities.

Section 2.03. Benefits.

- (a) The benefits of the Project to the Department include:
- (i) demonstrating technology for the solidification of alkaline wastes on a significant scale;
 - (ii) demonstrating technology for the solidification of acidic thorium-based wastes on a significant scale;
 - (iii) providing greater experience with the decontamination and decommissioning of facilities used in the nuclear fuel cycle, including the demonstration of technology for the decontamination, decommissioning and disposal of high level radioactive waste storage tanks;
 - (iv) providing operational experience in the removal of sludge from high level waste tanks;
 - (v) developing methodologies for assessing the environmental impact of and developing safety criteria for other high level waste solidification projects; and
 - (vi) protecting public health and safety.
- (b) The benefits of the Project to the Authority include, in addition to the benefits to the Department:
- (i) solidification of the high level radioactive wastes at the Center and their transportation to an appropriate Federal repository for permanent disposal;

- (ii) decontamination and decommissioning of the facilities at the Center used in carrying out the Project; and
- (iii) disposal of radioactive wastes (other than the high level wastes solidified at the Center) produced by or in connection with the Project.

ARTICLE III

PROJECT MANAGEMENT AND RESPONSIBILITIES

Section 3.01. Department Responsibility for the Project. Except as provided in Section 3.03 and Article VIII, the Department shall have the sole responsibility for carrying out the Project, including without limitation the planning, design, management, implementation, and completion thereof in a manner which protects public health and safety.

Section 3.02. Specific Department Responsibilities. Without limiting the generality of its obligations under Section 3.01, the Department shall:

- (a) in accordance with the Act, during the fiscal year ending September 30, 1981:
 - (i) hold public hearings in the vicinity of the Center to inform residents of the area in which the Project is located of the activities to be undertaken under the Project and to receive their comments on the Project;
 - (ii) consider the techniques available for the solidification and handling of the high level radioactive wastes at the Center;
 - (iii) undertake detailed engineering and cost estimates for the Project;

- (iv) prepare a plan for the safe removal of the high level radioactive wastes at the Center for the purpose of solidification;
 - (v) conduct a safety analysis of the Project;
 - (vi) prepare such environmental analyses for the Project as may be required under the National Environmental Policy Act of 1969; and
 - (vii) enter into an agreement with the Commission to establish arrangements for review and consultation by the Commission with respect to the Project, as required by the Act.
- (b) on or before October 1, 1981:
- (i) assume exclusive possession of the Project Premises and Project Facilities for use in carrying out the Project; and
 - (ii) assume responsibility for protection of public health and safety with respect to the Project Premises and Project Facilities for the duration of the Project.
- (c) commencing October 1, 1981, and in accordance with the Annual Project Plans provided for in Section 8.01 of this Agreement:
- (i) prepare the Project Premises and Project Facilities to accommodate the Project, including such decontamination of facilities and equipment as may be necessary or appropriate to permit their use in the Project;
 - (ii) solidify, in a form suitable for transportation and disposal, the high level radioactive wastes at the Center by vitrification or such other technology as the Department

determines to be most effective for solidification, using the Project Facilities at the Center;

- (iii) develop containers suitable for the permanent disposal of the high level radioactive wastes solidified at the Center;
- (iv) maintain and thereafter transport, as soon as feasible after solidification and in accordance with applicable provisions of law, the waste solidified at the Center to an appropriate Federal repository for permanent disposal;
- (v) dispose of low level radioactive waste and transuranic waste produced by or as a result of the Project in accordance with applicable licensing requirements;
- (vi) decontaminate and decommission the tanks and other facilities at the Center in which the solidified wastes were stored and all Project Facilities and other facilities, material and hardware used in carrying out the Project, all in accordance with such requirements as the Commission may prescribe; and
- (vii) take all such other and further actions as may be necessary to carry out the Department's obligations hereunder.

Section 3.03. Authority Services. In connection with the Project, the Authority shall:

- (a) cooperate with the Department in the preparation of an environmental impact statement with respect to the Project and coordinate the reviews and comments thereon by all agencies of the State;
- (b) continue to cause the premises and facilities at the Center to be operated and maintained for use in the Project until October 1, 1981, or such earlier date on which the Department

assumes exclusive use and possession of the Project Premises and Project Facilities pursuant to Section 4.01;

- (c) authorize the Department to use the Project Premises and Project Facilities in accordance with the terms of Article IV of this Agreement;
- (d) provide services to the Department in connection with the Project in accordance with the provisions of Article V of this Agreement;
- (e) subject to the approval of NFS, or by designating the Department to act as the Authority's agent under the West Valley Agreements, provide such access to the Center as the Department may reasonably require until the Department is put in exclusive possession of the Project Premises and Project Facilities; and
- (f) otherwise participate and cooperate in carrying out the Project to the extent specified in Article VIII of this Agreement.

Section 3.04. Standard of Performance; Etc. The Department and the Authority shall carry out their respective obligations under this Article III in a prudent, professional, and workmanlike manner which does not jeopardize public health or safety and shall, subject to Unavoidable Delay, use their best efforts to complete the Project as expeditiously as possible. In performing such obligations hereunder, the Department and the Authority may utilize the services of such professionally qualified contractors, subcontractors, agents, and employees as they shall deem necessary or desirable, provided that no such utilization shall relieve either of them of any of their respective obligations under this Agreement.

Section 3.05. Maintenance and Management of the Solidified Wastes.

- (a) Nothing in this Agreement shall be construed as providing for

the transfer of title from the Authority to the Department of, or responsibility for, the high level radioactive wastes solidified under the Project, except to the extent provided in Subsection 3.05(b).

- (b) Upon delivery of the high level radioactive wastes solidified under the Project to an appropriate Federal repository for permanent disposal and payment to the Department of the funds held by the Authority for the maintenance of such wastes under the West Valley Agreements, with interest accrued thereon, the Department shall continue to be responsible for the control and management of such wastes and the Department and the Authority shall exchange documents necessary to evidence the foregoing. The Department shall control and manage such wastes using the funds paid to the Department under this Section and to the extent consistent with Section 11.02 of this Agreement. Nothing in the Act or this Agreement obligates the Department or the Federal government to pay the disposal costs, if any, for the solidified wastes.

ARTICLE IV

USE OF THE CENTER

Section 4.01. Possession of Project Premises and Project Facilities.

In accordance with the Act, the Authority hereby grants the Department, and the Department hereby assumes for use in carrying out the Project, exclusive use and possession of the Project Premises, together with the buildings, facilities and improvements of whatever kind and description erected thereon

and all personal property, equipment, supplies, and material, including all radioactive material and waste located or stored therein, including, but not limited to, the facilities described in Exhibit C (collectively, the "Project Facilities") effective at 12:00 Noon on October 1, 1981, or such earlier date and time as may be mutually agreed upon by the Department and the Authority. Subject to the provisions of Article VI, the Authority shall take all steps necessary to put the Department into possession of the Project Premises and Project Facilities in accordance with the terms of this Agreement. The Department shall remain in exclusive use and possession of the Project Premises and Project Facilities and shall comply with its obligations hereunder throughout the remainder of the Project Term.

Section 4.02. Use of the Project Premises, Project Facilities, and Retained Premises. The Department shall use the Process Plant in carrying out the Project. Project Premises and Project Facilities shall be used solely for the purpose of carrying out the Project and for no other purpose whatsoever, except as expressly provided in this Agreement. During the Project Term, the Authority shall not use, or authorize the use of, the portion of the Center not subject to the exclusive use and possession of the Department (the "Retained Premises") in a manner which interferes with carrying out the Project.

Section 4.03. Condition on Surrender. On the Project Completion Date, the Department shall surrender to the Authority

- (a) the Process Plant and
- (b) such other Project Premises, Project Facilities and any other non-federally-owned facilities, material, and hardware which it uses in carrying out the Project

decontaminated and decommissioned in accordance with the Act and such requirements as the Commission may prescribe; provided, however, that the

Authority may (but shall be under no obligation to) agree that certain facilities used in carrying out the Project may be surrendered to it without having been decontaminated and decommissioned. In no event shall the Department be required under this Agreement to decontaminate and decommission materials buried in the Burial Facility prior to the assumption by the Department of possession of, and responsibility for, the Project Premises and Project Facilities."

Section 4.04. Additional Rights Granted to the Department. Commencing October 1, 1981, the Authority hereby grants the Department such rights as the Authority may have of access to and the use of all water, rail, electric and gas utilities and monitoring sites, including, but not limited to, the facilities described in Exhibit D (collectively, the "Additional Facilities") located on the Retained Premises, and as may be reasonably necessary to carry out the Project. The Department shall assume all costs incurred in connection with the Department's operation, use and maintenance of the Additional Facilities.

Section 4.05. Rights Retained by the Authority. Anything to the contrary contained herein notwithstanding, during the Project Term the Authority shall without charge:

- (a) be entitled to use of * to 800 square feet of furnished office space within the existing Administration Building at the Center, including such telephone service, parking facilities and document duplicating services as may be reasonably necessary for Project purposes;

*So in the original -- should read "up to 800 square feet".

- (b) subject to reasonable notice and coordination with Project activities, have the right of ingress and egress across the Project Premises for the purpose of access to the Retained Premises and such office space;
- (c) subject to reasonable notice and coordination with Project activities, have direct access to and the use of all water, rail, electric, gas and other utilities and monitoring sites and facilities located within the Project Premises and Project Facilities to the extent necessary for the conduct of operations on the Retained Premises; and
- (d) be entitled to continue to allow the storage of those irradiated nuclear fuel elements presently stored in the Fuel Receiving and Storage Area at the Center pursuant to the provisions of Section 4.11.

Section 4.06. Present Condition of Center. The Act directs the Department to carry out the Project at the Center, and therefore the Department's responsibilities hereunder shall not be affected by any defect in the condition or fitness of the Project Premises or Project Facilities nor shall the Department have any claim against the Authority arising from any such defect.

Section 4.07. Changes, Alterations, and Additions. Subject to the provisions of Article VIII, the Department may make, from time-to-time, such changes, alterations and additions to the Project Facilities and Additional Facilities as may be reasonably necessary to carry out the Project.

Section 4.08. Operation, Maintenance, and Repair. The Department shall operate and maintain the Project Premises, Project Facilities, and such Additional Facilities which it uses in carrying out the Project, and as may be necessary or appropriate to carry out the Project in a manner which

protects public health and safety and complies with the provisions of this Agreement. As used in this Section, the term "maintain" shall include, but not be limited to, the obligation to make all necessary and appropriate repairs, changes, alterations, and additions thereto or replacements thereof, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen.

Section 4.09. Damage or Destruction. Notwithstanding the provisions of Section 4.08, nothing in this Agreement shall require the Department to repair or restore any Project Facility which is damaged or destroyed by accident, fire, or other casualty, except that the Department shall repair or restore any such facility to the extent necessary to protect the public health and safety, continue and complete the Project, or as may be reasonably required in connection with any responsibilities the Authority may have with respect to the Center upon completion of the Project and the Department shall decontaminate and decommission any other damaged or destroyed facility pursuant to Section 3.02 of this Agreement.

Section 4.10. Responsibility for Project Premises and Facilities. If the Department shall not occupy the Project Premises by October 1, 1981, the cost of operation and maintenance of the Project Premises and Project Facilities during the Project Term, including the management of the radioactive materials and wastes stored therein, and protection of public health and safety shall nevertheless be deemed Project Costs, payable by the Department.

Section 4.11. Additional Department Services.

(a) To provide for the efficient management of the Project Premises and Project Facilities during the Project Term, the Department shall:

(i) accept such quantities of wastewater as are generated as a result of the maintenance of the facilities used for

- the disposal of low level radioactive wastes within the Retained Premises and treat such wastewater at treatment facilities, whether existing or hereafter constructed, on the Project Premises. As used in this subsection, the word "treat" includes, but is not limited to, the use of chemical and/or physical processes for the removal of pollutants, including radioactive materials, from wastewaters, the discharge of such wastewaters after the application of such physical and/or chemical processes, and the disposal of any solid wastes resulting therefrom;
- (ii) in connection with its responsibility for operation and maintenance of the Fuel Storage and Receiving Area at the Center for use in the Project, be responsible as agent of the Authority for the management, maintenance and surveillance of the irradiated nuclear fuel elements now stored therein; and
 - (iii) provide general site surveillance and security services for the Retained Premises and Facilities.

The Incremental Cost of providing the foregoing services shall be the sole and exclusive responsibility of the Authority, and the Authority agrees to promptly reimburse the Department for such Incremental Cost. As used in this Section, the term "Incremental Cost" means any costs which would not have been incurred but for the service being rendered and shall include, but not be limited to, (A) costs of alterations or repairs attributable to the maintenance of the irradiated nuclear fuel elements stored in the Fuel Receiving and Storage Area; (B)

the cost of any claims, damage, losses, and expenses (including reasonable attorney's and expert witness' fees) arising out of or resulting from the performance of the services described in this Section, except where such claim, damage, loss, or expense results from the negligence of the Department, its contractors, employees, or agents; and (C) increases in operating expenses attributable to the services rendered.

- (b) The Department shall consult with, and obtain the approval of, the Authority with respect to any extraordinary expenses which it proposes to incur in connection with providing services under this Section. In the event that the Authority withholds such approval, it shall be responsible for any damages or claims resulting therefrom.

Section 4.12. Utility and Transportation Services. Commencing October 1, 1981, the Department shall pay or cause to be paid, all charges or expenses for gas, electricity, heat, water, steam, and power and for telephone, communications, and protective services and for all other public or private utility services and all public or private rail or highway services which shall be used, rendered, or supplied upon, to or in connection with the Project Premises and Project Facilities or any part thereof at any time during the remainder of the Project Term and shall do all other things reasonably required for the continuance of all such services as the Department determines are necessary or useful in the proper maintenance and operation of the Project Premises and Project Facilities.

ARTICLE V
COST OF THE PROJECT

Section 5.01. Estimated Cost of the Project. The Total Project Costs are estimated by the Department to be two hundred eighty-five million dollars (\$285,000,000).

Section 5.02. Cost-Sharing. The Department shall pay ninety percent (90%) of the Total Project Costs and the Authority shall pay ten percent (10%) of such costs in the manner set forth in Section 5.03. The Authority may not use Federal funds to pay its share of the cost of the Project. The Department and the Authority shall use their best efforts to minimize Total Project Costs.

Section 5.03. Accounting for Project Costs.

- (a) Within sixty days after the end of each Federal fiscal year commencing on or after October 1, 1980, and continuing until the end of the Federal fiscal year in which the Project Completion date occurs, the Department shall deliver to the Authority an accounting of all Project Costs incurred by the Department during the preceding Federal fiscal year ("Annual Project Costs").
- (b) The Authority shall pay its share of the Annual Project Costs for any particular Federal fiscal year on or before the next July 1 after the Department delivers its accounting for that year, in the following manner:
 - (i) by expending funds for the provision of services ("Authority Services") as agreed pursuant to Section 5.03(d) for the applicable Federal fiscal year;

- (ii) by expending a portion ("Annual Authority Facility Credit") of the Authority's credit for the value of making the Project Premises, Project Facilities, and Additional Facilities available to the Department pursuant to Article IV of this Agreement, which premises and facilities for the purpose of this Agreement have been determined by the Department to have a value to the Project of twelve million dollars (\$12,000,000), which is hereby credited to the Authority beginning October 1, 1981, provided, however, that if the Project has not been completed within ten years from the date of this Agreement and the entire twelve million dollar credit has been expended, the Authority and the Department shall determine by amendment to this Agreement a further credit to the Authority for the value of the further use of the Project Premises, Project Facilities, and Additional Facilities for the Project for the additional time necessary to complete the Project; and
 - (iii) by paying the balance to the Department by check or other negotiable instrument.
- (c) If, for any Federal fiscal year, the sum of the funds that the Authority expended providing Authority Services pursuant to Section 5.03(b)(i) and the Annual Authority Facility Credit expended pursuant to Section 5.03(b)(ii) exceeds the Authority's share of the Annual Project Costs for that year, then such excess expenditures in providing Authority Services shall be credited to the Authority as the expenditure of funds

for the provision of Authority Services in the next succeeding Federal fiscal year in addition to the funds expended in such succeeding year as agreed pursuant to Section 5.03(d).

- (d) Before the commencement of the Federal fiscal year commencing October 1, 1981, and before the commencement of each succeeding Federal fiscal year until the Project is completed, the Department and the Authority shall agree in writing on Authority Services to be provided to the Project during the next Federal fiscal year and the amount of funds to be expended by the Authority in providing those services, which shall include, but need not be limited to, the services described in Exhibit E. Authority Services and the value thereof may be adjusted or modified during the applicable Federal fiscal year upon agreement in writing between the Department and the Authority. During the Federal fiscal year ending September 30, 1981, credit shall be given for Authority Services in the amount of five hundred seventy-five thousand dollars (\$575,000) and the Authority shall provide an accounting to the Department for providing such services.

Section 5.04. Adjustments. All values or estimates of costs used in this Article are expressed in 1980 dollars. The Department and the Authority recognize that the Total Project Costs will require revision, from time-to-time, to account for the effects of inflation and other factors. The Department and the Authority also recognize that the value of the Project Premises, Project Facilities, Additional Facilities, and Authority Services to the Project will likewise require revision, from time-to-time, to account for the effects of inflation and other factors.

ARTICLE VI
LICENSING AND COMPLIANCE WITH LAWS

Section 6.01. Technical Assistance; Application to the Commission.

The Department shall provide the Authority with technical assistance in securing regulatory license amendments or changes as may be required or appropriate in connection with the Project. As provided in the Act, the Department and the Authority shall cooperate in the joint submission to the Commission of an application for any such licensing amendment or change as may be required to carry out the Project.

Section 6.02. Licensing. The Authority, with the technical assistance of the Department, shall make timely application to the Commission for such licensing action, if any, as may be required for the Authority to assume possession of the Project Premises and Project Facilities upon completion of the Project.

Section 6.03. Compliance with Legal Requirements. The Department shall be responsible for compliance with all Legal Requirements applicable to its participation in the Project, including without limitation, the National Environmental Policy Act of 1969, and the Authority shall be responsible for compliance with all Legal Requirements applicable to its participation in the Project, including without limitation the New York State Environmental Quality Review Act; provided, however, that nothing in this Agreement shall be deemed to constitute a waiver of sovereign immunity by either the Department or the Authority nor shall it otherwise affect the Department's rights under the Supremacy Clause of the United States Constitution. The Department and the Authority shall cooperate in the preparation of such environmental analyses of the Project as may be required under Federal and State

law, and the Authority shall coordinate the review by all State agencies of all such environmental analyses. Actions by the Department and the Authority under this agreement will only be taken in accordance with the applicable legal requirements of the National Environmental Policy Act and the New York State Environmental Quality Review Act, respectively.

ARTICLE VII
INDEMNIFICATION

Section 7.01. Indemnification.

- (a) Subject to the provisions of Section 11.02, the Department shall indemnify and hold the Authority and the State (and their respective members, officers, employees, and agents) harmless from all claims, damages, losses, and expenses (including reasonable attorney's and expert witness' fees) or liabilities, arising out of or resulting from the performance of (or failure to perform) the Department's obligations hereunder.
- (b) Subject to the provisions of Section 11.02, the Authority shall indemnify and hold the Department and the United States of America (and their respective members, officers, employees, and agents) harmless from all claims, damages, losses, and expenses (including reasonable attorney's and expert witness' fees) or liabilities, arising out of or resulting from the performance of (or failure to perform) the Authority's obligations hereunder.

ARTICLE VIII

PROJECT PLANS, REPORTS, CONSULTATION, AND COORDINATION

Section 8.01. Annual Project Plan and Budget. Before the commencement of the Federal fiscal year commencing October 1, 1981 and before the commencement of each succeeding fiscal year until the Project is completed, the Department shall prepare:

- (a) an annual plan for the implementation of the Project (the "Annual Project Plan") which shall (i) report on progress achieved during the current Federal fiscal year in implementing the Project, significant obstacles or problems encountered in implementing the Project, and proposed solutions to such obstacles or problems; and (ii) detail all major actions to be taken, decisions required to be made, and work to be performed in connection with the Project during the next fiscal year and to complete the Project; and
- (b) an annual budget for the implementation of the Project (the "Annual Budget") which shall detail all estimated expenditures and costs which : (i) have been incurred as Project Costs; (ii) will be incurred as Project Costs during the current and next fiscal year; and (iii) will be required to complete the project.

The Annual Project Plans and Annual Budgets shall be in sufficient detail to allow determinations to be made under Sections 8.02 and 8.03 and may be the report submitted to Congress under Section 4 of the Act if it contains the information described above. Any amendment of the Annual Project Plans and Annual Budgets shall conform to the foregoing requirements. The Department

shall carry out the Project in accordance with the Annual Project Plans and Annual Budgets, as amended. The Annual Project Plans and Annual Budgets and any amendments thereto shall be provided to the Authority promptly after preparation.

Section 8.02. Consultation and Agreement in Certain Events. The Department shall consult with the Authority with respect to the development of, and any amendment to, the Annual Project Plans and Annual Budgets and the Authority's agreement shall be required with respect to matters contained therein (or other major decisions in carrying out the Project) that materially affect obligations (i) which the Authority may have with respect to the Center after the completion of the Project, or (ii) which the Authority may have exclusive of the Project; provided, however, that the agreement of the Authority shall not be required with respect to the decontamination and decommissioning of Project Facilities at the Center pursuant to Commission requirements under Section 3.02(c)(vi).

Section 8.03. Resolution of Disputes as to Project Costs. In the event the Department and the Authority are unable to agree through their respective normal management chains with respect to any matter contained in the Annual Project Plans and Annual Budgets (or any amendment thereto) that materially affects Total Project Costs, then either the Department or the Authority may refer the matter to the Secretary and the Governor of the State of New York for resolution. Pending such resolution, costs associated with such matter shall not be included in the determination of Annual Project Costs pursuant to Section 5.03. The Department may also elect not to fund activities with respect to such matter until such resolution. The provisions of this Section 8.03 shall not apply if the Department determines that the resolution of the matter as proposed by the Authority would present an unreasonable risk to public health and safety.

Section 8.04. Consultation and Coordination. Before October 1, 1981, the Department and the Authority shall develop and mutually agree upon detailed plans to assure continued consultation and coordination between the Department and the Authority during the Project Term. These plans shall include, but need not be limited to, provision for the following:

- (a) the Authority's designation of a Project Engineer who is intended to be resident at the Center during the Project;
- (b) periodic meetings (to be held not less often than monthly) of the Department's Project Manager and the Authority's Project Engineer; attendance by the Authority's Project Engineer at other project meetings when mutually agreed on, but such agreement shall not unreasonably be withheld.
- (c) the Authority's receipt of direct distribution of all Department Monthly Integrated Project Reports, draft and final contractors' technical reports received by the Department, and reasonable access to such other documents bearing on the Project as the Authority may request, subject to any proprietary rights retained by the Department's contractors and patent clearance procedures;
- (d) the development of Emergency Preparedness Plans coordinating Federal, State, and local actions and responsibilities in the event of an emergency at the Center, which shall be submitted to the Commission for comment;
- (e) receipt by the Authority's Project Engineer of all baseline plans and specifications for the construction of major changes, alterations, or additions to the Project Facilities and Additional Facilities which require Department approval;

- (f) the Department's receipt of environmental surveillance reports affecting the Project and reasonable access to such other documents in the control of the State which bear on the Project; and
- (g) the Department's receipt of plans and schedules for the maintenance and repair of facilities within the Retained Premises.

Section 8.05. Notice and Consultation in Certain Events. The Department shall promptly notify and consult with the Authority's Project Engineer with respect to (a) any unexpected developments or material problems that may develop in implementing the Project or fulfilling the Department's responsibilities under this Agreement; and (b) any event occurring at the Project Premises or Project Facilities which affects, of* may affect, public health or safety.

Section 8.06. Authority's Right of Inspection. Throughout the Project Term, the Authority shall have the right to enter upon the Project Premises and Project Facilities for the purpose of inspecting the same and of observing the progress of the Project. Such entry shall be at reasonable times and in a manner which does not interfere with the Department's obligations under this Agreement. Nothing contained in this Agreement shall be construed as creating or implying any duty on the part of the Authority to make any such inspection or to make any repairs or remedy any defect disclosed thereby and the Authority shall incur no liability or obligation for failing to make any such inspection or repairs or to remedy any such defect, or, once having undertaken any such inspection, for not making the same carefully or properly. No commencement or completion by the Authority of any such inspection shall create or imply any such duty, liability, or obligation or constitute a waiver by the Authority in respect of any matters disclosed thereby.

* So in the original--should read "or may affect".

Section 8.07. Consultation in Contractor Selection and Evaluations.

The Authority shall not be a member of the Source Evaluation Board ("the Board"); provided, however, that:

- (a) draft copies of the statement of work, evaluation criteria, including rating sheets minus the weights or values assigned therein, and subsequently the Request For Proposals ("RFP"), will be made available to not more than three Authority employees or consultants designated by the Authority (the "Authority Representatives") and the Authority Representatives will be afforded opportunities to consult with the Board by submitting written comment and/or meeting with the Board prior to: (i) final decisions with respect to the statement of work and evaluation criteria; and (ii) issuance of the RFP;
- (b) Authority Representatives shall have the opportunity to review the technical proposals, cost proposals, and to meet and consult with the Board with respect thereto prior to establishment of a competitive range. Schedule of timing of reviews shall be arranged by the Authority with the Board;
- (c) Authority Representatives shall have the opportunity to participate as observers in the oral presentation and site visit for all proposers in the competitive range and thereafter will have the opportunity to consult with the Board prior to final ranking of proposers;
- (d) Authority Representatives shall have the opportunity to attend and participate in the briefing of the Source Selection Officer, including an opportunity at the briefing to review all materials made available at the briefing. The Chairman of the Authority shall be promptly notified of the final selection;

- (e) the Department shall also provide for the Authority's participation in periodic contractor management reviews and evaluations and shall furnish audit reports and contractor management review and evaluation reports for the Authority's review; and
- (f) Authority Representatives shall execute confidentiality certificates and conflict of interest certificates in the form the Department prescribes for members of the Board.

Section 8.08. No Limitation on Responsibilities. All actions by the Department and the Authority under this Article shall be taken in a timely manner consistent with the expeditious completion of the Project and the Department's procurement schedule. Neither the provisions of this Article nor any action taken by the Authority (or the failure of the Authority to take any such action) under this Article shall limit or affect the Department's rights or responsibilities under this Agreement.

ARTICLE IX ASSIGNMENTS

Section 9.01. Assignments. This Agreement may not be assigned by either the Department or the Authority except (a) by operation of law; or (b) by the Authority in connection with the transfer of the Center or any portion thereof to any agency, authority, or instrumentality of the State of New York.

ARTICLE X

INSURANCE

Section 10.01. Price-Anderson Act. Prior to October 1, 1981, the Department shall determine, pursuant to 41 C.F.R. 9-10.5005, whether to extend an indemnity to any contractor it may retain with respect to its responsibilities at the Center under this Agreement. If the Department determines to extend an indemnity to its contractor under Section 170(d) of the Atomic Energy Act of 1954, as amended, and 41 C.F.R. Subpart 9-10.50, the Authority shall be a person indemnified to the extent that the Authority incurs public liability for a nuclear incident or extraordinary nuclear occurrence (as the underlined- terms are defined in the Atomic Energy Act of 1954 as amended) arising out of or in connection with the activities covered by such indemnity. The Authority shall be furnished with a copy of any agreement containing the terms of such indemnity.

Section 10.02. Other Insurance. If the Department obtains, or authorizes or requires any of its contractors or subcontractors, regardless of tier, to obtain public liability insurance, property damage insurance, or insurance against any hazard, the Authority shall be named as an additional insured. The Authority shall be furnished with a certificate evidencing any such insurance.

ARTICLE XI

MISCELLANEOUS

Section 11.01. No Waiver. Nothing herein shall constitute or imply any waiver by the Authority of any claims it may have against NFS or any other party under the West Valley Agreements or otherwise in connection

with the Center; provided that the foregoing shall not be construed as affecting the respective rights and liabilities as between the Department and the Authority as provided in the Act.

Section 11.02. Availability of Funds. The respective undertakings of the Department and the Authority under this Agreement are conditioned upon the availability of appropriated funds.

Section 11.03. General Conditions. Subject to the provisions of Section 11.04 of this Agreement, the General Conditions attached hereto as Exhibit F are incorporated herein by reference.

Section 11.04. Order of Precedence. In the event of an inconsistency among provisions of this Agreement, the inconsistency shall be resolved by giving precedence as follows:

- (a) Cooperative Agreement Articles;
- (b) Exhibits; and
- (c) General Conditions.

Section 11.05. Counterparts, Etc. Neither this Agreement nor any term hereof may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge, or termination is sought. The headings in this Agreement are for convenience of reference only, and shall not define or limit the terms hereof. Except as provided herein, all the terms of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date set forth above.

UNITED STATES DEPARTMENT OF ENERGY

(SEAL)

By James B. Edwards*
(Secretary)

NEW YORK STATE ENERGY RESEARCH AND
DEVELOPMENT AUTHORITY

By James L. Larocca
(Chairman)

I, Carmine J. Clemente, certify that I am the Secretary of the New York State Energy Research and Development Authority; that James L. Larocca, who signed this document on behalf of the Authority was then Chairman of the Authority; that this document was duly signed for and on behalf of the Authority by authority of its governing body and is within the scope of its legal powers.

IN WITNESS WHEREOF, I have hereunto affixed my hand and the seal of the New York State Energy Research and Development Authority.

/s/Carmine J. Clemente
Carmine J. Clemente
Secretary

(SEAL)

*The original Agreement was signed on behalf of the Department by Under Secretary Worth Bateman.

EXHIBIT A

Retained Premises

ALL THAT TRACT AND PARCEL OF LAND consisting of 3,330.925 acres more or less, situated in the Town of Ashford, County of Cattaraugus (Parcel 1) and 14.35 contiguous acres, more or less, situated in the Town of Concord, County of Erie (Parcel 2) as shown on a map (annexed hereto as Map No. 1) depicting the Western New York Nuclear Service Center prepared by Lockwood, Kessler & Bartlett, Inc. Consulting Engineers, for the State of New York Office of Atomic Development, and revised by Pratt, Edwards & Moncreiff, P.C. on January 2, 1969 being bounded and described as follows:

PARCEL 1

ALL THAT TRACT OR PARCEL OF LAND acquired in the name of The People of the State of New York by appropriation in the manner provided by Section 30 of the Highway Law pursuant to the provisions of Article 19-D of the Executive Law, described in and shown on Map No. 1 (a) filed in the office of the Department of Public Works of the State of New York on June 15, 1961, (b) filed in the Department of State of the State of New York on June 16, 1961, and (c) filed in the office of the County Clerk of Cattaraugus County on June 20, 1961, such tract or parcel of land being situate in the Town of Ashford, County of Cattaraugus, State of New York, being all of Lots 56, 61, 62, 63 and 67 and part of Lots 49, 50, 55, 57, 64, 66, 68, 69, 70 and 74 in Township 6, Range 6, also part of Lots 32, 40 and 48 in Township 5, Range 6 of Holland Land Company survey, bounded and described as follows:

COMMENCING at a point on the southerly line of Lot 61, said point being at the northwest corner of Lot 40 and the northeast corner of Lot 48, thence westerly along the southerly line of said Lot 61, 588.240 feet to the point of beginning, said point of beginning being the intersection of the southwest corner of Lot 61 and the southeast corner of Lot 66 with the north line of Lot 48, thence westerly along the southerly line of Lot 66, 1,536.078 feet to a point, thence northerly through the property of Clinton Johnson (reputed owner), on a line parallel to the easterly line of said Lot 66, 1,128.595 feet to the southeasterly corner of property of Ollis Beason and Dolores Beason (reputed owners), thence westerly along southerly property line of Ollis Beason and Dolores Beason (reputed owners) and Ralph V. Wilcox (reputed owner), 2,332.156 feet to a point on the westerly line of Lot 66, said point being 1,155.267 feet distant northerly along said westerly line of Lot 66 from a point, said point being the corner formed by the intersection of the boundaries of Lots 66 and 71 in Township 6, and Lot 56 in Township 5; thence northerly along the said westerly line of Lot 66 and continuing along the westerly line of Lot 67, 6,757.415 feet to a point, said point being the corner formed by the intersection of the boundaries of Lots 67, 68, 72 and 73; thence easterly along the northerly line of Lot 67, 1,030.00 feet to a point on the easterly boundary line of Boberg Road, thence northwesterly along the said easterly boundary line of Boberg Road as it winds and turns, 361.350 feet to a point on the division line between the property of Emerson B. Carl and Judith W. Carl (reputed owners) on the west and the property of Arthur O. C. Gross and Virginia E. Gross (reputed owners) on the east; thence northeasterly along said division line on a course N21°47'17"E 440.00 feet to a point; thence through the property of Arthur O. C. Gross

and Virginia E. Gross (reputed owners) on a course N35°08'30"E 1,126.662 feet to a point on the easterly boundary line of Rock Springs Road; thence northerly along the said easterly boundary line of Rock Springs Road; thence northerly along the said easterly boundary line of Rock Springs Road as it winds and turns 564.873 feet to a point on the division line between the property of Arthur Gross and Marion Mall (reputed owners) on the south, and the property of Robert J. Burns and Mary Lou Burns (reputed owners) on the north; thence westerly along the southerly boundary line of property of Robert J. Burns and Mary Lou Burns (reputed owners) S89°23'26"W 347.328 feet to a point, said point being the southwest corner of the property of Robert J. Burns and Mary Lou Burns (reputed owners); thence along the division line between the property of Robert J. Burns and Mary Lou Burns (reputed owners) on the east, and the properties of Edward Warzel and Sarah Warzel and Russell C. Miller and Pearl Miller (reputed owners) on the west N1°56'45"E 875.317 feet to the northwest corner of property of Robert J. Burns and Mary Lou Burns (reputed owners); thence easterly along the division line between the property of Robert J. Burns and Mary Lou Burns (reputed owners) on the south, and the property of Albert C. Pearce and Ruth E. Pearce (reputed owners) on the north, S89°38'24"E 40.014 feet to the easterly boundary line of Rock Springs Road; thence along said easterly boundary line of Rock Springs Road, 842.592 feet to the northerly line of Lot 68; thence easterly along the said northerly line of Lot 68, 1,147.324 feet to a point, said point being 1,342.694 feet westerly along said northerly line of Lot 68, from a corner formed by the intersection of the boundaries of Lots 63, 64, 68 and 69; thence northerly along the division line between the property of Albert C. Pearce and Ruth E. Pearce (reputed owners) on the east and the property of Eagle Tree Farms, Inc. (reputed owner) on the west, on a course N1°41'28"E 904.058 feet to a point on the northerly boundary line of the Baltimore and Ohio Railroad Company (formerly the Buffalo, Rochester and Pittsburgh Railway Company); thence northwesterly along the said northerly boundary line of the Baltimore and Ohio Railroad Company (formerly the Buffalo, Rochester and Pittsburgh Railway Company), the following twenty-six (26) courses and distances: N40°56'57"W 221.222 feet, on a curve to the right, having a radius of 922.37 feet, a length of 241.744 feet N25°55'57"W 210.300 feet, on a curve to the left, having a radius of 988.37 feet, a length of 375.194 feet N47°40'57"W 415.100 feet, on a curve to the left, having a radius of 1,179.28 feet, a length of 386.948 feet, N66°28'57"W 171.500 feet, N23°31'03"E 51.10 feet, N66°28'57"W 110.60 feet, S23°31'03"W 50.00 feet, N66°28'57"W 73.40 feet, on a curve to the right, having a radius of 1,877.08 feet, a length of 397.503 feet, N54°20'57"W 313.800 feet, on a curve to the right having a radius of 922.37 feet, a length of 404.606 feet, N29°12'57"W 5.70 feet, N86°47'03"E 46.90 feet, on a curve to the right, having a radius of 880.37 feet, a length of 14.70 feet, N29°12'57"W 134.40 feet, on a curve to the left, having a radius of 1,030.37 feet, a length of 543.697 feet, N59°26'57"W 53.30 feet, N29°40'04"E 197.721 feet, N60°51'57"W 374.800 feet, N20°13'57"W 182.00 feet S29°12'03"W 308.900 feet, and on a curve to the left having a radius of 2,939.93 feet, a length of 203.792 feet, and N66°51'57"W 257.815 feet to a point; thence northerly along the division line between the property of David and Helen Reed (reputed owners) on the east, and the property of Charles Edie (reputed owner) on the west N1°28'27"E 1,264.649 feet to a point; thence northwesterly through the property of Charles Edie (reputed owner) N22°27'14"W 623.173 feet and continuing on the same course through the property of David and Helen Reed (reputed owners) N22°27'14"W 1,373.013 feet to a point on the southerly bank of Cattaraugus Creek; thence easterly and northerly along said southerly bank

of Cattaraugus Creek as it winds and turns, the following four (4) courses and distances: S71°06'18"E 157.486 feet, S84°25'17"E 432.046 feet, N82°59'00"E 196.471 feet, and N44°47'46"E 198.698 feet to a point; thence southerly through the property of David and Helen Reed (reputed owners), the following two (2) courses and distances: S15°06'32"W 583.156 feet, and S22°56'13"E 862.168 feet to a point on the southerly boundary line of Emerson Road; thence southeasterly along the said southerly boundary line of Emerson Road as it winds and turns 1,284.287 feet to a point on the easterly line of Lot 74, said point being 1,462.00 feet distant northerly along said easterly line of Lot 74 from the corner formed by the intersection of the boundaries of Lots 69, 70 and 74; thence southerly along the said easterly line of Lot 74, 590.249 feet, thence southeasterly through the properties of Frederick C. Waterstram and Gladys E. Waterstram and Lorraine Deif (reputed owners) S39°40'52"E 2,986.63 feet to the southerly boundary line of Hayes Hollow Road; thence easterly and northerly along the said southerly boundary line of Hayes Hollow Road as it winds and turns 1,426.026 feet to a point; thence southeasterly through the property of Sidney P. Hayes (reputed owner) S68°43'07"E 462.908 feet to a point on the easterly line of Lot 69, said point being 1,320.699 feet distant southerly along said easterly line of Lot 69 from a corner formed by the intersection of the boundaries of Lots 64, 65, 69 and 70; thence continuing still through the property of Sidney P. Hayes (reputed owner) S68°43'07"E 2,021.513 feet to a point on the division line between the property of Sarah F. Emerson (reputed owner) on the east and Sidney P. Hayes (reputed owner) on the west; thence along said division line S2°03'30"W 1,200.00 feet to a point, said point being the southwest corner of property of Sarah F. Emerson (reputed owner); thence easterly along the division line between the property of Sarah F. Emerson (reputed owner) on the north, and Raymond Nelson (reputed owner) on the south, N89°53'16"E 720.06 feet to a point, said point being the southeast corner of property of Sarah F. Emerson (reputed owner); thence southerly along the division line between the property of Gordon Smith (reputed owner) on the east and Raymond Nelson (reputed owner) on the west, S2°03'30"W 825.00 feet to the southerly line of Lot 64; thence easterly along the said southerly line of Lot 64, 1,362.90 feet to a point, said point being a corner formed by the intersection of the boundaries of Lots 57, 58, 63 and 64; thence southerly along the easterly boundary of said Lot 63, a distance of 1,201.068 feet to a point; thence easterly along the division line between the property of Raymond L. Nelson and Mildred J. Nelson (reputed owners) on the north, and the property of Charles Zefers (reputed owner) on the south, N88°24'18"E 1,820.607 feet to a point on the westerly boundary line of County Road No. 32; thence southerly along the said westerly boundary line of County Road No. 32, 100.382 feet to a point; thence westerly through the property of Charles Zefers (reputed owner) on a line parallel to and 100.00 feet distant southerly from the aforementioned division line between the property of Raymond L. Nelson and Mildred J. Nelson (reputed owners) on the north, and Charles Zefers (reputed owner) on the south S88°24'18"W 1,691.919 feet to a point; thence southeasterly through the properties of Charles Zefers, Marcus N. Zefers and Marie C. Zefers (reputed owners) S55°33'13"E 4,417.530 feet to a point, said point being the corner formed by the intersection of the boundaries of Lots 50, 51, 56 and 57; thence easterly along the northerly line of Lot 50, 750.407 feet to a point; thence southerly on a line parallel to and 750.00 feet distant easterly from the westerly line of Lot 50 and Lot 49, through the properties of Wilson G. Smith and Luella Smith, Florence E. Mooney and Edward F. Fleckenstein, and Peter Simko and Violo Simko (reputed owners) 6,666.676 feet to a point, thence

westerly and still through the property of Peter Simko and Viola Simko (reputed owners) and at right angles to the last mentioned line, N88°39'14"W 298.930 feet to a point, said point being the northeasterly corner of property of Town of Ashford (reputed owner); thence southwesterly along the division line between the property of Peter Simko and Viola Simko (reputed owners) on the northwest and the property of Town of Ashford (reputed owner) on the southeast S52°54'24"W 575.883 feet to a point on the westerly line of Lot 49, said point being 936.628 feet distant northerly along said westerly line of Lot 49, from the corner formed by the intersection of the boundaries of Lots 49, 55 and 32, thence still continuing along the last mentioned division line S52°54'24"W 530.556 feet to the westerly boundary line of the Baltimore and Ohio Railroad (formerly the Buffalo, Rochester and Pittsburgh Railway Company), thence southerly along said railroad boundary 57.359 feet to the northerly boundary of Fox Hollow Road; thence along the northerly and westerly boundary as it winds and turns on said Fox Hollow Road 1,893.311 feet to a point; thence westerly along the division line between the property of Ralph W. Codd and Marjorie A. Codd (reputed owners) on the south and the property of David K. Miller and Adelhide Von B. Miller (reputed owners) on north S89°36'19"W *feet to a point on the westerly line of Lot 32, thence northerly along said westerly line of Lot 32, 169.578 feet to a point, said point being 839.562 feet distant southerly along said westerly line of Lot 32 from a corner formed by the intersection of the boundaries of Lots 32, 40 and 55; thence westerly along the division line between the property of Walter Zefers (reputed owner) on the north and the property of Charles L. Hess and Iona A. Hess (reputed owners) on the south, said division line being parallel to and 839.52 feet distant southerly from the northerly line of Lot 40, 3,878.068 feet to a point on the westerly line of Lot 40, said point being 839.603 feet distant southerly along said westerly line of Lot 40, from a corner formed by the intersection of the boundaries of Lots 40, 48 and 61, thence northwesterly through the property of Charles L. Hess and Iona A. Hess and Walter Zefers (reputed owners) N34°51'01"W 1,018.366 feet to the point of beginning.

SUBJECT, to the following:

1. Rights of others, as their interests may appear, to the continued flow of any streams and water courses within said property.
2. All the right, title and interest, if any, of the United States of America in and to said property.
3. All the right, title and interest of Baltimore and Ohio Railroad Company (formerly Buffalo, Rochester and Pittsburgh Railway Company), its successors and assigns, in and to said property.
4. All the right, title and interest, if any, of public service corporations, their respective successors and assigns, in and to said property for the purposes of constructing, reconstructing, maintaining and operating facilities for the transmission or distribution of electricity, message by means of electricity, fluids and gases.
5. All public roads and highways located within the limits of said property on the date of acquisition of such property by The People of the State of New York, as such public roads and highways may, from time to time, be

*So in the original -- should read "S89°36'19"W 2,484.830 feet".

relocated by mutual agreement of the New York State Atomic Research and Development Authority and Nuclear Fuel Services, Inc.

EXCEPT for an area within that portion of Zone A which lies north of Buttermilk Road and consists of approximately 158.8 acres, as shown and described in Exhibit B as the Project Premises, said description being subject to completion of an accurate survey; and

EXCEPT for an area within that portion of Zone C which lies east of Zone A, such area consisting of approximately 4.574 acres and being bounded and described as follows: Commencing at a point on the centerline of Buttermilk Hill Road, Town of Ashford, designated by Cattaraugus County Department of Highways as P.C. 63+44.12 on Buttermilk Hill Road, said point being on the division line between Lot 55 and Lot 56 and being 1085.86 feet westerly measured along the centerline of Buttermilk Hill Road from the easterly boundary line of the Western New York Nuclear Service Center, thence S1°01'34"E 50.0 feet to a concrete highway marker on the highway boundary line, said highway marker being the point of beginning, thence (1) S88°58'26"W 325.0 feet along the highway boundary line to a point, thence (2) S1°01'34"E 500.0 feet to a point, thence (3) N88°58'26"E 400.0 feet to a point, thence (4) N1°01'34"W 490.0± feet to a point along the highway boundary line, thence (5) S88°58'26"W 75.0 feet to a point, said point being a concrete highway marker, thence (6) N1°01'34"W 10.0 feet to the point of beginning.

All bearings are referenced to True North of the 78°35' Meridian of West Longitude.

PARCEL 2

ALL THAT TRACT OR PARCEL OF LAND acquired in the name of The People of the State of New York by appropriation in the manner provided by Section 30 of the Highway Law pursuant to the provisions of Article 19-D of the Executive Law, described in and shown on Map No. 2 (a) filed in the office of the Department of Public Works of the State of New York on March 1, 1963, (b) filed in the Department of State of the State of New York on March 1, 1963, and (c) filed in the office of the County Clerk of Erie County on March 4, 1963, such tract or parcel of land being situate in The Town of Concord, County of Erie, State of New York, being parts or portions of Lots No. 15 and 16 Township 6, Range 6 of Holland Land Company survey, bounded and described as follows:

COMMENCING at the intersection of the north bounds of the lands of Curtis P. Goodemote (reputed owner) with the east bounds of Lot No. 16; thence S1°45'00"W along the east bounds of the aforesaid Lot No. 16, 1,240 feet to the point of beginning of the herein described parcel; thence along said Lot line S1°45'00"W 250.00 feet to the point of the intersection of the Lot line with the north bank of Cattaraugus Creek; thence following the north bank of Cattaraugus Creek the following courses and distances: S84°00'31"W 246.33 feet to a point; S49°15'00"W 350.00 feet to a point; S16°45'00"W 880.00 feet to a point; S54°15'00"W 300.00 feet to a point; N62°15'00"W 200.00 feet to a point; S86°30'00"W 475.00 feet to a point; thence away from the north bank of Cattaraugus Creek N43°45'00"E 1,450.00 feet to a point; thence N58°15'00"E 780.00 feet to the point of beginning.

SUBJECT, HOWEVER, to the following:

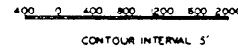
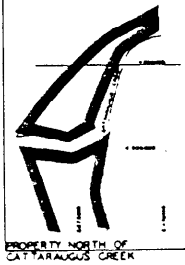
1. Rights of others, as their interests may appear, to the continued flow of any streams and water courses within said property.

2. All the right, title and interest, if any, of the United States of America in and to said property.

3. All the right, title and interest, if any, of public service corporations, their respective successors and assigns, in and to said property for the purposes of constructing, reconstructing, maintaining and operating facilities for the transmission or distribution of electricity, messages by means of electricity, fluids and gases.

All bearings are computed from the Magnetic and are referenced to True North.

Town of Ashford
County of Cattaraugus
And
Town of Concord
County of Erie



ZONE A

ZONE B

ZONE C

[illegible]

LOCKWOOD, KESSLER & BARTLETT, INC.

EXHIBIT B

Project Premises

ALL THAT TRACT AND PARCEL OF LAND situated in the Town of Ashford, County of Cattaraugus consisting of 158.8 acres, more or less, located north of Buttermilk Road in Zone A of a 3,300± acre parcel known as the Western New York Nuclear Service Center (See Exhibit A) as shown and identified on a map annexed hereto as Map No. 2.

SAID AREA consists of all lands and improvements:

(a) Within the perimeter of a six foot chain link fence INCLUDING a 5.1± acre rectangular area situated in the southeastern portion of the parcel identified on a map annexed hereto (Map No. 2) as the NRC Licensed Burial Area but EXCLUDING a 15.5± rectangular area situated in the southeastern portion of the parcel and identified on Map No. 2 as the State licensed Low Level Burial Area; and

(b) Between portions of said fence that run roughly parallel to Buttermilk Road and the northeastern edge of Buttermilk Road INCLUDING an entrance road into the fenced area, an administration building and security station situated on the eastern side of said entrance road and a paved rectangular parking area situated on the western side of said entrance road.

SUBJECT to all restrictions and covenants of record to which the Retained Premises are subject; and

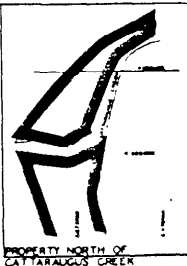
SUBJECT to completion of an accurate instrument survey of the Project Premises, the NRC Licensed Burial Area located therein and the State licensed Low Level Burial Area together with legal descriptions for each area and a current map of said areas to be supplied within sixty days of the date of this Agreement.

EXHIBIT B MAP NO. 2

WESTERN NEW YORK
NUCLEAR SERVICE CENTER

Town of Ashford
County of Cattaraugus
And
Town of Concord
County of Erie

400 0 400 800 1200 1600 2000
CONTOUR INTERVAL 5'



ZONE A
ZONE B
ZONE C

PROJECT PREMISES
(156.356± Ac.)

LOW LEVEL
BURIAL AREA
(15.271± Ac.)

NRC LICENSED
BURIAL AREA
(5.095± Ac.)

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EXHIBIT C

Project Facilities

Project Facilities shall consist of all buildings, facilities and improvements, including personal property, equipment and material located on the project premises, including radioactive material and waste, located or stored therein, including, but not limited to, the following:

1. Process plant. The existing facility at the Center used for the receipt, storage and reprocessing of irradiated nuclear fuel elements, including but not limited to the fuel receiving and storage area, analytical laboratories, control room, hot and process cells, offices, stack and associated equipment.
2. Waste storage facilities.
 - (a) High level waste tank farm area. The facilities for the storage of liquid radioactive waste, including the off-gas system, sampler*, all electrical, piping, ventilation, filtration, heating, cooling, control, surveillance, and mechanical equipment and instruments.
 - (b) Interceptors. Storage pools constructed of concrete and concrete and stainless steel used for temporary storage of radioactive liquid effluents from the plant prior to discharge into the lagoons.
 - (c) Storage lagoons. Holding ponds, pumps, pipelines and associated equipment for the storage of liquid radioactive effluents used in conjunction with the low level waste treatment plant, not including holding lagoons in the New York State-licensed burial area.
 - (d) Hardstand. The above-ground storage area for the weathering, decay and temporary storage of equipment and materials.
 - (e) NRC-licensed waste burial area. The area comprising about 7.2 acres used for the internment of high level solid radioactive wastes.
3. Low level waste treatment facility. The facilities used for processing contaminated aqueous waste from the plant and waste burial area, including the flocculator/clarifier, the centrifuge, filters, ion exchange system, the neutralizer, the pumps, pipes, tanks, ventilation system and related fixtures, machinery, equipment, installations or apparatus affixed thereto or installed in connection therewith.
4. Service facilities.
 - (a) Utility room building and utility service facilities. The buildings and facilities used to provide electricity, natural gas, steam, air, water, fuel, drainage, and sewerage, including

*So in the original -- should read "sampler".

but not limited to diesel generators, boilers, compressors, pumps, water, oil and chemical storage tanks, cooling tower, transformers, switch gear room, sewer treatment plant, instruments, controls, fire equipment, culverts, ditches, sumps, pits, sludge ponds, and related fixtures, equipment, controls, instruments, installations and related supplies.

- (b) Service distribution systems. All air, air conditioning, water, electrical, natural gas, ventilation, sewerage and steam distribution systems, including the electrical power substation, wires, piping, shafts, ducts, mechanical equipment, and the controls and instruments relating thereto.
- (c) Administration area. The paved parking area, the administration building known as "the Annex" (including mobile home structures), all furnishings, equipment, carpeting, draperies and supplies.
- (d) Warehouse. The building used for storing materials, supplies and spare parts, including the contents thereof and the adjacent incinerator.
- (e) Maintenance shops. All buildings, equipment, machinery, supplies and parts used for maintenance, repair and upkeep, including the weld shop and the machine shop.
- (f) Laundry. The facility used to launder contaminated or potentially contaminated clothing and materials, including, but not limited to, all associated equipment, lockers and detection equipment located therein.
- (g) Railroad spur. The rail line serving the Center, including tracks, road bed and ties.
- (h) Environmental monitoring. All facilities and equipment, including air, deposition and water samplers*, dosimeters and monitors used for detecting the presence and level of radiation.
- (i) Meteorological Tower. The meteorological tower, the stack equipment and all other equipment used to monitor and record meteorological data.
- (j) Communication towers. All aerials, towers, wires and associated communication equipment used for radio communication.
- (k) Service roads. All paved and unpaved improved roadways and walkways which provide access to project facilities.
- (l) Service vehicles. All vans, pick-up trucks, stake trucks, maintenance and utility vehicles, tractor trailer trucks, cask trucks, forklifts, work platform vehicles, all-terrain vehicles, cranes, loaders and plows or other associated equipment used for services at the Center.

*So in the original -- should read "samplers".

5. Plant security system.
 - (a) Gate house. The building and equipment through which personnel access to the project facilities is gained.
 - (b) Chain link fencing. Approximately 12,000 feet of fencing, gates and associated equipment around the plant area, waste burial areas and the high level waste tank farm area.
6. Services. All equipment and supplies used for emergency, first aid, medical, fire, industrial safety, personal* monitoring, training and communication.

*So in the original -- should read "personnel".

EXHIBIT D

ADDITIONAL FACILITIES

Additional facilities shall consist of all facilities as may be reasonably necessary to carry out the Project located on that portion of the Center which is not subject to the exclusive use and possession of the Department, including but not limited to, the following:

1. Water supply and discharge. The water supply impoundment, streams, water, pump house, pump, pipeline and associated fixtures, equipment, controls and instruments used for supplying water to and carrying water away from the Project Premises.

2. Railroad spur. The rail line serving the Center, including tracks, ties and road bed.

3. Environmental laboratory. The building known as the "old school-house" south of the Project Premises on Rock Springs Road used for environmental and radiation analysis, including all related equipment, supplies, material, instruments.

4. Environmental monitoring. All facilities and equipment, including air, deposition and water samplers, dosimeters and monitors used for detecting the presence and level of radiation and other environmental information.

EXHIBIT E

AUTHORITY SERVICES

The Authority shall provide, or cause to be provided, at least the following Authority Services which benefit the Project: (a) participation in the Project under this Agreement by maintaining at the Authority's main offices sufficient staff and supplies, services, and equipment, and supplemental services, by contract or otherwise, to support said staff, to provide for adequate State participation, review, and monitoring of the Project and to: cooperate with the Department in the preparation of draft and final Federal environmental impact statements with respect to the Project; coordinate the reviews and comments thereon by agencies of the State; comply with the requirements of the State Environmental Quality Review Act; provide information from Authority files to the Department to facilitate the preparation by the Department of the detailed engineering and cost estimates for the Project, the plan for the safe removal of the high-level radioactive waste, and safety analyses required by Section 2(b)(3) of the Act; participate in the joint submission with the Department of applications to the Commission for such licensing amendments as are necessary in relation to the Project; review the Annual Project Plans, Annual Budgets, and other plans, specifications, and cost estimates for any proposed change, alteration, or addition to the Project which requires approval by the Department; and make available to the Department plans, schedules, and such other information as may be available to the Authority which the Department requires for the maintenance and repair of Project Facilities and Additional Facilities; and (b) participation in the Project under this Agreement by maintaining at the Center a Managing Project Engineer and such staff, supplies, equipment, and supplemental services, by contract or otherwise, to support the Managing Project Engineer as may be necessary in support of the activities described in (a) above; the value of the services described herein to equal the Authority's actual expenditures from funds appropriated for the purpose of providing such services, not to exceed, however, \$900,000 per annum (1980 dollars), which shall be adjusted to account for inflation in accordance with the CPI index.

EXHIBIT F

GENERAL CONDITIONS

COVENANT AGAINST CONTINGENT FEES

The Authority 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 Authority for the purpose of securing business. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

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.

EQUAL OPPORTUNITY

During the performance of this Agreement, the Authority agrees as follows:

- A. The Authority will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Authority will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Authority agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary of Labor setting forth the provisions of this Equal Opportunity clause.
- B. The Authority will, in all solicitations or advertisements for employees placed by or on behalf of the Authority, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. The Authority will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Secretary, advising the labor union or workers' representative of the Authority's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- D. The Authority will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Authority will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of the Authority's noncompliance with the Equal Opportunity clause of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be cancelled, terminated, or suspended, in whole or in part, and the Authority may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The Authority will include the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Authority will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for non-compliance. Provided, however, that in the event the Authority becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Authority may request the United States to enter into such litigation to protect the interests of the United States.

ASSIGNMENT OF CLAIMS

- (a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this Agreement provides for payments aggregating \$1,000 or more, claims for money due or to become due to the State from the DOE under this Agreement may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and re-assigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this Agreement and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this Agreement, payments to an assignee of any monies due or to become due under this Agreement shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff.

CONVICT-LABOR

In connection with the performance of work under this Agreement, the Authority 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.

BUY AMERICAN ACT

The provisions of the Buy American Act (41 U.S.C. 10a-10d) are applicable to procurements by the Department in the performance of its respective obligations under this Agreement.

PATENTS, DATA, AND COPYRIGHTS

It is agreed that the Department's patent, data, and copyright provisions set forth in 41 CFR Part 9-9 shall control the allocation of all such rights; provided, however, the Department will use its best efforts to obtain on behalf of the Authority at least an irrevocable, non-exclusive paid-up license to make, use and sell any inventions throughout the world; provided, further, that to the extent the Department may be entitled to recoupment by reason of the grant of any waiver of rights under the above Part, the Department will use its best efforts on behalf of the Authority so that the waiver recipient will, in fulfilling its recoupment obligations, share such funds between the Department and the Authority on a pro-rata basis based upon the funding share contributed by each party under the Cooperative Agreement.

EXAMINATION OF RECORDS BY THE COMPTROLLER GENERAL
OF THE UNITED STATES AND THE COMPTROLLER
OF THE STATE OF NEW YORK

- A. The Authority and the Department agree that the Comptroller General of the United States and the Comptroller of the State of New York, respectively, or any of their duly authorized representatives, shall, until the expiration of three years after final payment under this Agreement or such lesser time specified in the Federal Procurement Regulations, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Authority or the Department, respectively, involving transactions related to this Agreement. For the purposes of applying the Federal Procurement Regulations in connection with this paragraph A and paragraphs B and C, the Comptroller of the State of New York shall be treated in the same manner as the Comptroller General of the United States.
- B. The Authority and the Department further agree to include in all their subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States and the Comptroller of the State of New York, or any of their duly authorized representatives, shall, under the subcontract or Procurement Regulations, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract.
- C. The periods of access and examination described in A and B, above, for records which relate to litigation or the settlement of claims arising out of the performance of this Agreement, or services required by this Agreement as to which exception has been taken by the Comptroller General of the United States or the Comptroller of the State of New York, or any of their duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.
- D. The Authority shall report to the Secretary promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the Authority has knowledge.
- F. 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, the Authority shall furnish to the Government, when requested by the Secretary, all evidence and information in possession of the Authority pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Authority has agreed to indemnify the Government.