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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101
DECEMBER 20, 1989

IN THE MATTER OF

The United States Department of the Army
Cornhusker Army Ammunition Plant
Hall County, Nebraska

FEDERAL FACILITY AGREEMENT

Docket No. VII-90-F-0004

PRELIMINARY STATEMENT

Based on the information available to the Parties on the effective date of this FEDERAL FACILITY AGREEMENT (Agreement), and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

I. JURISDICTION

Each Party is entering into this Agreement pursuant to the following authorities:

A. The U.S. Environmental Protection Agency (U.S. EPA), Region VII, enters into those portions of this Agreement that relate to the Remedial Investigation/Feasibility Study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9620(e)(1), as amended by the Superfund Amendments Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA/SARA or CERCLA) and Sections 6001, 3008(h) and 3004(u) and (v) of the Resource Conservation and

Recovery Act (RCRA), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA/HSWA or RCRA) and Executive Order 12580;

B. U.S. EPA Region VII, enters into those portions of this Agreement that relate to remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, Sections 6001, 3008(h) and 3004(u) and (v) of RCRA and Executive Order 12580;

C. The Department of the Army enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, Sections 6001, 3008(h) and 3004(u) and (v) of RCRA, Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. Section 4321, and the Defense Environmental Restoration Program (DERP), 10 U.S.C. Section 2701 et seq.;

D. Army enters into those portions of this Agreement that relate to remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, Sections 6001, 3008(h), 3004(u) and 3004(v) of RCRA, Executive Order 12580 and the DERP;

E. The NDEC enters into this Agreement pursuant to Sections 120(f) and 121(f) of CERCLA/SARA, Sections 6001 and 3006 of RCRA, 42 U.S.C. § 6926, and Nebraska Protection Act, Neb. Rev. Stat. §§ 81-1501, 81-1504, 81-1505.

II. PARTIES

The Parties to this Agreement are the EPA, the NDEC and the Army. The terms of this Agreement shall apply to and be binding upon the signatories to this Agreement and upon their successors

and assigns. The undersigned representative of each party to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to bind legally the Party to it. The Army shall notify EPA and NDEC of the identity, qualifications, and assigned tasks of each of its contractors performing work under this Agreement upon its selection. This Agreement shall be enforceable against all the foregoing by any Party to this Agreement. The Army shall provide a copy of this Agreement to all primary contractors retained to perform work pursuant to this Agreement and to any operators, lessees, and tenants, or owners of any portion of CAAP, upon which any work under this Agreement is performed. This section shall not be construed as an agreement to indemnify any person.

III. DEFINITIONS

Except as otherwise explicitly stated herein, terms used in this Agreement which are defined in CERCLA shall have the meaning as defined in CERCLA. The following definitions shall apply for purposes of this Agreement:

A. "Agreement" means this Federal Facility Agreement, all attachments to this Agreement and all reports, plans, notices and other documents developed pursuant to this Agreement.

B. "ARAR" means any applicable or relevant and appropriate standard, requirement, criteria or limitation within the meaning of Section 121(d)(2)(a) of CERCLA.

C. "Authorized representative" means any person designated to act on behalf of a Party to this Agreement, including, inter alia, contractors retained to perform work at or relating to the Site.

D. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. Section 9601 et seq.

E. "Army" means the United States Department of the Army, its employees and authorized representatives.

F. "Days" mean calendar days, unless business days are specified. Any Submittal, Written Notice of Position or Written Statement of dispute that, under the terms of this Agreement, would be due on a Saturday, Sunday or holiday shall be due on the following business day.

G. "Endangerment Assessment" means a determination of the magnitude and probability of any actual or potential harm to public health or welfare or the environment from a threatened or actual release of hazardous substance or a hazardous waste. An Endangerment Assessment evaluates the collective demographic, geographic, physical, chemical, and biological factors which describe the extent of the impacts of any potential or actual release of a hazardous substance and/or hazardous waste. An Endangerment Assessment consists of a Risk Assessment and Ecological Assessment, as described in the following guidance documents: "Risk Assessment Guidance for Superfund", March 1989,

OSWER Directive 9285.7-01. This document is a two-manual set. One manual, the "Environmental Evaluation Manual", provides guidance for ecological assessment at Superfund sites. The other manual, the "Superfund Health Evaluation Manual" provides guidance for health risk assessment at these sites. A companion guidance document to this two-manual set is "The Superfund Exposure Assessment Manual", April 1988, OSWER Directive 9285.5-1, which provides detailed descriptions of specific field or laboratory procedures for estimating and modeling the fate and transport of contaminants in the environment.

H. "EPA" or "U.S. EPA" means the United States Environmental Protection Agency, its employees and authorized representatives.

I. "Feasibility Study" or "FS" means that study which fully evaluates and develops remedial action alternatives to prevent or mitigate the migration or the release of hazardous substances, pollutants or contaminants at and from the Site. The FS is further defined in the National Contingency Plan.

J. "NDEC" means the Nebraska Department of Environmental Control, its employees and authorized representatives.

K. Remedial Investigation or "RI" means that investigation conducted to fully determine the nature and extent of any release or threat of release of hazardous substances, pollutants, or contaminants and to gather necessary data to support the Feasibility Study. The RI is defined further in the National Contingency Plan.

L. "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616.

M. "Site" means the Cornhusker Army Ammunition Plant (CAAP) and any areas contaminated by hazardous substances, pollutants or contaminants which have migrated from CAAP.

N. "Submittal" means each and every document, report, schedule, deliverable, work plan or other item to be submitted to EPA pursuant to this Agreement.

O. "Timetables and Deadlines" means schedules or the time limitations contained therein that are applicable to the primary documents designated pursuant to this Agreement as well as the work and those actions which are to be completed and performed in conjunction with such schedules, including performance of actions established pursuant to the dispute resolution procedures set forth in Article XVIII, Resolution of Disputes, of this Agreement. Timetables and deadlines may be contained in attachments to this Agreement as well as documents prepared pursuant to this Agreement.

IV. PURPOSE

A. The general purposes of this Agreement are to:

1. Ensure that the environmental impacts associated with past and present activities at CAAP are thoroughly investigated and appropriate remedial action taken both on and off CAAP as necessary to protect the public health, welfare and the environment;

2. Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with CERCLA/SARA, the NCP, Superfund guidance and policy, RCRA, RCRA guidance and policy; and, applicable state law, rules and regulations;

3. Facilitate cooperation, exchange of information and participation of the Parties in such actions.

B. Specifically, the purposes of this Agreement are to:

1. Establish requirements for the performance of a RI to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of a FS for the Site to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA/SARA and applicable State law;

2. Identify the nature, objective and schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA/SARA and applicable State law;

3. Identify Operable Unit Remedial Action alternatives which are appropriate at the Site prior to the implementation of final remedial action(s) for the Site. Operable Unit alternatives

shall be identified and proposed to the Parties as early as possible prior to formal proposal of Operable Unit Remedial Actions to U.S. EPA and NDEC pursuant to CERCLA/SARA and applicable State law. This process is designed to promote cooperation among the Parties in identifying Operable Unit Remedial Action alternatives prior to selection of final Operable Unit Remedial Actions.

4. Implement the selected Operable Unit and final remedial action(s) in accordance with CERCLA and applicable State law and meet the requirements of Section 120(e)(2) of CERCLA for an Interagency Agreement among the Parties.

5. Assure compliance, through this Agreement, with RCRA and other federal and state hazardous waste laws and regulations and other applicable State laws, rules and regulations for matters covered herein.

6. Coordinate response actions at the Site with the mission and support activities at CAAP.

7. Expedite the cleanup process to the extent consistent with protection of human health and the environment.

8. Provide NDEC involvement in the initiation, development, selection and enforcement of remedial actions to be undertaken at CAAP, including review of all applicable data as it becomes available and the development of studies, reports, and action plans, and to identify and integrate State ARARs into the remedial action process.

9. Provide for operation and maintenance of any remedial action selected and implemented pursuant to this Agreement.

C. This Agreement covers all response actions, including removal and remedial actions as these terms are defined by CERCLA, to be undertaken at the Site.

V. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

A. The Parties intend to integrate the Cornhusker Army Ammunition Plant's CERCLA response obligations and RCRA corrective action obligations which relate to the release of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. § 9601 et seq.; satisfy the corrective action requirements of Sections 3004(u) and (v) of RCRA, 42 U.S.C. §§ 6924(u) and (v), for a RCRA permit, and Section 3008(h), 42 U.S.C. § 6928(h), for interim status facilities; and meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. § 9621 and applicable State law.

B. Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement will be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA (i.e.,

no further corrective action shall be required). The Parties agree that with respect to releases of hazardous waste covered by this Agreement, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to Section 121 of CERCLA.

C. The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that on-going hazardous waste management activities at the Cornhusker Army Ammunition Plant may require the issuance of permits under Federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to the CAAP for on-going hazardous waste management activities at the Site, EPA and/or NDEC shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. With respect to those portions of this Agreement incorporated by reference into permits, the Parties intend that the judicial review of the incorporated portions shall, to the extent review is authorized by law, only occur under the provisions of CERCLA.

D. Nothing in this Agreement shall alter the Army's authority with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

VI. FINDINGS OF FACT

This Section contains Findings of Fact determined by the EPA and the NDEC as a basis for this Agreement. None of these findings are admissions by CAAP or the Army for any purpose, including the extent of CAAP compliance with applicable Federal or State environmental laws, nor are they in any way legally binding on any party.

The following facts form the basis of this Agreement:

A. The Cornhusker Army Ammunition Plant (CAAP) is a United States Army Armament, Munitions and Chemical Command facility located in Hall County, Nebraska, approximately three miles west of the city of Grand Island. CAAP was constructed in 1942 for production of conventional munitions. It has alternated between periods of activity and inactivity and has been in standby status since October 1973. Present activities at the plant are limited to maintenance operations, leasing of property for agricultural purposes and livestock grazing, storage building leasing and wildlife management. Currently, no explosives are produced or stored at CAAP.

B. CAAP occupies approximately 18.7 square miles, of which 16.1 square miles are currently leased for agriculture, grazing and/or wildlife management activities. CAAP includes all of Sections 6, 7, 17, 18, 19, 30, and portions of Sections 5, 8, 20 and 29 in Township 11 North, Range 10 West; and all of Section 1, 2, 11, 12, 13, 14, 23, 24, 25 and 26 in Township 11 North, Range 11 West; all located in Hall County, Nebraska.

C. The principle activities conducted at CAAP during periods of active production included loading, assembling and packing conventional munitions, with associated support functions, and production of ammonium nitrate fertilizer. The major components of the facility are:

1. Five major load line production areas where LAP activities were conducted;

2. A fertilizer production area;

3. Two major storage facilities associated with munitions production;

4. A landfill; and

5. A burning ground used for open burning of explosives contaminated materials.

D. Geology in the area of the Site consists of approximately 3 to 20 feet of loess deposits, which are underlain by 50 to 100 feet of Quaternary age sand and gravel. These deposits are the primary source of ground water in Hall County. Ground water flow direction from the Site is towards the east-northeast. Depth to the ground water ranges from 15 to 35 feet beneath the ground surface at CAAP to approximately 5 to 10 feet beneath the ground surface to the east-northeast of CAAP. The location of discharge has never been studied or determined. The principal contaminant migration pathway from the Site is into the unconsolidated Quaternary age sand and gravel deposits.

E. Surface drainage at CAAP is via three man made drainage ditches which run north and south across CAAP and empty into

Silver Creek. Silver Creek is an intermittent stream, which is generally dry most of the year except after flash rainfalls. Silver Creek flows into Prairie Creek, which in turn flows into the Platte River. The Platte River runs approximately five miles south of CAAP.

F. During the periods of munitions production, wastewater contaminated with explosives was deposited into fifty-six (56) earthen surface impoundments which were located near the five load lines. Dried solids were periodically scraped from the bottom of these surface impoundments and ignited at the burning grounds.

G. Ground water monitoring conducted by Army over the time period from 1981 to the present found extensive ground water contamination beneath CAAP and in a plume extending downgradient from CAAP approximately 3 1/2 miles beyond the eastern boundary of the Facility. Contaminants identified in the ground water included the following explosive compounds:

1. Cyclotrimethylene trinitramine (RDX);
2. 2-4-6 Trinitrotoluene (2-4-6 TNT) and associated degradation products;
3. 2-4 Dinitrotoluene (2-4 DNT);
4. 2-6 Dinitrotoluene (2-6 DNT); and
5. 1-3-5 Trinitrobenzene (1-3-5 TNB).

H. Each of the following compounds has been detected in ground water within CAAP boundaries at concentrations up to the

following (from the Summary RI/FS Report, May, 1986, Page 36; Report # AMXTH-IR-86086):

RDX	307 ppb
2,4,6-TNT	5,290 ppb
1,3,5-TNB	352 ppb
2,4-DNT	12.3 ppb
2,6-DNT	4.2 ppb.

I. Each of the following compounds have been detected outside the CAAP boundaries but within the plume of contaminated ground water at levels up to the following (from the Summary RI/FS Report, May, 1986, Page 36; Report # AMXTH-IR-86086 and from Sampling and Analysis/Volatile Organics, April, 1985, Appendix 2; Report # AMXTH-AS-TR-85017, respectively):

RDX	371 ppb
2,4,6-TNT	445 ppb
1,3,5-TNB	114 ppb
2,4-DNT	7 ppb
2,6-DNT	6 ppb
Trichloroethylene (TCE)	6.2 ppb
1,1,1-Trichloroethane	1.8 ppb

J. The Army estimates that approximately 9 & 1/2 billion gallons of ground water have been contaminated by explosives compounds originating from the Site. This contaminant plume affected approximately 246 residential drinking water supply wells in northwest section of the city of Grand Island. The Army

supplied bottled water to those individuals whose wells had been contaminated by RDX. In December 1985, an extension of Grand Island's water supply system was completed and operational in this area.

K. Between August 1987 and July 1988, the Army conducted a program to incinerate the contaminated soil present in the 56 surface impoundments. The ash which remained after incineration was landfilled on-site. Approximately 40,000 tons of contaminated soil was treated by incineration during this time period.

L. Sufficient exposure to RDX has been known to cause symptoms of intoxication following ingestion, with the primary effects noticed on the central nervous system in humans. Among the known reactions to such exposures are convulsions, unconsciousness, insomnia, restlessness, disorientation, amnesia and irritability.

M. 2-4-6 TNT is known to produce toxic effects in humans. It is primarily absorbed through the skin or through inhalation/ingestion of its fumes and dust. Sufficient exposure has been known to cause hepatitis, anemia, dermatitis, headaches, nausea and liver disease.

N. 2-4-DNT is a suspected human carcinogen.

O. 2-6-DNT is a suspected human carcinogen. 2-6 DNT can cause severe headaches, confusion and nausea.

P. Humans can be exposed to 1-3-5-TNB by absorption through the skin and through inhalation of its dust or vapors. Possible effects include anemia, dermatitis, fatigue, dizziness, head-

aches, insomnia and other central nervous system effects.

Q. Trichloroethylene is a known carcinogen in mice; is mutagenic; and has shown toxic effects upon the kidney, liver and central and peripheral nervous system in lower animals.

R. On July 22, 1987, CAAP was listed on the National Priorities List.

VII. DETERMINATIONS

This section contains determinations of law made solely by the U.S. EPA and the NDEC. As with the Findings of Fact, infra, they are not admissions by CAAP or the Army for any purpose. Based upon the foregoing findings of fact the Parties have determined:

A. CAAP is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and is subject to CERCLA in the same manner and to the same extent as nongovernmental entities.

B. Hazardous substances or pollutants or contaminants within the meaning of Sections 101(14) and 101(33) of CERCLA, 42 U.S.C. §§ 9601(14) and (33), respectively, have been disposed at CAAP.

C. There is a release or threatened release of hazardous substances, pollutants or contaminants into the environment from CAAP within the meaning of Sections 101(8) and 101(22), respectively, 42 U.S.C. §§ 9601(8) and 9601(22).

D. CAAP is a federal facility within the meaning of Section 120 of CERCLA, 42 U.S.C. § 9620.

E. The actions to be taken pursuant to this Agreement are necessary to protect the public health and welfare and the environment and are consistent with the National Contingency Plan.

F. The schedule for completing the actions required by this Agreement complies with the requirements of Section 120(e) of CERCLA, 42 U.S.C. § 9620(e).

VIII. WORK TO BE PERFORMED

It is hereby agreed by the Parties that Army shall conduct each of the following activities in accordance with the schedule established in Part X.

A. Remedial Investigation and Feasibility Study

1. The Army shall conduct a remedial investigation and feasibility study in accordance with the guidelines set forth in the document entitled "Guidance For Conducting Remedial Investigation and Feasibility Studies Under CERCLA", OSWER Directive 9355.3-01 (October 1988), or such more recent version thereof as EPA shall make available to the Army during the course of the RI/FS. The Remedial Investigation shall include, inter alia, the following:

a. The design and implementation of a monitoring program to define the nature and extent of soil contamination, surface water contamination, and ground water contamination at the Site and the nature and extent of releases of hazardous substances at and from CAAP.

b. An Endangerment Assessment conducted in

accordance with the guidelines set forth in the documents entitled " Risk Assessment Guidance for Superfund," OSWER Directive 9285.7-01; March, 1989 and the "Superfund Exposure Assessment Manual", OSWER Directive 9285.5-1; April, 1988.

2. The Army shall submit to EPA and NDEC for review and approval work plans and reports for the RI and FS in accordance with Parts IX and X of the Agreement and shall implement the approved Work Plans in accordance with the schedule set forth in Part X of this Agreement.

3. The RI shall be coordinated with the FS such that both activities are completed in a timely and cost effective manner.

B. Operable Unit Remedial Actions

1. In accordance with Part X of this Agreement, the Army shall propose deadlines for the completion of Operable Unit Work Plans for any Operable Unit remedial action anticipated. These work plans shall be reviewed in accordance with Part IX of this Agreement.

2. All Operable Unit remedial actions undertaken pursuant to this Agreement shall comply with CERCLA/SARA and the NCP, and all requirements and EPA guidelines applicable to such actions and applicable state laws.

3. All requirements for remedial action selection and implementation pursuant to this Agreement shall apply to the selection and implementation of Operable Unit remedial actions.

selection and implementation of Operable Unit remedial actions.

C. Remedial Action Selection

1. Upon approval of a Feasibility Study report, including an Operable Unit Feasibility Study report, by EPA and NDEC, the Army shall, after consultation with EPA and NDEC pursuant to Part IX, publish a proposed plan for public review and comment in accordance with Part XXXI.

2. Within sixty (60) days of completion of the proposed plan public comment period, the Army shall submit its proposed Record of Decision (ROD), including its response to all significant comments received from the public during the public comment period (Responsiveness Summary), to EPA and NDEC. The proposed ROD and Responsiveness Summary shall be written in accordance with the guidance document entitled "Interim Final Guidelines on Preparing Superfund Decision Documents: The Proposed Plan and Record of Decision", OSWER Directive No.9355.3-02 (May 1989). The Administrator of EPA shall, in consultation with the Army and NDEC pursuant to Part IX, make the final selection of the remedial action for CAAP. The remedial action selected by the Administrator shall be final but is subject to the rights reserved by the State of Nebraska in Part XXV of this Agreement.

3. Within fifteen (15) months of receipt of written notice of final remedy selection by EPA, the Army shall commence substantial continuous physical on-site remedial action at CAAP.

4. The Army shall implement the remedial action in accordance with the provisions, time schedule, standards and

specifications set forth in this Agreement and the approved Remedial Action Work Plan.

5. The Army shall provide for public participation in accordance with Part XXXI prior to commencement of any remedial action.

D. Removal Actions

1. All removal actions undertaken by the Army at the Site shall be conducted in a manner consistent with CERCLA/SARA and the NCP, including provisions for timely notice and consultation with EPA and NDEC.

2. Prior to initiating any removal action, except for an emergency removal action, Army shall provide EPA and NDEC with an adequate opportunity for timely review and comment on any such proposed removal action. The following information shall be provided, in writing, to EPA and NDEC for each such removal action:

a. A description of the basis for the need to undertake such action;

b. A description of the action contemplated;

c. The expected time period during which the removal action will be implemented; and

d. The impact, if any, on any remedial action contemplated at the Site.

The Army shall provide a written response to all comments received from the EPA and NDEC.

3. For emergency removals, the Army shall provide as much advance notice as the circumstances leading to the removal action allow.

4. Upon completion of each removal action, the Army shall provide a written notification of completion and a description of the action taken.

IX. CONSULTATION WITH EPA AND NDEC

Review and Comment Process for Draft and Final Documents

A. Applicability:

The provisions of this Part establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either primary or secondary documents. In accordance with Section 120 of CERCLA and 10 U.S.C. § 2705, the Army will normally be responsible for issuing primary and secondary documents to EPA and NDEC. As of the effective date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with Paragraphs B through J below.

The designation of a document as "draft" or "final" is solely for purposes of consultation with EPA and NDEC in accordance with this Part. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final", to the public for review and comment as appropriate and as required by law.

B. General Process for RI/FS and RD/RA Documents:

1. Primary documents include those reports that are major, discrete portions of RI/FS or RD/RA activities. Primary documents are initially issued by the Army in draft subject to review and comment by EPA and NDEC. Following receipt of comments on a particular draft primary document, the Army will respond in writing to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary document will become the final primary document 60 days after issuance if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

2. Secondary documents include those reports that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by the Army in draft subject to review and comment by EPA and NDEC. Although the Army will respond to comments received, the draft secondary documents may be finalized in the context of the corresponding primary documents. A secondary document may be disputed at the time the corresponding draft final primary document is issued.

C. Primary Reports:

1. The Army shall complete and transmit draft reports for the following primary documents to EPA and NDEC for review, comment and approval in accordance with the provisions of this Part:

a. Conceptual Project Management Plan,

b. RI/FS Work Plan, including Sampling and Analysis Plan, Quality Assurance Project Plan, and Health and Safety Plan,

c. Remedial Investigation Report,

d. Endangerment Assessment,

e. Feasibility Study Work Plan,

f. Feasibility Study Report,

g. Proposed Plan,

h. Record of Decision,

i. Operable Unit Work Plans and Reports,

j. Remedial Action Work Plan showing 100% of Design and

k. Community Relations Plan.

2. Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. The Army shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Part X of this Agreement.

D. Secondary Documents:

1. The Army shall complete and transmit draft reports for the following secondary documents to EPA and NDEC for review and comment in accordance with the provisions of this Part:

a. Summary of all data and reports prepared thus far,

b. Data Quality Objectives,

c. Site Characterization Summary,

d. Contaminant identification and documentation,

e. Exposure assessment and documentation,

f. Toxicity assessment and documentation,

g. Risk characterization,

h. Initial Screening of Alternatives,

i. Detailed Analysis of Alternatives using the criteria identified in the Guidance for Conducting a Remedial Investigation and Feasibility Study Under CERCLA, OSWER Directive No. 9355.3-01, October, 1988,

j. Treatability Studies, if needed,

k. Sampling and Data Results,

l. Draft Remedial Action Work Plan showing 40% of the design,

m. Draft Remedial Action Work Plan showing 80% of the design, and

n. Ground water Data Analysis Report including a summary of all sampling results and their locations.

2. Although EPA and NDEC may comment on the draft reports for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Paragraph B hereof. Target dates shall be established for the completion and transmission of draft secondary reports pursuant to Part X of this Agreement.

E. Meetings of the Project Managers on Development of Reports:

The Project Managers shall meet approximately every 30 days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site on the primary and secondary documents. Prior to preparing any draft report specified in Paragraphs C and D above, the Project Managers shall meet to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft report.

F. Identification and Determination of Potential ARARs:

1. For those primary reports or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft report, the Parties shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the report being addressed. NDEC shall identify all potential state ARARs as early in the remedial process as possible consistent with the requirements of CERCLA section 121 and the NCP. The Army shall consider any written interpretations of ARARs provided by the state. Draft ARAR determinations shall be prepared by the Army in accordance with Section 121(d)(2) of CERCLA, the NCP and pertinent guidance issued by EPA that is consistent with CERCLA and the NCP.

2. In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-

specific basis and that ARARs depend on the specific hazardous substances, pollutants and/or contaminants at a site, the particular actions proposed as a remedy and the characteristics of a site. The Parties recognize that ARAR identification is an iterative process and that potential ARARs must be reexamined throughout the RI/FS process until a ROD is issued.

G. Review and Comment on Draft Reports:

1. The Army shall complete and transmit each draft primary report to EPA and NDEC on or before the corresponding deadline established for the issuance of the report. The Army shall complete and transmit the draft secondary document in accordance with the target dates established for the issuance of such reports established pursuant to Part X of this Agreement.

2. Unless the Parties mutually agree to another time period, all draft reports shall be subject to a 45-day period for review and comment. Review of any document by the EPA and NDEC may concern all aspects of the report (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP and any pertinent guidance or policy issued by the EPA and with applicable state law. Comments by the EPA and NDEC shall be provided with adequate specificity so that the Army may respond to the comment and, if appropriate, make changes to the draft report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and,

upon request of the Army, the EPA or NDEC shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, either EPA or NDEC may extend the 45-day comment period for an additional 20 days by written notice to the Army prior to the end of the 45-day period. On or before the close of the comment period, EPA and NDEC shall transmit their written comments to the Army and to each other.

3. Representatives of the Army shall make themselves readily available to EPA and NDEC during the comment period for purposes of informally responding to questions and comments on draft reports. Oral comments made during such discussions need not be the subject of a written response by the Army on the close of the comment period.

4. In commenting on a draft report which contains a proposed ARAR determination, EPA and NDEC shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that either EPA or NDEC does object, it shall explain the bases for its objection in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

5. Following the close of the comment period for a draft report, the Army shall give full consideration to all written comments on the draft report submitted during the comment period. Within 45 days of the close of the comment period on a draft secondary report, the Army shall transmit to EPA and NDEC its written response to comments received within the comment period.

Within 45 days of the close of the comment period on a draft primary report, the Army shall transmit to EPA and NDEC a draft final primary report. While the resulting draft final report shall be the responsibility of the Army, it shall be the product of formal written consensus to the maximum extent possible.

6. The Army may extend the 45-day period for either responding to comments on a draft report or for issuing the draft final primary report for an additional 20 days by providing notice to EPA and NDEC. In appropriate circumstances, this time period may be further extended in accordance with Part XI hereof.

H. Availability of Dispute Resolution for Draft Final Primary Documents:

1. Dispute resolution shall be available to the Parties for draft final primary reports as set forth in Part XVIII.

2. When dispute resolution is invoked on a draft final primary report, work may be stopped in accordance with the procedures set forth in Part XVIII regarding dispute resolution.

I. Finalization of Reports:

The draft final primary report shall serve as the final primary report if no party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process should the Army's position be sustained. If the Army's determination is not sustained in the dispute resolution process, the Army shall prepare, within not more than 45 days, a revision of the draft final report which conforms to the

results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Part XI hereof.

J. Subsequent Modifications of Final Reports:

Following finalization of any primary report pursuant to Paragraph I above, EPA, NDEC, or the Army may seek to modify the report, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Paragraphs 1 and 2 below.

1. EPA, NDEC, or the Army may seek to modify a report after finalization if it determines, based on new information (i.e., information that became available, or conditions that became known, after the report was finalized) that the requested modification is necessary. EPA, NDEC, or the Army may seek such a modification by submitting a concise written request to the Project Manager of the other Parties. The request shall specify the nature of the requested modification and how the request is based on new information.

2. In the event that a consensus is not reached by the Project Managers within fourteen (14) calendar days of the nonrequesting parties receipt of a written request for modification, on the need for a modification, either EPA, NDEC, or the Army may invoke dispute resolution to determine if such modification shall be conducted. Modification of a report shall be required only upon a showing that: (1) the requested modification is based on significant new information, and (2) the requested

modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment.

3. Nothing in this Subpart shall alter EPA's or NDEC's ability to request the performance of additional work which was not contemplated by this Agreement. The Army's obligation to perform such work must be established by either a modification of a report or document or by amendment to this Agreement.

X. DEADLINES

A. Within twenty-one (21) days of the effective date of this Agreement, the Army shall propose deadlines for completion of the following draft primary documents:

1. Conceptual Project Management Plan
2. RI/FS Work Plan, including Sampling and Analysis Plan, Quality Assurance Project Plan, and Health and Safety Plan
3. Remedial Investigation Report
4. Endangerment Assessment
5. Feasibility Study Work Plan
6. Feasibility Study Report
7. Proposed Plan
8. Record of Decision
9. Operable Unit Work Plans and Reports
10. Community Relations Plan

Within fifteen (15) days of receipt, EPA and NDEC shall

review and provide comments to the Army regarding the proposed deadlines. Within fifteen (15) days following receipt of the comments the Army shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. If the Parties agree on proposed deadlines, the finalized deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree within thirty (30) days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Part XVIII of this Agreement.

The final deadlines established pursuant to this Paragraph shall be published by EPA.

B. Within twenty-one (21) days of issuance of the Record of Decision, the Army shall propose deadlines for completion of the following draft primary documents to EPA and NDEC:

1. Remedial Action Work Plan Showing 100 Percent of Design.

These deadlines shall be proposed, finalized and published utilizing the same procedures set forth in Paragraph A. above.

D. The deadlines set forth in this Part, or to be established as set forth in this Part, may be extended pursuant to Part XI of this Agreement. The Parties recognize that one possible basis for extension of the deadlines for completion of the Remedial Investigation and Feasibility Study Reports is the identification of significant new Site conditions during the performance of the Remedial Investigation.

XI. EXTENSIONS

A. Either a timetable and deadline or a schedule shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by the Army shall be submitted in writing to EPA and NDEC and shall specify:

1. The timetable and deadline or the schedule that is sought to be extended;
2. The length of the extension sought;
3. The good cause(s) for the extension; and
4. Any related timetable and deadline or schedule that would be affected if the extension were granted.

B. Good cause exists for an extension when sought in regard to:

1. An event of force majeure, as defined in Part XXI of this Agreement;
2. A delay caused by another party's failure to meet any requirement of this Agreement;
3. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
4. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; and
5. Any other event or series of events mutually agreed

to by the Parties as constituting good cause.

C. Absent agreement of the Parties with respect to the existence of good cause, the Army may seek and obtain a determination through the dispute resolution process that good cause exists.

D. Within fourteen (14) days of receipt of a request for an extension of a timetable and deadline or a schedule, EPA or NDEC shall advise the Army in writing of its respective position on the request. Any failure by EPA and NDEC to respond within the 14-day period shall be deemed to constitute concurrence in the request for extension. If either EPA or NDEC does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

E. If there is consensus among the Parties that the requested extension is warranted, the Army shall extend the affected timetable and deadline or schedule accordingly. If there is no consensus among the Parties as to whether all or part of the requested extension is warranted, the timetable and deadline or schedule shall not be extended except in accordance with determination resulting from the dispute resolution process.

F. Within fourteen (14) days of receipt of a statement of nonconcurrence with the requested extension, the Army may invoke dispute resolution.

G. A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected timetable and deadline or

schedule until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and the requested extension is denied, stipulated penalties may be assessed and may accrue from the date of the original timetable, deadline or schedule. Following the grant of an extension, an assessment of stipulated penalties or an application for judicial enforcement may be sought only to compel compliance with the timetable and deadline or schedule as most recently extended.

XII. MONITORING AND QUALITY ASSURANCE

A. In accordance with Part VIII of this Agreement, the Army shall develop a Quality Assurance Project Plan (QAPP) for each Remedial Investigation, including investigations undertaken for an Operable Unit, for review and comment by EPA and NDEC. Each QAPP shall be prepared in accordance with EPA Document QAMS-005/80 and applicable guidance developed by EPA and provided to Army. Each QAPP shall include, inter alia, sampling methodology, sample storage and shipping methods, documentation, sampling and chain-of-custody procedures, calibration procedures, laboratory quality control/quality assurance procedures and frequency. The Army shall use the quality assurance, quality control, and chain-of-custody procedures specified in the QAPP throughout all field investigation, sample collection, and laboratory analysis activities. The Army shall inform and obtain the approval of EPA and NDEC in planning all sampling and analysis.

B. In order to provide quality assurance and maintain quality control regarding all sample collection pursuant to this

Agreement, the Army shall obtain the approval of EPA and NDEC for methods deemed satisfactory to EPA and NDEC and shall submit all protocols used for sampling and analysis to them for review and comment as to substantive equivalency with established EPA protocols. The Army shall also ensure that each laboratory used to perform analyses pursuant to this Agreement participate in the U.S. Army Toxic and Hazardous Materials Agency quality assurance/quality control program. EPA and NDEC may request the analysis of performance evaluation samples to demonstrate the quality of each laboratory's analytical data.

C. The Army shall ensure that EPA and NDEC personnel and authorized representatives are allowed access, including interviewing appropriate laboratory personnel and reviewing and copying records, to each laboratory utilized by the Army in implementing this Agreement for the purpose of validating sample analyses, protocols and procedures required by this Agreement.

XIII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. Within thirty (30) days of its receipt, the Army shall make available to EPA and NDEC all results of sampling, tests and other data collection, including quality assurance documentation obtained by it, or on its behalf, with respect to the implementation of this Agreement. These results include, but are not limited to, sampling of all areas known or suspected to have been contaminated by hazardous substances, including the CAAP water supply wells, identified in the Remedial Investiga-

tion. If quality assurance is not completed within thirty (30) days of receipt of the results, summarized data, raw data and results shall be submitted within the thirty day period and quality assured data and results shall be provided as soon as they become available.

B. At the request of EPA or NDEC the Army shall allow the EPA to collect split or duplicate samples of all samples collected pursuant to this Agreement. The Army shall notify EPA and NDEC not less than fifteen business days in advance of any sampling activities and not less than five business days in advance of drilling, installation and testing of any monitoring well. EPA and NDEC shall make results of all sampling, tests or other data available to each other and to Army within thirty (30) days of receipt of such results.

XIV. REPORTING

A. Throughout the course of these activities, the Army shall submit to EPA and NDEC written quarterly progress reports, which shall include, at a minimum, the following:

1. A description of the actions completed during the quarter towards compliance with this Agreement;

2. A description of all actions scheduled for completion during the quarter which were not completed along with a statement indicating why such actions were not completed and an anticipated completion date;

3. A description of the actions which are scheduled for the following quarter.

B. These reports shall be due on or before the tenth day of the first month following the quarter for which the report is submitted.

XV. ACCESS

A. Subject to any statutory and regulatory requirements as may be necessary to protect national security, Army shall provide access to EPA and NDEC to all property upon which any activities are being conducted or have been conducted pursuant to this Agreement such that EPA and NDEC and their authorized representatives are able to enter and move freely about such property at all reasonable times for the purposes related to activities conducted pursuant to this Agreement, including, inter alia, the following:

1. Inspecting and copying records, files, photographs, operating logs, contracts and other documents relative to the implementation of this Agreement;
2. Reviewing the status of activities being conducted pursuant to this Agreement;
3. Collecting such samples or conducting such tests as EPA or NDEC determines are necessary or desirable to monitor compliance with the terms of this Agreement or to protect the public health, welfare, or the environment;

4. Using sound, optical or other types of recording equipment to record activities which have been or are being conducted pursuant to this Agreement; and

5. Verifying data and other information submitted by the Army pursuant to this Agreement.

B. CAAP shall provide an escort whenever EPA or NDEC require access to restricted areas of CAAP for purposes consistent with the provisions of this Agreement. EPA and the State shall provide reasonable notice to the Army Project Manager to request any necessary escorts. EPA and NDEC shall not use any camera, sound recording or other electronic recording device at CAAP without the permission of the Army Project Manager. The Army shall not unreasonably withhold such permission.

C. The rights to access by EPA and the State, granted in Paragraph A of this section, shall be subject to those regulations as may be necessary to protect national security. Upon denying any aspect of access the Army shall provide an explanation within 48 hours of the reason for denial and, to the extent possible, provide a recommendation for accommodating the requested access in an alternate manner. The Parties agree that this Agreement is subject to CERCLA § 120(j). 42 U.S.C. § 9620(j), regarding the issuance of Site Specific Presidential Orders as may be necessary to protect national security.

D. All Parties with access to CAAP pursuant to this section shall comply with all applicable health and safety plans.

E. To the extent that activities pursuant to this Agreement must be carried out on other than Army property, the Army shall use its best efforts to obtain access agreements from the owners which shall provide reasonable access for the Army, EPA, NDEC and their representatives. In the event that the Army is unable to obtain such access agreements, the Army shall promptly notify EPA and NDEC.

XVI. DESIGNATED PROJECT MANAGERS

A. All verbal notices and written documents, including, but not limited to written notices, reports, plans, and schedules, requested or required to be submitted pursuant to this Agreement shall be directed to the designated Project Managers for the other Parties. To the maximum extent possible, all communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Managers.

B. The following individuals are designated as Project Managers by the Parties:

1. For EPA:
Dana Trugley
U.S. Environmental Protection Agency
Superfund Branch
726 Minnesota Avenue
Kansas City, Kansas 66101
Telephone Number 913/236-2856

2. For the Army:
David Mark
USATHAMA
Aberdeen Proving Ground, Maryland 21010-5401
Telephone Number 301/671-3921

3. For the NDEC:
Rich Schlenker
Unit Supervisor
Hazardous Waste Section
Nebraska Department of Environmental Control
301 Centennial Mall South
Lincoln, Nebraska 68509
Telephone Number 402/471-4217

C. The EPA and NDEC Project Managers or their designated representatives shall have the authority to recommend and request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or design, utilized in carrying out this Agreement, which are necessary to the completion of the project.

D. The Army Project Manager or designated representative may recommend and request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or design, utilized in carrying out this Agreement which are necessary to the completion of the project. Any field modifications proposed under this Part by any Party must be approved orally by all Project Managers to be effective. If agreement cannot be reached on the proposed additional work or modification to work, dispute resolution as set forth in Part XVIII may be used in addition to this Part. Within five (5) business days following a modification made pursuant to this Part, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the other Project Managers.

E. The Project Manager or designated representative for the

Army shall be physically present on CAAP or reasonably available to supervise work performed at CAAP during implementation of the work performed pursuant to this Agreement and shall make himself available to EPA for the pendency of this Agreement. The EPA and NDEC Project Managers need not be present at CAAP and their absence shall not be cause for work stoppage.

F. Any party may change its designated Project Manager and shall provide written notice to the other parties of the change.

XVII. CREATION OF DANGER AND EMERGENCY ACTIONS

In the event the EPA or NDEC determines that activities conducted pursuant to this Agreement are creating an imminent and substantial endangerment to the health or welfare of the people on CAAP or in the surrounding area or to the environment, the EPA or NDEC may direct the Army to stop further implementation of work under this Agreement for such period of time as necessary to abate the danger. Any such directed work stoppages may be a basis for modifying the schedule of activities affected by the work stoppage. Any party directing the Army to stop work pursuant to this provision shall within 24 hours of doing so provide a written statement of the basis for its directing the work stoppage. The Army shall have 3 business days from receipt of this written statement to request a review of the work stoppage. This request shall include a statement as to the Army's basis for recommending that the work stoppage cease and as to possible measures to abate or mitigate the danger. Within 72 hours of an Army request for review, the EPA Division Director or appropriate

NDEC official shall determine in writing whether continued work stoppage is necessary. The final decision shall be subject to Resolution of Disputes procedures.

XVIII. RESOLUTION OF DISPUTES

Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Part shall apply.

All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Part shall be implemented to resolve a dispute.

A. Within sixty (60) days after: (1) issuance of a draft final primary document pursuant to Part IX, Part G herein, or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position.

B. Prior to any Party's issuance of a written statement of dispute, the disputing Party shall engage the other Party in informal dispute resolution among the Project Managers and/or their immediate supervisors. During this informal dispute reso-

lution period the Parties shall meet as many times as are necessary to discuss and attempt resolution of the dispute.

C. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (SES or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on the DRC is the Waste Management Division Director of EPA's Region VII. The Army designated member is the Deputy/Technical Director of USATHAMA. The NDEC representative on the DRC is the Land Quality Division Director. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Part XVI.

D. Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution, within seven (7) days after close of the twenty-one (21) day resolution period.

E. The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA representative on the SEC is the Regional Administrator of

EPA's Region VII. The Army representative on the SEC is the DESOH, ASA (I&L). The NDEC representative on the SEC is the Director. The SEC shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, EPA's Regional Administrator shall issue a written position on the dispute. The Army or NDEC may, within fourteen (14) days of the Regional Administrator's issuance of U.S. EPA's position, issue a written notice elevating the dispute to the Administrator of U.S. EPA for resolution in accordance with all applicable laws and procedures. In the event that the Army or NDEC elects not to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, the Army or NDEC shall be deemed to have agreed with Regional Administrator's written position with respect to the dispute.

F. Upon escalation of a dispute to the Administrator of EPA pursuant to Subpart E, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the U.S. EPA Administrator shall meet and confer with the Army Secretariat Representative and the NDEC Representative to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the Army and NDEC with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Part shall not be delegated.

G. The pendency of any dispute under this Part shall not affect the Army's responsibility for timely performance of the work required by this Agreement, except that the time period for completion of work affected by such dispute shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this Agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable schedule.

H. When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Hazardous Waste Division Director for U.S. EPA's Region VII requests, in writing, that work related to the dispute be stopped because, in EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. NDEC may request the U.S. EPA's Region VII Waste Management Division Director to order work stopped for the reasons set out above. To the extent possible, the Party seeking the work stoppage shall consult with the other Parties prior to initiating a work stoppage request. After stoppage of work, if a Party believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the Party ordering the work stoppage to discuss the work stoppage. Following this meeting, and further consideration of

the issues, the U.S. EPA Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the U.S. EPA Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the party requesting dispute resolution.

I. Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Part, the Army shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

J. Resolution of a dispute pursuant to this Part of the Agreement constitutes a final resolution of any dispute arising under this Agreement, subject to the rights reserved in this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Part of this Agreement.

K. NDEC reserves its right to maintain an action under Section 121(f)(3)(B) of CERCLA, 42 U.S.C. § 9621(f)(3)(B), to challenge the selection of a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria or limitation.

XIX. ENFORCEABILITY

A. The Parties agree that:

1. Upon the effective date of this Agreement, any

standard, regulation, condition, requirement or order which has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person pursuant to Section 310 of CERCLA, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under Sections 310(c) and 109 of CERCLA; and

2. All timetables or deadlines associated with the RI/FS shall be enforceable by any person pursuant to Section 310 of CERCLA, and any violation of such timetables or deadlines will be subject to civil penalties under Sections 310(c) and 109 of CERCLA;

3. All terms and conditions of this Agreement which relate to interim or final remedial actions, including corresponding timetables, deadlines or schedules, and all work associated with the interim or final remedial actions, shall be enforceable by any person pursuant to Section 310(c) of CERCLA, and any violation of such terms or conditions will be subject to civil penalties under Sections 310(c) and 109 of CERCLA; and

4. Any final resolution of a dispute pursuant to Part XVIII of this Agreement which establishes a term, condition, timetable, deadline or schedule shall be enforceable by any person pursuant to Section 310(c) of CERCLA, and any violation of such term, condition, timetable, deadline or schedule will be subject to civil penalties under Sections 310(c) and 109 of CERCLA.

B. Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any action or work where review is barred by any provision of CERCLA, including Section 113(h) of CERCLA.

C. Nothing in this Agreement shall be construed as a restriction or waiver of any rights the U.S. EPA or NDEC may have under CERCLA, including but not limited to any rights under sections 113 and 310, 42 U.S.C. §§ 9613 and 9659. The Army does not waive any rights it may have under CERCLA section 120, SARA section 211 and Executive Order 12580.

D. The parties agree to exhaust their rights under Part XVIII prior to exercising any rights to judicial review that they may have.

E. The Parties agree that all Parties shall have the right to enforce the terms of this Agreement.

XX. STIPULATED PENALTIES

A. In the event that the Army fails to submit a primary document to EPA and NDEC pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an operable unit or final remedial action, EPA, after consultation with NDEC, may assess a stipulated penalty against the Army. NDEC may also request that a stipulated penalty be assessed against the Army. A stipulated penalty may be assessed in an amount not to exceed $5,000 for the first week (or part thereof), and $10,000 for each additional week (or part

thereof) for which a failure set forth in this Paragraph occurs.

B. Upon determining that the Army has failed in a manner set forth in Paragraph A, EPA shall so notify the Army in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Army shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Army shall not be liable for the stipulated penalty assessed by EPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty. If the dispute resolution procedure is not invoked by the Army, then the assessment shall be final as determined by EPA.

C. The annual reports required by Section 120(e)(5) of CERCLA, 42 U.S.C. § 9620(e)(5), shall include, with respect to each final assessment of a stipulated penalty against the Army under this Agreement, each of the following:

1. The facility responsible for the failure;

2. A statement of the facts and circumstances giving rise to the failure;

3. A statement of any administrative or other corrective action taken at the relevant facility, or a statement of why such measures were determined to be inappropriate;

4. A statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure; and

5. The total dollar amount of the stipulated penalty assessed for the particular failure.

D. Stipulated penalties assessed pursuant to this Part shall be payable to the Hazardous Substances Response Trust Fund only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the Army. The Army shall notify the other Parties of the payment.

E. In no event shall this Part give rise to a stipulated penalty in excess of the amount set forth in Section 109 of CERCLA, 42 U.S.C. Section 9609.

F. This Part shall not affect the Army's ability to obtain an extension of a timetable, deadline or schedule pursuant to Part X of this Agreement.

G. Nothing in this Agreement shall be construed to render any officer or employee of the Army personally liable for the payment of any stipulated penalty assessed pursuant to this Part.

XXI. FORCE MAJEURE

A. Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or prevents the performance of any obligation under this Agreement, including, but not limited to, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably

diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the Army; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriated funds, if the Army shall have made timely request for such funds as part of the budgetary process as set forth in Part XXII Funding of this Agreement. A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

XXII. FUNDING

A. It is the expectation of the Parties to this Agreement that all obligations of the Army arising under this Agreement will be fully funded. The Army agrees to seek sufficient funding through the DOD budgetary process to fulfill its obligations under this Agreement.

B. In accordance with Section 120(e)(5)(B) of CERCLA, 42 U.S.C. § 9620(e)(5)(B), the Army shall include in its annual

report to Congress the specific cost estimates and budgetary proposals associated with the implementation of this Agreement. Any requirement for the payment or obligation of funds, including stipulated penalties, by the Army established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

C. If appropriated funds are not available to fulfill the Army's obligations under this Agreement, EPA reserves the right to initiate an action against any other person, or to take any response action, which would be appropriate absent this Agreement.

D. Funds authorized and appropriated annually by Congress under the "Environmental Restoration, Defense" appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense (Environment) to the Army will be the source of funds for activities required by this Agreement consistent with Section 211 of SARA, 10 U.S.C. Chapter 160. However, should the Environmental Restoration, Defense appropriation be inadequate in any year to meet the total Army CERCLA implementation requirements, the DOD shall employ and the Army shall follow a standardized DOD prioritization process which

allocates that year's appropriations in a manner which maximizes the protection of human health and the environment. A standardized DOD prioritization model shall be developed and utilized with the assistance of EPA and the states.

XXIII. CONFIDENTIAL BUSINESS INFORMATION

The Army may assert a business confidentiality claim covering all or part of the information submitted pursuant to this Agreement in accordance with Section 104(e)(7) of CERCLA. The information covered by such a claim will be disclosed by EPA only to the extent and by the procedures specified in 40 C.F.R. Part 2, Subpart B. Such a claim may be made by placing on or attaching to the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend or other suitable form of notice employing language such as "trade secret", "proprietary", or "company confidential". Allegedly confidential portions of otherwise non-confidential documents should be clearly identified and may be submitted separately to facilitate identification and handling by EPA. If confidential treatment is sought only until a certain date or occurrence of a certain event, the notice should so state. If no such claim accompanies the information when it is received by EPA or NDEC or is provided prior to release, it may be made available to the public without further notice to the Army. Information determined to be confidential by EPA pursuant to 40 C.F.R. Part 2 shall be afforded the protection specified therein. A copy of the request for confidentiality shall be provided to NDEC without the accompanying attachments.

At such time as a claim for confidentiality is denied by EPA, Army shall submit the information to NDEC.

XXIV. RECORD PRESERVATION

The Army shall, without regard to any document retention policy to the contrary, preserve during the pendency of this Agreement and for a minimum of seven (7) years after its termination, all records and documents in its possession, custody or control which relate in any way to work performed pursuant to this Agreement. After this seven-year period has lapsed, the Army shall notify EPA at least forty-five (45) calendar days prior to the destruction of any such document. As directed by EPA, the Army shall provide to the documents or copies of such documents to the U.S. EPA.

XXV. RESERVATION OF RIGHTS

A. Notwithstanding compliance with the terms of this Agreement, the Army is not released from any liability for any actions beyond the terms of this Agreement taken by the EPA or NDEC with respect to the Site. EPA and NDEC reserve the right to take any enforcement action against the Army with respect to this Site pursuant to RCRA, CERCLA and/or any other available legal authority for relief including, but not limited to, injunctive relief, monetary penalties, and punitive damages for any violation of law or this Agreement.

B. The EPA and NDEC reserve any rights they may have under law to undertake response action(s) to address the release or threat of release of hazardous substances from the Site at any

time and to seek reimbursement from the Army thereafter for such costs incurred by the United States and/or the State of Nebraska.

C. The EPA and NDEC retain the right to conduct emergency actions as may be necessary to alleviate immediate threats to human health and the environment from the release or threatened release of hazardous substances or pollutants or contaminants at the Site. Such actions shall be conducted after consultation with the Army.

D. Notwithstanding any other provisions of this Agreement, NDEC reserves the right to seek modification of this Agreement or to institute a new action to seek additional remedial measures at the Site if (1) conditions previously unknown to the Parties or undisclosed to NDEC arise or are discovered at the Site; or (2) NDEC receives information which indicates that the requirements of this Agreement are not adequately protective of public health, welfare, or the environment.

E. Nothing in this Agreement shall be construed to affect NDEC's rights to seek appropriate relief, to the extent authorized by law and/or this Agreement, against EPA, the Army, or any other person, to obtain compliance with the law at the Site, including, but not limited to, State law governing hazardous or solid waste storage, treatment, or disposal, State law concerning remedial actions, or liability or compliance with respect to the release of hazardous waste substances or other pollutants or contaminants.

F. Nothing in this Agreement shall be construed as a re-

lease of liability to the State of Nebraska for damage to natural resources, past, present or future, as defined by CERCLA.

XXVI. OTHER APPLICABLE LAWS

A. Except as otherwise provided in Part XXVII, below, with regard to permits, all actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations, including, but not limited to, any permitting or licensing requirements.

B. All reports, plans, specifications, and schedules submitted pursuant to this Agreement are, upon approval by EPA and NDEC, incorporated into this Agreement. Any noncompliance with such approved reports, plans, specifications, or schedules shall be considered a failure to achieve compliance with the requirements of this Agreement.

XXVII. PERMITS

A. The Army shall make timely and complete application or request for any and all permits, licenses or other authorizations necessary to implement the response actions required by this Agreement. The Army shall notify EPA and NDEC of each such permit, license or authorization for which such application has been made by providing the following information:

1. The agency or instrumentality from whom the permit, license or authorization must be sought and the agency or instrumentality which would grant or issue the permit, license or authorization if not the same as the one from which it must be

sought;

2. The activity which would be the subject of the permit, license or authorization;

3. A description of the procedure to be followed in securing such permit, license or authorization, including the date by which an application must be filed and the anticipated duration of the permit, license or authorization.

B. As provided in Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), no federal, state, or local permit shall be required for those portions of the response actions undertaken pursuant to this Agreement which are conducted entirely on the Site. Such response actions must satisfy all applicable or relevant and appropriate federal and state standards, requirements, criteria, or limitations which would have been included in any such permit. For each response action proposed by the Army which in the absence of 121(e)(1) of CERCLA would require a permit, the Army shall include the following information in the Submittal:

1. The identity of each permit which would otherwise be required;

2. The standards, requirements, criteria, or limitations which would have been met to obtain each such permit;

3. A description of how the proposed response action will meet the standards, requirements, criteria or limitations which would be included in each such permit.

C. If a permit which is necessary for implementation of this Agreement is not issued, or is issued or renewed in a manner

which is materially inconsistent with the requirements of this Agreement, the Army shall notify EPA and NDEC in writing of its intention to propose modifications to primary documents thereby affected in accordance with paragraph IX. J. of this Agreement. Notification by the Army of its intention to propose modifications shall be submitted within seven (7) calendar days of receipt by the Army of notification that: (1) a permit will not be issued; (2) a permit has been issued or reissued; or (3) a final determination with respect to any appeal related to the issuance of a permit has been entered whichever is later. Within forty-five (45) days from the date it submits its notice of intention to propose modifications, the Army shall submit to the EPA and NDEC its proposed modifications with an explanation of its reasons in support thereof. Such proposed modifications will be reviewed in accordance with Part XVIII, Resolution of Disputes, of this Agreement.

D. If the Army submits proposed modifications prior to a final determination of any appeal taken on a permit needed to implement this Agreement, EPA or NDEC may elect to delay review of the proposed modifications until after such final determination is entered.

E. During any appeal of any permit required to implement this Agreement or during review of any of the Army's proposed modifications as provided in Subpart D above, the Army shall continue to implement those portions of this Agreement which can be reasonably implemented pending final resolution of the permit

issue(s).

F. Except as otherwise provided in this Agreement the Army shall comply with applicable state and federal hazardous waste management requirements at the Site.

XXVIII. FIVE YEAR REVIEW

If a remedy is selected for the Site which results in any hazardous substances, pollutants or contaminants remaining at the Site, EPA and NDEC shall, consistent with Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), review the remedial action no less often that each five years after the initiation of the final remedial action to assure that human health and the environment are being protected by the remedial action being implemented. If upon such review it is the judgment of EPA that additional action or modification of the remedial action is appropriate in accordance with Section 104 or 106 of CERCLA, 42 U.S.C. §§ 9604 and 9606, the EPA shall require the Army to implement such additional or modified action.

XXIX. OTHER CLAIMS

A. Nothing in this Agreement shall constitute or be construed as a bar or release from any claim, cause of action or demand in law or equity by or against any person, firm, partnership or corporation not a signatory to this Agreement for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, and migration or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to,

or taken from the Site.

B. The EPA and the NDEC shall not be held as a party to any contract entered into by the Army to implement the requirements of this Agreement.

C. This Agreement shall not restrict EPA or the NDEC from taking any legal or response action for any matter not specifically part of the work covered by this Agreement.

XXX. PUBLIC PARTICIPATION

A. In accordance with Section 117 of CERCLA, 42 U.S.C. § 9617, before adoption of any plan for remedial action pursuant to this Agreement, the Army shall:

1. Publish in a local newspaper or newspapers of general circulation a notice and brief analysis of the proposed plan, including an explanation of the proposed plan and alternatives considered;

2. Make such plan available to the public; and

3. Provide a reasonable opportunity for a public meeting at or near the facility regarding the proposed plan and any proposed findings under Section 121(d)(4) of CERCLA, 42 U.S.C. § 9621(d)(4).

B. Before commencement of any remedial action, the Army shall publish a notice of the final EPA and NDEC approved remedial action plan adopted and shall make available to the public the plan, a discussion of any significant changes and the reasons for the changes in the proposed plan or Record of Decision and shall publish a responsiveness summary for the significant comment,

criticism, and new data submitted during the public comment on the proposed plan.

C. If the remedial action taken differs in any significant respects from the final remedial action which was approved by EPA in consultation with NDEC, the Army shall publish an explanation of the significant differences and the reasons such changes were made pursuant to Section 117(c) of CERCLA, 42 U.S.C. § 9617(c).

D. The Army shall develop and implement a Community Relations Plan (CRP) in a manner consistent with Section 117 of CERCLA, the NCP, EPA guidelines set forth in "Community Relations In Superfund" Interim Final, OSWER Directive 9230.0-3B, June 1988, and any modifications thereto.

E. Any Party issuing a formal press release to the media regarding any of the work required by this Agreement shall advise the other Parties of such press release and the contents thereof, at least forty-eight (48) hours before the issuance of such press release and of any subsequent changes prior to release.

F. Within thirty (30) days of the effective date of this Agreement, the Army shall establish and maintain an Administrative Record, including an index of all documents contained therein, at or near CAAP, available for public review, in accordance with Section 113(k) of CERCLA. The Administrative Record shall be established and maintained in accordance with current and future EPA policy and guidelines. A copy of each document placed in the Administrative Record will be provided to EPA and NDEC at the time it is placed in the Administrative Record. An updated index

of the Administrative Record shall be provided to EPA and NDEC on at least a quarterly basis. The Administrative Record developed by the Army shall be routinely updated. Upon request by EPA, the Army shall provide a copy of any document in the Administrative Record not previously provided to EPA. At a minimum, each primary and secondary document developed pursuant to this Agreement shall be included in the Administrative Record.

G. The Army shall follow the public participation requirements of CERCLA Section 113(k) and comply with any guidance and regulations promulgated by EPA with respect to each Section.

XXXI. PUBLIC COMMENT ON THIS AGREEMENT

A. Within fifteen (15) days of the date Army receives a fully executed copy of this Agreement, it shall announce the availability of the Agreement to the public for review and comment and shall accept comments from the public for a period of forty-five days after such announcement. Upon completion of this public comment period, the Army shall promptly provide copies of all comments received to EPA and NDEC.

B. Each of the Parties shall review all comments and shall either:

1. Determine that the agreement shall be made effective in its present form, or

2. Determine that modification of the Agreement is necessary.

If no request for modification is made within the time period, the Agreement shall be made effective in its present form

in accordance with Part XXXIV hereof.

C. If any Party determines that modification of the Agreement is necessary, it shall, within thirty (30) days of completion of the public comment period, provide a written request for modification to the other Parties. This request for modification shall include the following:

1. A statement of the basis for determining modification is necessary, and

2. Proposed revisions to the Agreement addressing the modification.

D. If a request for modification is made in accordance with § XXXII. C. above, the Parties shall meet to discuss the proposed modification. If the Parties agree on the modification, the Agreement shall be revised accordingly, in writing, and the revised Agreement signed by each Party, and the Agreement made effective in accordance with Part XXXIV, hereof. In the event the Parties are unable to agree upon such modifications, any Party reserves the right to withdraw from the Agreement. Before a Party exercises its right to withdraw, it shall give written notice of its intention to withdraw and make its SEC representative, as identified in § XVIII.E. hereof, available to meet with the other Parties' SEC representatives upon request to discuss the withdrawal.

E. In the event of significant revision or public comment, the public notice procedures of Section 117 of CERCLA, 42 U.S.C. § 9617 shall be followed and a responsiveness summary shall be

published by the Army, after consultation with EPA and NDEC.

XXXII. REIMBURSEMENT OF STATE EXPENSES

A. The Army and NDEC agree that the terms and conditions of this Part will be null and void during the period when the State has a cooperative agreement for State cost reimbursement and has a Defense/State Memorandum of Agreement (DSMOA) with the Department of Defense.

B. Subject to the conditions and limitations set forth in this Part and Part XXII, Funding, the Army agrees to request funding and reimburse the State of Nebraska through NDEC for all reasonable costs it incurs in providing services, which are not inconsistent with the National Contingency Plan (NCP) and are in direct support of the Army's environmental restoration activities pursuant to this Agreement at CAAP.

C. Reimbursable expenses shall include only actual expenditures incurred in providing the following assistance at CAAP.

1. Timely technical review and substantive comment on reports or studies which CAAP prepares in support of response actions and submits to the NDEC;

2. Identification and explanation of State requirements applicable in performing response actions, especially State applicable or relevant and appropriate requirements (ARARS);

3. Field visits to ensure that cleanup activities are implemented in accordance with appropriate State requirements, or in accordance with conditions agreed upon between NDEC and CAAP;

4. Support and assistance to CAAP in the conduct of

public education and public participation activities in accordance with federal and State requirements for public involvement;

5. Participation in the review and comment functions of the CAAP Technical Review Committee.

D. In the event that the State of Nebraska or NDEC contracts for services to be provided at CAAP that are of the same type performed within NDEC or another State agency, the reimbursable costs for that service shall be limited to the amount that NDEC or such other State agency would have expended if it had performed the service in-house. Neither interest nor profit shall be payable, nor shall costs for any services performed prior to the effective date of this Agreement be reimbursable.

E. The Army shall not be responsible for reimbursing the State for any costs incurred in the implementation of this Agreement in excess of one percent (1%) of the Army's total lifetime Defense Environmental Restoration Account (DERA) eligible project costs incurred through construction of the remedial actions and their operation and maintenance at CAAP. This total eligible project cost is currently estimated to be $14,800,000.00 over the life of the Agreement.

F. Total reimbursable costs payable during any Federal fiscal year following the effective date of this Agreement shall not exceed $50,000.00 per annum. Two years after this Agreement takes effect, the Army and State may review the appropriateness of continuing the $50,000.00 annual cost reimbursement ceiling component. Any disagreement as to its continuance is not subject

to the dispute resolution procedures of Part XVIII, Dispute Resolution, but will be resolved in accordance with the procedures set forth in this Part.

G. Within forty (45) days after the end of each quarter of the Federal fiscal year, the State of Nebraska shall submit to the Army through CAAP an accounting of all State costs actually incurred during that quarter in providing services under this Part. Such accounting shall be in accordance with 40 CFR Parts 31 and 35 subpart O and be accompanied by cost summaries which set forth employee hours and other expenses by major type of support service. All costs must be for work directly related to implementation of this Agreement, be supported by documentation which meets federal auditing requirements, and not inconsistent with the requirements described in OMB Circulars A-87 (Cost Principles for State and Local Governments) and A-128 (Audits for State and Local Cooperative Agreements with State and Local Governments). The Army has the right to audit cost reports used by the State to develop the cost summaries. The cost of any audit conducted by the Army shall be borne by the Army. Subject to subparagraph I, below, the Army will, upon timely receipt of properly presented and documented accountings, pay the allowable portion of such accounting within ninety (90) days of proper presentation.

H. The Army shall accept the accounting of costs provided by NDEC pursuant to 40 CFR Parts 31 and 35 subpart O to be ade-

quate documentation of costs incurred by NDEC pursuant to this Agreement, provided such accounting is supported by documentation which meets federal auditing requirements and is not inconsistent with the provisions of OMB Circulars A-87 (Cost Principles for State and Local Governments) and A-128 (Audits for State and Local Cooperative Agreements with State and Local Governments).

I. In the event that the Army contends that any costs set forth in the accounting provided pursuant to subparagraph G above, are not properly payable, or if the Army and the NDEC have any other dispute concerning cost reimbursement, including any disagreement over a cap over future annual or lifetime cost reimbursement, the matter shall be resolved through a bilateral dispute resolution process as follows:

1. The CAAP Project Manager and the NDEC Project Manager shall be the primary points of contact to coordinate resolution of disputes arising under this Part.

2. If the CAAP Project Manager and NDEC Project Manager are unable to agree, the matter shall be referred to the installation commander or his designated representative and the chief of the designated program office of NDEC as soon as practicable, but in any event, within five (5) working days.

3. Should the aforementioned parties be unable to agree within ten (10) working days, the matter shall be elevated to the NDEC Director and the Deputy for Environment, Safety and Occupational Health, Office of the Assistant Secretary of the Army, (Installations and Logistics), (DESOH, ASA(I&L)).

4. It is the intention of the Army and the State that all disputes shall be resolved in this manner. The use of alternative dispute resolution is encouraged. In the event the NDEC Director and the DESOH, ASA(I&L) are unable to resolve a dispute, the State retains all of its legal and equitable remedies to recover its costs. In addition, the NDEC may withdraw from this Agreement by giving sixty (60) days notice to the other Parties.

J. The State agrees to maintain accounting records sufficient to identify and support all claimed expenses for support services provided at CAAP for a period of ten (10) years from the termination date of this Agreement. The State agrees to provide the Army or its designated representative reasonable access to all such financial records for the purpose of audit for a period of ten (10) years from the termination date of this Agreement.

K. As of 1 April of each year, the State shall submit to the Army a budget estimate for projected costs for activities reimbursable under this Agreement for the following Federal fiscal year in the same level of detail as the billing documents.

L. The State agrees to seek reimbursement for its expenses solely through the mechanisms established in this Part, and reimbursement provided under this Part shall be in settlement of any claims for State response costs relative to the Army's environmental restoration activities at CAAP.

XXXIII. AMENDMENT OF THE AGREEMENT

This Agreement may be amended or modified solely upon the written consent of all Parties. Each such amendment shall have

as its effective date that date on which it has been signed by all Parties.

XXXIV. EFFECTIVE DATE

This Agreement shall be effective upon issuance of a notice to the Parties by EPA following implementation of Part XXXI hereof.

XXXV. TERMINATION

The provisions of this Agreement shall be deemed satisfied and terminated upon receipt by the Army of written notice from EPA and NDEC that the Army has demonstrated, to their satisfaction that all the terms of this Agreement have been completed.

IN WITNESS WHEREOF, the parties have affixed their signatures below:

For the United States Department of the Army

3/15/90
Date

By: Lewis D Walker
Lewis D. Walker
Deputy Assistant Secretary
of the Army
(Environment, Safety and
Occupational Health)
OASA (I&L)

For the Nebraska Department of Environmental Control

4-9-90
Date

By: Dennis Grams
Dennis Grams
Director of Nebraska
Department of Environmental
Control

For the United States Environmental Protection Agency

4-23-90
Date

By: Morris Kay
Morris Kay
Regional Administrator
United States Environmental
Protection Agency
Region VII
726 Minnesota Avenue
Kansas City, Kansas