

Rob MacDougall see paper 1 + or encl
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To: Robert MacDougall MS 62355
HLSE MEMORANDUM

TO: Tribal/State Program Managers
FROM: Kevin Gover, Counsel
Nez Perce NHPA Program
RE: Status of Nez Perce C & C Negotiations
DATE: August 10, 1987

Attached for your information are two documents relating to the Nez Perce Tribe's C & C negotiations with DOE. The first is an agreement on negotiating procedures executed on August 6, 1987, by the Chairmen of the respective negotiating teams. The second is a report on the outcome of our first formal negotiating session with DOE on August 5-6, 1987, showing our proposals, DOE's responses, and any provisions agreed upon.

Overall, I believe significant progress was made in the first session. DOE's concerns with our proposals generally were principled and reasonable, if not always meritorious. We were able to negotiate several provisions guaranteeing tribal rights well beyond those acknowledged in previous DOE policy pronouncements. We are cautiously optimistic that most if not all remaining issues can be resolved at our next negotiating session on September 9-10.

Notwithstanding the foregoing, we should not make too much of the progress. The Tribe's proposals were relatively modest, designed primarily to eliminate delay in the award of grants and undue interference in their administration. DOE long ago conceded the desirability of these goals, and could not oppose responsibly reasonable proposals directed at their attainment. Moreover, the most difficult issues remain unresolved.

Your views on these items are welcome and appreciated.

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PDR WASTE
WM-10
PDR
87312369
WM Project: WM-10
PDR w/encl
(Return to WM, 623-55)

WM Record File: 101, 2
LPDR w/encl

encl. to Memo to Tribal/State
Program Managers from
Kevin Gover, Counsel

STATUS OF C & C NEGOTIATIONS ON
FINANCIAL ASSISTANCE
8/7/87

CONSULTATION AND COOPERATION AGREEMENT

BETWEEN

THE NEZ PERCE TRIBE

AND

THE UNITED STATES OF AMERICA

GOVERNING THE PROVISION OF

FINANCIAL ASSISTANCE FROM THE NUCLEAR WASTE FUND

This Consultation and Cooperation Agreement (hereinafter, "Agreement") is made and entered into this ____ day of _____, 1987, by and between the Nez Perce Tribe, a federally-recognized Indian tribe (hereinafter, "the Tribe"), and the United States of America, by and through the U.S. Department of Energy (hereinafter, "DOE"), under the authority of Section 117(c) of the Nuclear Waste Policy Act of 1982 (hereinafter, "the NWPA" or "the Act"):

WITNESSETH:

ARTICLE I. STATEMENT OF PRINCIPLES

The parties agree that the following principles shall govern the provision of financial assistance to the Tribe from the Nuclear Waste Fund.

NEZ PERCE PROPOSAL

A. The NWPA establishes a relationship between DOE and affected tribes and states which is unlike the relationship between DOE and any other persons or entities to whom DOE provides financial assistance. The rules, regulations and

instruments employed in providing financial assistance to the Tribe must reflect this unique relationship.

DOE PROPOSAL

A. The NWPA establishes a relationship between DOE and affected tribes and states which is unlike the relationship between DOE and any other persons or entities to whom DOE provides financial assistance. The promulgation and interpretation of the rules, regulations and instruments employed in providing financial assistance to the Tribe must reflect this unique relationship.

STATUS: AGREEMENT ON DOE PROPOSAL

NEZ PERCE PROPOSAL

B. DOE acts as a fiduciary in administering the Nuclear Waste Fund. The Tribe has a similar responsibility in: (1) carrying out activities with public resources, and (2) developing an oversight capability that will enable it to identify and assist in the resolution of potential impacts on the public health and safety, the economic and social well-being of the public, and the environment, that may result from the development or operation of a repository for the disposal of high-level radioactive waste and spent nuclear fuel.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

C. The Tribe acts under a public trust equivalent to that of DOE in meeting the objectives and mandates of the NWPA.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

D. Without assistance from the Nuclear Waste Fund, the Tribe cannot participate effectively in the NWPA process. Any effort to limit, withhold or seek repayment of funds may chill expressions of concern by the Tribe and negatively affect the Tribe's efforts to protect the public health and safety, the social and economic well-being of the public, and the environment.

DOE PROPOSAL

D. Without assistance from the Nuclear Waste Fund, the Tribe cannot participate effectively in the NWPA process. Every effort will be made, consistent with the NWPA and the Tribe's responsibilities thereunder, to support the Tribe's efforts to protect the public health and safety, the social and economic well-being of the public, and the environment.

SECOND NEZ PERCE PROPOSAL

D. Without assistance from the Nuclear Waste Fund, the Tribe cannot participate effectively in the NWPA process. Inflexible and restrictive applications of rules and regulations governing financial assistance to the Tribe may chill expressions of concern by the Tribe and thereby diminish the scope and quality of Tribal participation. Every effort will be made, therefore, consistent with the NWPA and the Tribe's responsibilities thereunder, to support the Tribe's efforts to protect the public health and safety, the social and economic well-being of the public, and the environment.

STATUS: AGREEMENT ON SECOND NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

E. Because the NWPA established the Tribe in an independent oversight function with regard to DOE activities, DOE's involvement in the administration

and management of grants to the Tribe should be only as much as is necessary to ensure that funds are spent for the purposes for which they are awarded.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

F. As a result of the special federal-tribal relationship, a number of federal statutes provide unique opportunities for flexibility in the processes of awarding and administering financial assistance to the Tribe. These statutes should be used flexibly and creatively to tailor DOE's administration of the Nuclear Waste Fund to the Tribe's situation.

SECOND NEZ PERCE PROPOSAL

F. As a result of the special federal-tribal relationship, a number of federal statutes provide unique opportunities for flexibility in the processes of awarding and administering financial assistance to the Tribe. These statutes should be used as models for the provision of financial assistance to the Tribe and to tailor DOE's administration of the Nuclear Waste Fund to the Tribe's situation.

STATUS: DOE TO REVIEW AND RESPOND BY 9/9/87

NEZ PERCE PROPOSAL

G. The timely award of grants to the Tribe is essential to its ability to conduct responsibly and effectively its oversight activities.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

H. The Tribe has broad discretion in defining the scope and extent of its independent oversight, monitoring and evaluation activities, but that discretion is subject to the need to protect the physical integrity of the candidate site and the availability of monies from the Nuclear Waste Fund.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

I. The Tribe stands as a separate nation within the federal system, enjoying an ongoing treaty relationship with the United States, and is not a sub-unit of the federal government.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

J. The Tribe and DOE recognize the need for program continuity, and grants to the Tribe must be maintained at a level commensurate with its oversight, monitoring and evaluation activities, and the status and pace of DOE's activities.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

ARTICLE II. PURPOSES AND SCOPE

NEZ PERCE PROPOSAL

A. Purposes. The purposes of this Agreement are:

- (1) To guarantee regularity, predictability and fairness in the provision and administration of financial assistance to the Tribe from DOE;

- (2) To define the duties of the parties in connection with the provision of financial assistance to the Tribe by DOE; and
- (3) To adjust DOE rules, regulations, procedures and guidelines on the provision of financial assistance to reflect the unique circumstances of the Tribe, its special relationship with the United States, and its independent oversight role in the NWPA process.

DOE PROPOSAL

A. Purposes. The purposes of this Agreement are:

- (1) To guarantee regularity, predictability and fairness in the provision and administration of financial assistance to the Tribe from DOE;
- (2) To define the duties of the parties in connection with the provision of financial assistance to the Tribe by DOE; and
- (3) To ensure interpretations of DOE rules, regulations, procedures and guidelines on the provision of financial assistance to reflect the unique circumstances of the Tribe, its special relationship with the United States, and its independent oversight role in the NWPA process.

SECOND NEZ PERCE PROPOSAL

A. Purposes. The purposes of this Agreement are:

- (1) To guarantee regularity, predictability and fairness in the provision and administration of financial assistance to the Tribe from DOE;
- (2) To define the duties of the parties in connection with the provision of financial assistance to the Tribe by DOE; and

- (3) To tailor DOE rules, regulations, procedures and guidelines on the provision of financial assistance and the application thereof to reflect the unique circumstances of the Tribe, its special relationship with the United States, and its independent oversight role in the NWPA process.

STATUS: AGREEMENT ON SECOND NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

B. Scope. This Agreement shall govern the provision of financial assistance from the Nuclear Waste Fund to the Tribe by DOE. This Agreement is to be read in conjunction with DOE rules, regulations, procedures and guidelines generally applicable to the provision of financial assistance. To the extent the provisions of this Agreement conflict with such rules, regulations, procedures and guidelines, the provisions of this Agreement shall control.

DOE PROPOSAL

B. Scope. This Agreement shall govern the provision of financial assistance from the Nuclear Waste Fund to the Tribe by DOE. This Agreement is to be read in conjunction and consistent with DOE rules, regulations, procedures and guidelines generally applicable to the provision of financial assistance. To the extent the provisions of this Agreement provide a more detailed interpretation of such rules, regulations, procedures and guidelines, the provisions of this Agreement shall govern.

STATUS: BOTH PARTIES TO REVIEW AND RESPOND BY 9/9/87

ARTICLE III. Authority for Agreement; Parties

NEZ PERCE PROPOSAL

A. Authority. This Agreement is made and entered into under the authority of Section 117 of the NWPA, and is intended to be binding and enforceable in accordance therewith. The authority of DOE to bind the United States is Section 117 of the NWPA. The authority of the Tribe to bind itself is its inherent sovereign power to conduct relations with the United States.

B. Parties.

1. United States Department of Energy. The United States is represented by the Director of the Office of Geologic Repositories of the Office of Civilian Radioactive Waste Management. The Director of OGR acts on behalf of the Secretary of Energy in executing this Agreement. The Director of OGR, in executing this Agreement, binds the United States, the Department of Energy, and all officers, employees, offices, agencies, other entities thereof, and their successors as to the matters covered by this Agreement.

2. Nez Perce Tribe. The Tribe is represented by the Chairman of the Nez Perce Tribal Executive Committee, the governing body of the Tribe. The Chairman, in executing this Agreement, acts with authority granted expressly by NPTEC, and binds the Tribe, the NPTEC, and all officials, agencies and other entities thereof.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

ARTICLE IV. Nuclear Waste Fund

NEZ PERCE PROPOSAL

The Nuclear Waste Fund established by the NWPA is composed of payments made by the generators and owners of high-level radioactive waste and spent nuclear fuel. The Fund was established to ensure that the costs of carrying out activi-

ties relating to the disposal of such waste and spent fuel will be borne by the persons responsible for generating such waste and spent fuel.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

ARTICLE V. Fundable Activities During Characterization

BWIP currently is characterizing the Hanford Site pursuant to Section 113 of the NWPA. The Tribal activities that shall be funded under Section 118(b) of the NWPA during the characterization phase include, but are not limited to:

- (1) Reviews of policy and technical reports, studies, analyses, computer models, plans, surveys, audits and other documents generated by any entity involved in the execution, enforcement, review, oversight, implementation or regulation of NWPA-related activities;
- (2) Activities directed at discovering any potential impacts of the location of a repository at Hanford on the public health and safety, the social and economic well-being of the public, the environment, and natural resources in the possessory and usage rights area of the Tribe;
- (3) Preparation of a report to the Secretary of the impacts discovered under paragraph (2); preparation of a request for technical and financial assistance designed to avoid, minimize, mitigate or provide compensation for adverse impacts discovered under paragraph (2); and preparation for negotiations under Section 118(b)(3)(B) to determine the nature and amount of such technical and financial assistance;
- (4) Monitoring, inspection and assessment of on-site activities related to the disposal of waste in an NWPA facility, of the site, of environmental monitoring, of environmental and cultural information gathering, of the

effects of characterization activities, and of scientific and technical tests and data collection;

- (5) Independent testing, data collection and studies, both on-site and off-site, relating to the suitability of the Hanford Site for a repository and the potential impacts associated with a repository, including impacts associated with transportation of waste to and from such a repository;
- (6) Conducting a public information program to provide information on NWPA activities to Tribal constituents, including the development and dissemination of information, maintenance and operation of public information offices, and conducting public meetings and hearings;
- (7) Coordinating activities and sharing information with officials, agencies, and entities of the United States, the several States, Indian tribes (whether or not such tribes are deemed "affected Indian tribes" under the NWPA), local governments, intergovernmental entities and all other entities having an interest in the conduct of the NWPA program;
- (8) Activities intended to lead to a consultation and cooperation agreement with DOE;
- (9) Activities authorized by or conducted pursuant to a consultation and cooperation agreement with DOE;
- (10) Commenting upon and expressing concerns and objections in connection with DOE activities, both at Hanford and nationally, while characterization is under way at any of the three sites now undergoing characterization; and
- (11) Activities directed at preparing for participation as a party or as an observer in proceedings of the Commission on any application for a

construction authorization or operating license for a facility in which high-level radioactive waste or spent fuel is to be handled, packaged, reprocessed, stored or disposed of.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

ARTICLE VI. Application of 10 C.F.R. Part 600

The parties acknowledge that 10 C.F.R. Part 600 provides a reasonable set of rules for the award, use and administration of grant funds, and the Tribe agrees to the application of 10 C.F.R. Part 600 to financial assistance received by the Tribe from DOE. The parties further acknowledge that the assistance to be received is grant assistance, and that no federal agency collaboration, participation or intervention in the activities of the Tribe pursuant to the grant is to occur, except as requested by the Tribe.

DOE PROPOSAL

ARTICLE VI. Application of 10 C.F.R. Part 600

The parties acknowledge that 10 C.F.R. Part 600 provides a reasonable set of rules for the award, use and administration of grant funds, and the Tribe agrees to the application of 10 C.F.R. Part 600 to financial assistance received by the Tribe from DOE. The parties further acknowledge that the assistance to be received is grant assistance, and that no federal agency collaboration, participation or intervention in the activities of the Tribe during its activities pursuant to the grant is to occur, except as requested by the Tribe or as it required to fulfill federal responsibilities under applicable laws and regulations.

SECOND NEZ PERCE PROPOSAL

ARTICLE VI. Application of 10 C.F.R. Part 600

The parties acknowledge that 10 C.F.R. Part 600 provides a reasonable set of rules for the award, use and administration of grant funds, and the Tribe agrees to the application of 10 C.F.R. Part 600 to financial assistance received by the Tribe from DOE. The parties further acknowledge that the assistance to be received is grant assistance, and that no federal agency collaboration, participation or intervention in the activities of the Tribe during its activities pursuant to the grant is to occur, except to the minimum extent necessary to ensure that funds are spent for the purposes for which they are awarded, or as requested by the Tribe.

STATUS: AGREEMENT ON SECOND NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

A. Special Restrictive Conditions Disfavored. The parties acknowledge that under 10 C.F.R. § 600.105, DOE may apply award conditions on grants to the Tribe that are more restrictive than those generally applicable. The parties acknowledge further that such conditions may be imposed only in accordance with § 600.105. The parties agree that, if DOE has applied such a condition to the Tribe's grant, the costs of the necessary corrective actions identified by DOE under § 600.105(b), shall be paid for out of the Nuclear Waste Fund.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

B. Continuation Awards. The Tribe may request from DOE that any specific project of the Tribe be funded on a multi-year basis. The parties agree that certain of the Tribe's activities are of the type that "require an extended funding commitment by DOE and for which an annual continuation review is inappropriate."

DOE agrees, therefore, that a single budget period exceeding twelve (12) months may be proposed by the Tribe and will be approved if all other grant application requirements are met.

Should the Hanford Site be eliminated from consideration under Section 118(b) (5) of the NWPA during a period covered by a budget period exceeding twelve months, the parties shall commence negotiations within forty-five (45) days on revisions to the Tribe's grant to comply with Section 118(b) (5).

DOE PROPOSAL

B. Continuation Awards. The Tribe may request from DOE that any specific project of the Tribe be approved on a multi-year basis with annual funding provided.

STATUS: BOTH PARTIES TO REVIEW AND RESPOND BY 9/9/87

NEZ PERCE PROPOSAL

C. No Cost Sharing. The parties agree that the Nuclear Waste Policy Act requires that all costs to the Tribe arising from its activities undertaken in connection with matters relating to the disposal of high-level nuclear waste shall be paid from the Nuclear Waste Fund. The Tribe, therefore, shall not be required to bear any of the cost of such activities.

DOE PROPOSAL

C. No Cost Sharing. The parties agree that the Nuclear Waste Policy Act requires that all allowable costs to the Tribe arising from its activities undertaken in connection with matters relating to the disposal of high-level nuclear waste shall be paid from the Nuclear Waste Fund. The Tribe, therefore, shall not be required to bear any of the allowable costs of such activities.

STATUS: AGREEMENT ON DOE PROPOSAL

NEZ PERCE PROPOSAL

D. Unobligated Balances. The parties agree that DOE may authorize all or part of any unobligated balance remaining at the end of a budget period for expenditure by the Tribe in the subsequent budget period. Where an unobligated balance remains and work is not yet complete on the project, DOE shall approve the use of such unobligated balance freely. Such unobligated balances shall not be offset in the subsequent budget period against the new DOE funding provided for the subsequent budget period.

DOE PROPOSAL

D. Unobligated Balances. The parties agree that DOE may authorize all or part of any unobligated balance remaining at the end of a budget period for expenditure by the Tribe in the subsequent budget period. Where an unobligated balance remains and work is not yet complete on the project, DOE shall approve the use of such unobligated balance to complete the project work. Such unobligated balances shall not be offset in the subsequent budget period against the new DOE funding provided for other program activities in the subsequent budget period.

STATUS: NEZ PERCE TO REVIEW AND RESPOND BY 9/9/87

NEZ PERCE PROPOSAL

E. Financial Management Systems. DOE agrees to provide grant money from the Nuclear Waste Fund to the Tribe for the purpose of reviewing tribal financial management systems for their compliance with applicable regulations, including, without limitation, the compliance of tribal financial management systems with OMB Circular A-87 and attachments, and OMB Circular A-102 and attachments.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

F. Payment. The parties agree that advance payments shall be made to the Tribe through a letter of credit. The Tribe agrees to comply with Treasury Circular 1075 guidelines and instructions from the administering payment office in making withdrawals under the letter of credit and in reporting on cash disbursements and balances.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

G. Budget and Project Revisions. The parties anticipate that, as the program progresses, projects, schedules, and deadlines will change regularly. Moreover, the parties agree that new issues requiring technical analyses by the Tribe will arise frequently during the course of the program. The parties acknowledge, therefore, that budget and project revisions will be necessary from time to time. DOE agrees that where the Tribe requests a budget change or a project change during the course of any budget period, DOE will process such revision within sixty (60) days. If DOE is unable to approve such revisions, it shall provide the Tribe with a detailed and final statement of reasons why the revisions cannot be approved, and provide any and all assistance needed by the Tribe to make any necessary corrections to the proposed revisions within thirty (30) days. Should DOE fail to approve or disapprove a proposed revision within sixty (60) days, the revision shall be deemed approved and the Tribe may proceed as if DOE had approved the revision. Costs incurred while engaging in activities within the scope of the requested revision shall be deemed allowable for any and all purposes.

DOE further agrees that when a budget or project revision on grant assistance provided under the NWPA is submitted, such revisions shall receive the immediate attention of the Contract Officer before any other matters pending before the Contract Officer.

DOE PROPOSAL

G. Budget and Project Revisions. The parties anticipate that, as the program progresses, projects, schedules, and deadlines will change regularly. Moreover, the parties agree that new issues requiring technical analyses by the Tribe will arise frequently during the course of the program. The parties acknowledge, therefore, that budget and project revisions will be necessary from time to time. DOE agrees that where the Tribe requests a budget change or a project change during the course of any budget period, DOE will process such revision within sixty (60) days. If DOE is unable to approve such revisions, it shall provide the Tribe with a detailed and final statement of reasons why the revisions cannot be approved, and provide any and all assistance needed by the Tribe to make any necessary corrections to the proposed revisions within thirty (30) days subsequent to the communication of the final statement of reasons. Should DOE fail to approve or disapprove a proposed revision within sixty (60) days, a meeting shall be held within five (5) working days to resolve the issue.

The Contract officer will acknowledge in writing receipt of any budget or project revision from the Tribe within five (5) working days of receipt.

STATUS: BOTH PARTIES TO REVIEW AND RESPOND BY 9/9/87

NEZ PERCE PROPOSAL

H. Performance Reports.

The Tribe agrees to submit quarterly performance reports under § 600.115(c)(1). The parties agree that the Tribe will not be required to submit any other performance reports, including the Management Summary Report referred to in § 600.115(f).

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

I. Financial Reports. The parties agree that the Tribe will provide the information required to be contained in a financial report under § 600.116 in machine usable format or computer printout instead of on the prescribed report forms. The Tribe shall not be required to use these forms to obtain financial information from a sub-grantee.

DOE PROPOSAL

I. Financial Reports. The parties agree that the Tribe will provide the information required to be contained in a financial report under § 600.116 in a mutually acceptable machine usable format or computer printout instead of on the prescribed report forms. The Tribe shall not be required to use these forms to obtain financial information from a sub-grantee.

STATUS: AGREEMENT ON DOE PROPOSAL

NEZ PERCE PROPOSAL

J. Procurement Under Grants and Sub-grants. The Tribe will submit to the Department of Interior a newly created procurement system. The purpose of the submission to the Department of Interior is to have the procurement system certified as being in compliance with OMB Circular A-102. Should the Department of Interior so certify, DOE shall rely on such certification for a period of 24

months, and shall not interfere in the Tribe's procurement of goods and services, so long as such procurement is accomplished in accordance with such tribal procurement system.

STATUS: DOE TO REVIEW AND RESPOND BY 9/9/87

ARTICLE VII. GRANT REVIEW SCHEDULE

NEZ PERCE PROPOSAL

The parties agree to be bound by the following schedule in the submission, review, and approval of applications by the Tribe for grant financial assistance from the Nuclear Waste Fund.

A. Submission of Grant Application. The Tribe shall submit its application for financial assistance on or before August 31st of any given year for the financial assistance needed for the following calendar year. BWIP shall, within five (5) days of receipt of the grant application, acknowledge in writing the receipt of the application and set a schedule therein for the review of that application. Such schedule shall not exceed a period of ninety (90) days.

STATUS: BOTH PARTIES TO REVIEW AND RESPOND BY 9/9/87

NEZ PERCE PROPOSAL

B. BWIP Review. BWIP shall analyze the grant application and prepare and transmit written recommendations to headquarters within thirty (30) days of receipt of the grant application. Said analyses and recommendations shall be final, and BWIP shall not at a later date raise any objections or concerns that are not raised in the initial analyses and recommendations. BWIP shall send to the Tribe a copy of the analyses and recommendations sent to headquarters simultaneously with the transmission of said analyses and recommendations to headquarters.

DOE PROPOSAL

B. BWIP Review. BWIP shall analyze the grant application and prepare and transmit written recommendations to headquarters within thirty (30) days of receipt of the grant application. Said analyses and recommendations shall be transmitted to headquarters and BWIP shall make every attempt not to raise at a later date any objections or concerns that are not raised in the initial analyses and recommendations. BWIP shall meet with the Tribe to discuss the analyses and recommendations concerning the grant prior to sending them to headquarters.

STATUS: NEZ PERCE TO REVIEW AND RESPOND BY 9/9/87

NEZ PERCE PROPOSAL

C. Headquarters Review. DOE headquarters shall review the analyses and recommendations of BWIP within fourteen (14) days of the date on which BWIP transmits the analyses and recommendations to head-quarters. Any concerns or objections headquarters may have to the grant application or to the analyses and recommendations of BWIP shall be communicated in writing to BWIP and to the Tribe within the same fourteen (14) day period. Any objections or concerns identified by headquarters shall constitute the final list of such objections and concerns, and no further objections or concerns may be raised at a later date.

DOE PROPOSAL

C. Headquarters Review. DOE headquarters shall review the analyses and recommendations of BWIP within fourteen (14) days of the date on which BWIP transmits the analyses and recommendations to headquarters. Any concerns or objections headquarters may have to the grant application or to the analyses and recommendations of BWIP shall be communicated in writing to BWIP within the same fourteen (14) day period. Headquarters shall make every attempt not to raise at a later

date any objections or concerns that are not raised in the analyses and recommendations communicated to BWIP.

STATUS: NEZ PERCE TO REVIEW AND RESPOND BY 9/9/87

NEZ PERCE PROPOSAL

D. Joint Tribal/BWIP/Headquarters Review. In the event any concerns or objections remain outstanding after review by headquarters of the Tribe's grant application, representatives of the Tribe, BWIP, and headquarters shall meet within seven (7) days of the expiration of the fourteen (14) day period described in Section C to resolve any remaining concerns. Said meeting shall be conducted at the offices of the Nez Perce Nuclear Waste Policy Act Program. The parties agree that DOE and the Tribe will give their best efforts to resolving all outstanding concerns or objections at said meeting. Based upon the out-come of that meeting, BWIP shall prepare the necessary documents to finalize the financial assistance award, and the proposed award documents shall be transmitted to headquarters within five (5) days of the meeting between the Tribe, BWIP, and headquarters. Headquarters shall review and concur in the award documents within seven (7) days of their transmission by BWIP.

DOE PROPOSAL

D. Joint Tribal/BWIP/Headquarters Review. In the event any concerns or objections remain outstanding after review by headquarters of the Tribe's grant application, representatives of the Tribe, BWIP, and headquarters shall meet within seven (7) days of the expiration of the fourteen (14) day period described in Section C to resolve any remaining concerns. Said meeting shall be conducted at the offices of the Nez Perce Nuclear Waste Policy Act Program. The parties agree that DOE and the Tribe will give their best efforts to resolving all out-

standing concerns or objections at said meeting. Based upon the out-come of that meeting, BWIP shall prepare the necessary documents to finalize the financial assistance award, and the proposed award documents shall be transmitted to headquarters within seven (7) days of the meeting between the Tribe, BWIP, and headquarters. Headquarters shall review and concur in the award documents within seven (7) days of their transmission by BWIP.

STATUS: NEZ PERCE TO REVIEW AND RESPOND BY 9/9/87

NEZ PERCE PROPOSAL

E. Notice of Financial Assistance Awards. Within seven (7) days of the receipt of final concurrence from headquarters on the financial assistance award documents, BWIP shall issue to the Tribe a Notice of Financial Assistance Award embodying the scope of activities agreed upon at the meeting of the Tribe, BWIP, and headquarters described in Section D.

STATUS: NEZ PERCE TO REVIEW AND RESPOND BY 9/9/87

NEZ PERCE PROPOSAL

F. Follow-up Schedule. Should any disagreement remain between the Tribe and DOE concerning the financial assistance award made under Section E, BWIP shall meet with the Tribe at the offices of the Nez Perce Nuclear Waste Policy Act Program within seven (7) days to discuss and resolve any issues remaining. In the event agreement is not reached on such issues at said meeting, the Tribe shall have the option of continuing informal discussions with BWIP, or pursuing any administrative or judicial remedies it may have. For purposes of pursuing further administrative or judicial remedies, the Notice of Financial Assistance Award

referred to in Section E shall be deemed final agency action, notwithstanding any informal discussions that may be continuing.

If informal discussions between the Tribe and BWIP fail to produce agreement, the Tribe also shall have the option of addressing the matter to the Director of the Office of Civilian Radioactive Waste Management. Said Director shall issue a decision on the matter within seven (7) days of receipt of notice from the Tribe of its desire that he intervene in the matter.

Should the Tribe and BWIP agree to a resolution of issues remaining after the notice of the Financial Assistance Award has been approved, BWIP shall prepare new award documents reflecting the agreement within five (5) days and transmit same to headquarters and to the Tribe. Headquarters shall review and approve or disapprove said documents within seven days of their receipt from BWIP.

DOE PROPOSAL

F. Follow-up Schedule. Should any disagreement remain between the Tribe and DOE concerning the financial assistance award made under Section E, BWIP shall meet with the Tribe at the offices of the Nez Perce Nuclear Waste Policy Act Program within seven (7) days to discuss and attempt to resolve any issues remaining. In the event agreement is not reached on such issues at said meeting, the Tribe shall have the option of continuing informal discussions with BWIP, or pursuing any administrative or judicial remedies it may have. For purposes of pursuing further administrative or judicial remedies, the Notice of Financial Assistance Award referred to in Section E shall be deemed final agency action, notwithstanding any informal discussions that may be continuing.

If informal discussions between the Tribe and BWIP fail to produce agreement, the Tribe also shall have the option of addressing the matter to the Director of the Office of Civilian Radioactive Waste Management. Said Director shall issue a

decision on the matter within fourteen (14) days of receipt of notice from the Tribe of its desire that he intervene in the matter.

Should the Tribe and BWIP agree to a resolution of issues remaining after the notice of the Financial Assistance Award has been approved, BWIP shall prepare new award documents reflecting the agreement within seven (7) days and transmit same to headquarters and to the Tribe. Headquarters shall review and approve or disapprove said documents within seven (7) days of their receipt from BWIP.

STATUS: NEZ PERCE TO REVIEW AND RESPOND BY 9/9/87

NEZ PERCE PROPOSAL

G. Effect of Failure to Meet Deadlines. Should the Tribe fail to meet the deadline for submission of its grant application, DOE may extend the schedule detailed in this Article by an amount of time equal to the amount of time by which the application was late. Should DOE fail to meet any deadline under this Article, the amount of time by which the schedule was exceeded shall be deducted from the amount of time available for the next step in the process. Should DOE fail to complete its review and issue a Notice of Financial Assistance Award within ninety (90) days of receipt of the Tribe's grant application, the application shall be deemed approved, and the Tribe may undertake any and all activities described in the application. No agency, office, bureau, department, or other entity of the United States may penalize, sanction, or otherwise commence any adverse action against the Tribe for the reason that said activities are beyond the scope of the grant. Nothing in this provision shall relieve the Tribe of its obligation to spend grant funds in accordance with applicable federal regulations.

H. Effect of Failure to Object. DOE acknowledges that it has, in its past relations with the Tribe, continually raised new concerns and objections to tribal

grant applications even after initial reviews have been completed. The parties agree that this practice has delayed Tribal implementation of programs ultimately found to be within the scope of grant assistance provided to the Tribe. In order to prevent this practice from recurring, DOE agrees that, the written analyses and recommendations prepared by BWIP under Section B of this Article shall constitute a final list of concerns and objections, and no further concerns or objections may be raised later in the process. In like fashion, the review of BWIP's analyses and recommendations by headquarters under Section C of this Article shall be final and headquarters shall raise no other objections or concerns in connection with the Tribe's grant assistance application.

DOE PROPOSAL

G. Timely Response

It is imperative that in order for the Tribe to meet its statutory responsibilities under the NWPA that adequate and timely financial assistance by the DOE be provided. Time is of the essence in such matters. The DOE will provide such timely financial assistance through diligent adherence to the procedures set forth in this Agreement. Failure to pursue such diligent adherence will adversely affect the Tribe's ability to fulfill its independent monitoring responsibilities under the NWPA and result in lost credit ability to the DOE. A delay in the overall scheduled of more than 20 days past the original 90 days will be considered by both parties "serious breach of good faith" and will require a letter of explanation, signed by the Director, OCRWM, and co-signed by the Manager, RL. This letter, to be accompanied by a corrective action plan, will be sent to the Tribal Chairman no later than ten (10) days following such breach.

STATUS: BOTH PARTIES TO REVIEW AND RESPOND BY 9/9/87

AGREEMENT
BETWEEN THE
NEZ PERCE TRIBE
AND THE
UNITED STATES DEPARTMENT OF ENERGY
GOVERNING THE NEGOTIATION
OF A
CONSULTATION AND COOPERATION AGREEMENT

THIS AGREEMENT, made and entered into this 6th day of August, 1987, between the Nez Perce Tribe (hereinafter "the Tribe"), by and through the Chairman of the Nuclear Waste Subcommittee (hereinafter "the Subcommittee") of the Nez Perce Tribal Executive Committee (hereinafter "the NPTEC"), and the United States Department of Energy (hereinafter "DOE"), by and through the Assistant Manager for Commercial Nuclear Waste, DOE Richland Operations Office (hereinafter "the Assistant Manager").

WITNESSETH:

1. Background; Purposes. The Nuclear Waste Policy Act of 1982 (hereinafter "the NWPA" or "the Act") directs the Secretary of Energy (hereinafter "the Secretary") to seek to enter into agreements with, inter alia, Indian tribes that have been designated by the Secretary of the Interior as "affected Indian tribes," to govern the process of consultation and cooperation between the parties during the conduct of DOE activities under the NWPA. The Tribe is an "affected Indian tribe" and has accepted the Secretary's invitation to begin negotiations on such a Consultation and Cooperation Agreement. The parties agree that procedures for the conduct of negotiations are necessary and desirable to expedite the progress of negotiations and to provide a clear record of events. To meet these goals, the parties agree to be bound by the procedures detailed in this agreement.

The parties recognize that no set of procedures can anticipate all circumstances that will arise during the course of negotiations, and this

agreement should be construed liberally to avoid devotion to procedure over substance and to achieve its purposes. Nevertheless, the failure of either party to abide by the letter and spirit of this agreement shall constitute good cause for the termination of negotiations.

2. Good Faith. The parties enter negotiations with the expectation of reaching a mutually satisfactory Consultation and Cooperation Agreement. As a showing of their good faith, the parties agree that negotiations will be terminated only for good cause. Good cause shall include, by way of explanation but not of limitation: material changes to the NWPA that alter the relationship between the Tribe and DOE; withdrawal of the Hanford Site from further consideration as a candidate site for a nuclear waste facility; failure to progress toward resolution of differences concerning the contents of a Consultation and Cooperation Agreement; bad faith on the part of either party; and the failure of either party to abide by the letter and spirit of the procedures detailed in this agreement.

3. Modifications. This agreement may be modified by the parties by a writing duly executed by the Chairman of the Subcommittee and the Assistant Manager.

4. Principles Governing Negotiations. The parties acknowledge the following principles as reflecting their respective and appropriate interests in the consultation and cooperation process:

A. As acknowledged in the President's Policy Statement of January, 1983, a government-to-government relationship exists between the United States and the Tribe under which the United States is obliged to protect and enhance the proprietary and governmental rights of the Tribe;

B. By virtue of its treaties with the United States, the Tribe has prior and paramount reserved rights to certain natural resources, and the Department is obliged to take all reasonable measures to avoid harm to those resources;

C. The Tribe has a critical interest in protecting the natural resources in the Tribe's possessory and usage rights area, and Departmental activities should be designed to avoid adverse impacts on those resources;

D. The Tribe has a critical interest in maintaining the environmental integrity of the Columbia River and its tributaries, and Departmental activities should be designed to avoid adverse impacts on the River;

E. The provisions of Section 117(c) of the NWPA do not constitute a limitation on the contents of a Consultation and Cooperation Agreement, and all issues arising from the NWPA program are open for discussion;

F. The Tribe's role in the NWPA program is one of independent oversight directed at protection of Tribal treaty rights, the health and welfare of Tribal constituents, the social and economic well-being of Tribal constituents, and the environmental quality of Tribal interest areas;

G. As a result of the trust relationship existing between the Tribe and the United States, ambiguities in the Act that cannot be resolved by referring to other sections of the Act or to the legislative history are to be construed in favor of the Tribe;

H. The NWPA is the vehicle by which Congress has chosen to resolve the hazards posed by the existence of high-level radioactive waste, and the activities of both parties must be guided by the NWPA;

I. The process of consultation and cooperation envisioned by Congress in Section 117(c) of the NWPA is one of honest, open, and comprehensive consultation and cooperation;

J. The consultation and cooperation process should be carried on in an orderly, predictable, and fair manner, and is assisted by the existence of a Consultation and Cooperation Agreement between the Tribe and DOE; and

K. Tribal and DOE activities under the NWPA must be conducted with due regard for the statutory obligation of DOE to develop a permanent repository and for DOE's role as trustee of the Nuclear Waste Fund.

5. Official Record of Negotiations

A. A Court Reporter certified by the state in which any negotiating session occurs shall record the proceedings of such negotiating session. Said Court Reporter shall be required to deliver a transcript of each negotiating session to a designated member of each negotiating team within seven (7) days of the date on which the session occurred. After editing by the negotiating teams for clerical errors, which shall be completed within fourteen (14) days of their receipt, an original and two (2) copies of the corrected transcript shall be delivered to each negotiating team. Said transcript shall become the official record of the negotiating session and may be relied upon in any court, tribunal, or forum in discerning the intent of the parties in relation to any provision of any Consultation and Cooperation Agreement between the parties.

B. By mutual consent of the parties, and upon the order of the chair, discussions may be held off the record at any time during a negotiating session.

6. Sites of Negotiating Sessions. The parties shall host negotiating sessions on an alternating basis. The party hosting a session will name a member of its negotiating team to chair the session and shall have the right to select

the site of the session. The parties agree that sites other than the offices or places of business of members of the negotiating teams will allow the negotiating teams to devote their full attention to the negotiations. The parties, therefore, will agree to other mutually convenient sites.

7. Negotiating Teams. The negotiating team of the Tribe consists of: Allen V. Pinkham, NPTEC Chairman; Del T. White, NPTEC Nuclear Waste Subcommittee Chairman; Ronald T. Halfmoon, Program Manager, Nez Perce Nuclear Waste Policy Act Program ("NP-NWPA"); B. Kevin Gover, Special Counsel, NP-NWPA; and John Hutchins, Council of Energy Resource Tribes. The negotiating team of DOE consists of: John Anttonen, Assistant Manager for Commercial Nuclear Waste, DOE Richland Operations Office; O. Lee Olson, Acting Director, Basalt Waste Isolation Division; Max Powell, Institutional Liaison, Basalt Waste Isolation Division; Eugene Pride, Chief Counsel, DOE Richland Operations Office; and Barry G. Gale, Chief, Economic and Intergovernmental Analysis Branch, DOE Office of Civilian Radioactive Waste Management (hereinafter "OCRWM"). Each party reserves the right to designate persons to replace members of its negotiating team. The parties anticipate that only persons succeeding members of the negotiating teams in their current capacities within the organizational structure of the parties shall be named to the respective negotiating teams, provided that, in the event the capacity, title, or position of any member of either negotiating team should change, that change does not require his or her removal from the negotiating team, and his or her successor in capacity, title, or position does not become a member of the negotiating team of the Tribe or DOE absent the affirmative act to that effect of the NPTEC or the Assistant Manager, respectively.

8. Persons Attending Negotiating Sessions. Negotiating sessions shall be closed to the public. Only members of the negotiating teams may be present

without the express consent in writing of each party, provided that members of the NPTEC, the NP-NWPA Intergovernmental Coordinator, one member of the Tribe's Multidisciplinary Team, the Director of the Portland Area Office of the Bureau of Indian Affairs or his designate, and the Director of the Portland Area Office of the Indian Health Service or his designate may attend any negotiating session as observers; and provided further that either party may request of the other in writing, at least seven (7) days prior to such negotiating session, permission to allow (an)other person(s) to attend a negotiating session as (an) observer(s) or participant(s) and such permission shall be given freely.

9. Quorum. The presence of three (3) members of each negotiating team shall constitute a quorum. Negotiating sessions may proceed only when a quorum is present.

10. Schedule. The parties agree to the desirability of completing a Consultation and Cooperation Agreement on or before December 31, 1988. To that end, the parties agree to conduct one negotiating session every six (6) weeks from the date of this agreement to December 31, 1988, except that any session may be cancelled or postponed with the mutual consent of the parties. Negotiating sessions shall be scheduled to last two (2) days. On the first day of a negotiating session, the session shall commence not prior to 1:00 p.m. local time.

The parties agree to the following dates for the first six (6) negotiating sessions:

August 5-6, 1987 (to be hosted by DOE)

September 9-10, 1987 (to be hosted by the Tribe)

October 21-22, 1987 (to be hosted by DOE)

December 10-11, 1987 (to be hosted by the Tribe)

January 20, 22, 1988 (to be hosted by DOE)

March 10-11, 1988 (to be hosted by the Tribe).

11. Agendas for Negotiating Sessions. The items for discussion at any negotiating session shall be communicated in writing at least two (2) weeks prior to such session by the host party. The parties anticipate that the items for discussion at a given session shall be mutually agreed upon at the previous session. Items not on the agenda may be discussed at a given session only with the mutual consent of the parties, which consent may be withdrawn by either party at any time during the session.

12. Recording Proposals and Counterproposals. The parties anticipate that the Tribe will be responsible for making most formal proposals for provisions to be included in the Consultation and Cooperation Agreement. Either party, however, is free to present formal proposals. Any proposal shall be marked clearly to reflect the identity of the party submitting the proposal, the issue to which the proposal is directed, and the date upon which the proposal is mailed or delivered to the other party. Each such proposal or counterproposal shall be made a part of the record at any negotiating session at which the issue to which the proposal is directed is discussed. A proposal shall be deemed proper and open for discussion only when made in writing and mailed or delivered to each member of the other party's negotiating team.

The parties should provide proposals and counterproposals at least one (1) week prior to the negotiating session at which such proposal or counterproposal is to be discussed.

13. Preliminary Ratification. When the negotiating teams have reached agreement on a provision, that provision shall be transmitted to the NPTEC and the Director of the DOE Office of Geologic Repositories (hereinafter "OGR") for their

review and preliminary approval. While such review and preliminary approval shall not constitute the final approval of the parties, or render the provision an Interim Agreement under Section 15 herein, or otherwise bind the parties to the provision, the parties agree that such review and preliminary approval indicates a strong likelihood that the provision ultimately will be approved and included in the Consultation and Cooperation Agreement between the parties. The NPTEC and the Director of OGR shall complete their review and render their written preliminary approval or disapproval within thirty (30) days of the negotiating session at which the negotiating teams reached agreement on the provision.

14. Deadlock; Communication of Concerns to Higher Levels of Authority

A. If an item has been on the agenda and discussed at three (3) negotiating sessions, and the negotiating teams have not reached agreement concerning that item, either party, or both of them, may declare a deadlock on that item and invoke the procedures described in Subsections 14.B, 14.C, 14.D, or 14.E herein. A declaration of deadlock on an item shall not prevent discussion of other items.

B. Upon the declaration of a deadlock as to a given item, the parties may agree to table the item. The tabling of an item shall prevent discussion of the item during the two (2) negotiating sessions immediately following the declaration of deadlock.

C. If the Tribe declares a deadlock on any item, it may, within fifteen (15) days of the declaration, submit to the Director of OGR a written petition for his intervention in the negotiations. Such written petition shall recite the provision proposed by the Tribe's negotiating team, the response (including any proper counterproposal) of the DOE negotiating team, and argument supporting the Tribe's proposal. A copy of the petition shall be delivered to each member of

DOE's negotiating team. The DOE negotiating team shall respond in writing within fifteen (15) days of receipt of the Tribe's petition, and shall deliver a copy of its response to each member of the Tribe's negotiating team. The Tribe's negotiating team then may reply to said response within ten (10) days of receipt of the response and shall deliver a copy of said reply to each member of DOE's negotiating team. The Director of OGR shall respond in writing to the Tribe's petition within thirty (30) days of receipt of the Tribe's reply and shall explain in detail the reasons for his decision. The decision of the Director of OGR shall not be binding on the Tribe, and the Tribe may accept or reject the provision proposed by the Director.

D. If DOE declares a deadlock on any item, it may, within fifteen (15) days of the declaration, submit to the NPTEC a written petition for its intervention in the negotiations. Such written petition shall recite the provision proposed by DOE's negotiating team, the response (including any proper counteroffer) of the Tribe's negotiating team, and argument supporting DOE's proposal. A copy of the petition shall be delivered to each member of the Tribe's negotiating team. The Tribe's negotiating team shall respond in writing within fifteen (15) days of receipt of DOE's petition and shall deliver a copy of its response to each member of DOE's negotiating team. DOE's negotiating team then may reply to said response within ten (10) days of receipt of that response and shall deliver a copy of said reply to each member of the Tribe's negotiating team. The NPTEC shall respond in writing to DOE's request within thirty (30) days of receipt of DOE's reply and shall explain in detail the reasons for its decision. The decision of the NPTEC shall not be binding on DOE, and DOE may accept or reject the provision proposed by the NPTEC.

E. Should differences continue to exist between the parties after the completion of the process described in Subsections 14.C and 14.D, whichever should apply, the parties may mutually agree upon arbitration proceedings. Within thirty (30) days after notification by the Director of OGR or the NPTEC of his or its decision under Subsection 14.C or 14.D, respectively, the negotiating teams shall appoint as the hearing officer one (1) mutually agreed upon, independent, recognized expert in the particular field involved. Within fifteen (15) days after such appointment, the parties each shall submit to the hearing officer a written statement of their respective proposals and the bases therefor. The hearing officer may hear oral presentations at his discretion. Nothing herein shall preclude the parties from asking for and receiving from the hearing officer a reasonable extension of the time limit for good cause. The hearing officer shall compile and maintain an accurate record of all written submissions and a transcript of any oral presentations made to him. The hearing officer shall consider all written submissions and oral presentations in the record and shall make written recommendations on the matters before him. The hearing officer shall transmit his written recommendations along with a copy of the record and transcript to the Director of OGRWM and to the negotiating teams within thirty (30) days following his receipt and consideration of all written submissions and authorized oral presentations.

Within ten (10) days following receipt of the hearing officer's written recommendations, the record, and the transcript, the negotiating teams may submit their own written comments and recommendations to the Director of OGRWM, which comments and recommendations shall be made a part of the record. Each party shall simultaneously transmit a copy of any such comments and recommendations to the other party. Within twenty-five (25) days following receipt of the written

recommendations of the hearing officer, the record, and the transcript, the Director of OCRWM shall issue a written decision on the matters before him, which decision shall include a description of the basis in the record for such decision. The responsibility of issuing a decision under this subsection may not be delegated by the Director of OCRWM. Copies of the decision shall be transmitted to the parties. The decision of the Director of OCRWM shall constitute the final action of DOE. Such decision shall not be binding on the Tribe, and the Tribe shall remain free to accept or reject the decision of the Director of OCRWM.

F. Nothing herein waives, modifies, abrogates, limits, or otherwise affects the right of the Tribe to request information under Section 117(a)(2) of the NWPA.

15. Interim Agreements. Prior to the completion of negotiations on the contents of a Consultation and Cooperation Agreement, the parties may agree to execute and implement Interim Agreements on items upon which the parties have reached a mutually satisfactory accord. Any such Interim Agreement shall be entered into under the authority of Section 117(c) of the NWPA and shall be binding and enforceable in accordance therewith. Said Interim Agreement(s) shall be signed by the Chairman of the NPTEC and the Director of OGR for the Tribe and DOE, respectively.

The parties agree that the provision of financial assistance grants to the Tribe from the Nuclear Waste Fund is an item of urgent importance and should be the subject of an Interim Agreement. The parties further agree that they shall devote their best efforts to finalizing such an Interim Agreement before November 30, 1987.

16. Ancillary Working Agreements. The Consultation and Cooperation Agreement to be negotiated by the parties is intended to endure throughout the

process of characterization and the possible licensing, construction, operation, decommissioning, closure, and post-closure monitoring of a nuclear waste facility at the Hanford Site. The details of the consultation and cooperation process during any given phase of the NWPA program shall be left to ancillary agreements between the parties. Such ancillary agreements shall be incorporated by reference into the Consultation and Cooperation Agreement. An ancillary agreement governing consultation and cooperation during the characterization phase will be executed simultaneously with the Consultation and Cooperation Agreement. Nothing herein shall prevent the parties from executing further ancillary agreements during the characterization phase.

17. Expenses of Negotiations. The costs of all activities of the parties pertaining to this agreement shall be paid from the Nuclear Waste Fund.

18. Definitions. As used in this agreement, the term:

A. "Consultation and Cooperation Agreement" means a binding, written agreement between the Tribe and the United States entered into pursuant to Section 117(c) of the NWPA;

B. "NPTEC" means the Nez Perce Tribal Executive Committee, the governing body of the Tribe;

C. "Nuclear waste facility" means a repository, a monitored retrievable storage facility, a test and evaluation facility, or an interim federal storage facility, as those terms are used and defined in the NWPA;

D. "Nuclear Waste Fund" means the Nuclear Waste Fund established in Section 302(c) of the NWPA;

E. "NWPA" means the Nuclear Waste Policy Act of 1982, Pub. L. 97-425, 96 Stat. L. 2201-2263, 42 U.S.C. Sections 10101-10226;

F. "OCRWM" means the Office of Civilian Radioactive Waste Management established in Section 304(a) of the NWPA;

G. "OGR" means the Office of Geologic Repositories of OCRWM;

H. "Secretary" means the Secretary of Energy;

I. "Subcommittee" means the Nuclear Waste Subcommittee of the NPTEC;

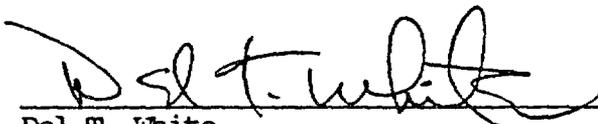
and

J. "Tribe" means the Nez Perce Tribe, an Indian tribal government whose members are eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians.

WHEREFORE:

The duly authorized representatives of the parties have set their hands and seals hereunto, and this agreement becomes effective on the 6th day of August, 1987.

FOR THE NEZ PERCE TRIBE:



Del T. White
NPTEC Nuclear Waste Subcommittee Chairman

Date: Aug 6, 1987

FOR THE UNITED STATES DEPARTMENT OF ENERGY:



John Anttonen
Assistant Manager for Commercial Nuclear Waste
Richland Operations Office

Date: Aug. 6, 1987

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To: R.D. Dwyer

and Cook

Rob MacDougal

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Dr. Robert MacDougal MS & PPS S
HLSE

MEMORANDUM

TO: Tribal/State Program Managers

FROM: Kevin Gover, Counsel 
Nez Perce NHPA Program

RE: Status of Nez Perce C & C Negotiations

DATE: August 10, 1987

Attached for your information are two documents relating to the Nez Perce Tribe's C & C negotiations with DOE. The first is an agreement on negotiating procedures executed on August 6, 1987, by the Chairmen of the respective negotiating teams. The second is a report on the outcome of our first formal negotiating session with DOE on August 5-6, 1987, showing our proposals, DOE's responses, and any provisions agreed upon.

Overall, I believe significant progress was made in the first session. DOE's concerns with our proposals generally were principled and reasonable, if not always meritorious. We were able to negotiate several provisions guaranteeing tribal rights well beyond those acknowledged in previous DOE policy pronouncements. We are cautiously optimistic that most if not all remaining issues can be resolved at our next negotiating session on September 9-10.

Notwithstanding the foregoing, we should not make too much of the progress. The Tribe's proposals were relatively modest, designed primarily to eliminate delay in the award of grants and undue interference in their administration. DOE long ago conceded the desirability of these goals, and could not oppose responsibly reasonable proposals directed at their attainment. Moreover, the most difficult issues remain unresolved.

Your views on these items are welcome and appreciated.

CONSULTATION AND COOPERATION AGREEMENT

BETWEEN

THE NEZ PERCE TRIBE

AND

THE UNITED STATES OF AMERICA

GOVERNING THE PROVISION OF

FINANCIAL ASSISTANCE FROM THE NUCLEAR WASTE FUND

This Consultation and Cooperation Agreement (hereinafter, "Agreement") is made and entered into this ____ day of _____, 1987, by and between the Nez Perce Tribe, a federally-recognized Indian tribe (hereinafter, "the Tribe"), and the United States of America, by and through the U.S. Department of Energy (hereinafter, "DOE"), under the authority of Section 117(c) of the Nuclear Waste Policy Act of 1982 (hereinafter, "the NWPA" or "the Act"):

WITNESSETH:

ARTICLE I. STATEMENT OF PRINCIPLES

The parties agree that the following principles shall govern the provision of financial assistance to the Tribe from the Nuclear Waste Fund.

NEZ PERCE PROPOSAL

A. The NWPA establishes a relationship between DOE and affected tribes and states which is unlike the relationship between DOE and any other persons or entities to whom DOE provides financial assistance. The rules, regulations and

instruments employed in providing financial assistance to the Tribe must reflect this unique relationship.

DOE PROPOSAL

A. The NWPA establishes a relationship between DOE and affected tribes and states which is unlike the relationship between DOE and any other persons or entities to whom DOE provides financial assistance. The promulgation and interpretation of the rules, regulations and instruments employed in providing financial assistance to the Tribe must reflect this unique relationship.

STATUS: AGREEMENT ON DOE PROPOSAL

NEZ PERCE PROPOSAL

B. DOE acts as a fiduciary in administering the Nuclear Waste Fund. The Tribe has a similar responsibility in: (1) carrying out activities with public resources, and (2) developing an oversight capability that will enable it to identify and assist in the resolution of potential impacts on the public health and safety, the economic and social well-being of the public, and the environment, that may result from the development or operation of a repository for the disposal of high-level radioactive waste and spent nuclear fuel.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

C. The Tribe acts under a public trust equivalent to that of DOE in meeting the objectives and mandates of the NWPA.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

D. Without assistance from the Nuclear Waste Fund, the Tribe cannot participate effectively in the NHPA process. Any effort to limit, withhold or seek repayment of funds may chill expressions of concern by the Tribe and negatively affect the Tribe's efforts to protect the public health and safety, the social and economic well-being of the public, and the environment.

DOE PROPOSAL

D. Without assistance from the Nuclear Waste Fund, the Tribe cannot participate effectively in the NHPA process. Every effort will be made, consistent with the NHPA and the Tribe's responsibilities thereunder, to support the Tribe's efforts to protect the public health and safety, the social and economic well-being of the public, and the environment.

SECOND NEZ PERCE PROPOSAL

D. Without assistance from the Nuclear Waste Fund, the Tribe cannot participate effectively in the NHPA process. Inflexible and restrictive applications of rules and regulations governing financial assistance to the Tribe may chill expressions of concern by the Tribe and thereby diminish the scope and quality of Tribal participation. Every effort will be made, therefore, consistent with the NHPA and the Tribe's responsibilities thereunder, to support the Tribe's efforts to protect the public health and safety, the social and economic well-being of the public, and the environment.

STATUS: AGREEMENT ON SECOND NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

E. Because the NHPA established the Tribe in an independent oversight function with regard to DOE activities, DOE's involvement in the administration

and management of grants to the Tribe should be only as much as is necessary to ensure that funds are spent for the purposes for which they are awarded.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

F. As a result of the special federal-tribal relationship, a number of federal statutes provide unique opportunities for flexibility in the processes of awarding and administering financial assistance to the Tribe. These statutes should be used flexibly and creatively to tailor DOE's administration of the Nuclear Waste Fund to the Tribe's situation.

SECOND NEZ PERCE PROPOSAL

F. As a result of the special federal-tribal relationship, a number of federal statutes provide unique opportunities for flexibility in the processes of awarding and administering financial assistance to the Tribe. These statutes should be used as models for the provision of financial assistance to the Tribe and to tailor DOE's administration of the Nuclear Waste Fund to the Tribe's situation.

STATUS: DOE TO REVIEW AND RESPOND BY 9/9/87

NEZ PERCE PROPOSAL

G. The timely award of grants to the Tribe is essential to its ability to conduct responsibly and effectively its oversight activities.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

H. The Tribe has broad discretion in defining the scope and extent of its independent oversight, monitoring and evaluation activities, but that discretion is subject to the need to protect the physical integrity of the candidate site and the availability of monies from the Nuclear Waste Fund.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

I. The Tribe stands as a separate nation within the federal system, enjoying an ongoing treaty relationship with the United States, and is not a sub-unit of the federal government.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

J. The Tribe and DOE recognize the need for program continuity, and grants to the Tribe must be maintained at a level commensurate with its oversight, monitoring and evaluation activities, and the status and pace of DOE's activities.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

ARTICLE II. PURPOSES AND SCOPE

NEZ PERCE PROPOSAL

A. Purposes. The purposes of this Agreement are:

- (1) To guarantee regularity, predictability and fairness in the provision and administration of financial assistance to the Tribe from DOE;

- (2) To define the duties of the parties in connection with the provision of financial assistance to the Tribe by DOE; and
- (3) To adjust DOE rules, regulations, procedures and guidelines on the provision of financial assistance to reflect the unique circumstances of the Tribe, its special relationship with the United States, and its independent oversight role in the NWPA process.

DOE PROPOSAL

A. Purposes. The purposes of this Agreement are:

- (1) To guarantee regularity, predictability and fairness in the provision and administration of financial assistance to the Tribe from DOE;
- (2) To define the duties of the parties in connection with the provision of financial assistance to the Tribe by DOE; and
- (3) To ensure interpretations of DOE rules, regulations, procedures and guidelines on the provision of financial assistance to reflect the unique circumstances of the Tribe, its special relationship with the United States, and its independent oversight role in the NWPA process.

SECOND NEZ PERCE PROPOSAL

A. Purposes. The purposes of this Agreement are:

- (1) To guarantee regularity, predictability and fairness in the provision and administration of financial assistance to the Tribe from DOE;
- (2) To define the duties of the parties in connection with the provision of financial assistance to the Tribe by DOE; and

- (3) To tailor DOE rules, regulations, procedures and guidelines on the provision of financial assistance and the application thereof to reflect the unique circumstances of the Tribe, its special relationship with the United States, and its independent oversight role in the NWPA process.

STATUS: AGREEMENT ON SECOND NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

B. Scope. This Agreement shall govern the provision of financial assistance from the Nuclear Waste Fund to the Tribe by DOE. This Agreement is to be read in conjunction with DOE rules, regulations, procedures and guidelines generally applicable to the provision of financial assistance. To the extent the provisions of this Agreement conflict with such rules, regulations, procedures and guidelines, the provisions of this Agreement shall control.

DOE PROPOSAL

B. Scope. This Agreement shall govern the provision of financial assistance from the Nuclear Waste Fund to the Tribe by DOE. This Agreement is to be read in conjunction and consistent with DOE rules, regulations, procedures and guidelines generally applicable to the provision of financial assistance. To the extent the provisions of this Agreement provide a more detailed interpretation of such rules, regulations, procedures and guidelines, the provisions of this Agreement shall govern.

STATUS: BOTH PARTIES TO REVIEW AND RESPOND BY 9/9/87

ARTICLE III. Authority for Agreement; Parties

NEZ PERCE PROPOSAL

A. Authority. This Agreement is made and entered into under the authority of Section 117 of the NWPA, and is intended to be binding and enforceable in accordance therewith. The authority of DOE to bind the United States is Section 117 of the NWPA. The authority of the Tribe to bind itself is its inherent sovereign power to conduct relations with the United States.

B. Parties.

1. United States Department of Energy. The United States is represented by the Director of the Office of Geologic Repositories of the Office of Civilian Radioactive Waste Management. The Director of OGR acts on behalf of the Secretary of Energy in executing this Agreement. The Director of OGR, in executing this Agreement, binds the United States, the Department of Energy, and all officers, employees, offices, agencies, other entities thereof, and their successors as to the matters covered by this Agreement.

2. Nez Perce Tribe. The Tribe is represented by the Chairman of the Nez Perce Tribal Executive Committee, the governing body of the Tribe. The Chairman, in executing this Agreement, acts with authority granted expressly by NPTEC, and binds the Tribe, the NPTEC, and all officials, agencies and other entities thereof.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

ARTICLE IV. Nuclear Waste Fund

NEZ PERCE PROPOSAL

The Nuclear Waste Fund established by the NWPA is composed of payments made by the generators and owners of high-level radioactive waste and spent nuclear fuel. The Fund was established to ensure that the costs of carrying out activi-

ties relating to the disposal of such waste and spent fuel will be borne by the persons responsible for generating such waste and spent fuel.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

ARTICLE V. Fundable Activities During Characterization

BWIP currently is characterizing the Hanford Site pursuant to Section 113 of the NWPA. The Tribal activities that shall be funded under Section 118(b) of the NWPA during the characterization phase include, but are not limited to:

- (1) Reviews of policy and technical reports, studies, analyses, computer models, plans, surveys, audits and other documents generated by any entity involved in the execution, enforcement, review, oversight, implementation or regulation of NWPA-related activities;
- (2) Activities directed at discovering any potential impacts of the location of a repository at Hanford on the public health and safety, the social and economic well-being of the public, the environment, and natural resources in the possessory and usage rights area of the Tribe;
- (3) Preparation of a report to the Secretary of the impacts discovered under paragraph (2); preparation of a request for technical and financial assistance designed to avoid, minimize, mitigate or provide compensation for adverse impacts discovered under paragraph (2); and preparation for negotiations under Section 118(b)(3)(B) to determine the nature and amount of such technical and financial assistance;
- (4) Monitoring, inspection and assessment of on-site activities related to the disposal of waste in an NWPA facility, of the site, of environmental monitoring, of environmental and cultural information gathering, of the

effects of characterization activities, and of scientific and technical tests and data collection;

- (5) Independent testing, data collection and studies, both on-site and off-site, relating to the suitability of the Hanford Site for a repository and the potential impacts associated with a repository, including impacts associated with transportation of waste to and from such a repository;
- (6) Conducting a public information program to provide information on NWPA activities to Tribal constituents, including the development and dissemination of information, maintenance and operation of public information offices, and conducting public meetings and hearings;
- (7) Coordinating activities and sharing information with officials, agencies, and entities of the United States, the several States, Indian tribes (whether or not such tribes are deemed "affected Indian tribes" under the NWPA), local governments, intergovernmental entities and all other entities having an interest in the conduct of the NWPA program;
- (8) Activities intended to lead to a consultation and cooperation agreement with DOE;
- (9) Activities authorized by or conducted pursuant to a consultation and cooperation agreement with DOE;
- (10) Commenting upon and expressing concerns and objections in connection with DOE activities, both at Hanford and nationally, while characterization is under way at any of the three sites now undergoing characterization; and
- (11) Activities directed at preparing for participation as a party or as an observer in proceedings of the Commission on any application for a

construction authorization or operating license for a facility in which high-level radioactive waste or spent fuel is to be handled, packaged, reprocessed, stored or disposed of.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

ARTICLE VI. Application of 10 C.F.R. Part 600

The parties acknowledge that 10 C.F.R. Part 600 provides a reasonable set of rules for the award, use and administration of grant funds, and the Tribe agrees to the application of 10 C.F.R. Part 600 to financial assistance received by the Tribe from DOE. The parties further acknowledge that the assistance to be received is grant assistance, and that no federal agency collaboration, participation or intervention in the activities of the Tribe pursuant to the grant is to occur, except as requested by the Tribe.

DOE PROPOSAL

ARTICLE VI. Application of 10 C.F.R. Part 600

The parties acknowledge that 10 C.F.R. Part 600 provides a reasonable set of rules for the award, use and administration of grant funds, and the Tribe agrees to the application of 10 C.F.R. Part 600 to financial assistance received by the Tribe from DOE. The parties further acknowledge that the assistance to be received is grant assistance, and that no federal agency collaboration, participation or intervention in the activities of the Tribe during its activities pursuant to the grant is to occur, except as requested by the Tribe or as it required to fulfill federal responsibilities under applicable laws and regulations.

SECOND NEZ PERCE PROPOSAL

ARTICLE VI. Application of 10 C.F.R. Part 600

The parties acknowledge that 10 C.F.R. Part 600 provides a reasonable set of rules for the award, use and administration of grant funds, and the Tribe agrees to the application of 10 C.F.R. Part 600 to financial assistance received by the Tribe from DOE. The parties further acknowledge that the assistance to be received is grant assistance, and that no federal agency collaboration, participation or intervention in the activities of the Tribe during its activities pursuant to the grant is to occur, except to the minimum extent necessary to ensure that funds are spent for the purposes for which they are awarded, or as requested by the Tribe.

STATUS: AGREEMENT ON SECOND NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

A. Special Restrictive Conditions Disfavored. The parties acknowledge that under 10 C.F.R. § 600.105, DOE may apply award conditions on grants to the Tribe that are more restrictive than those generally applicable. The parties acknowledge further that such conditions may be imposed only in accordance with § 600.105. The parties agree that, if DOE has applied such a condition to the Tribe's grant, the costs of the necessary corrective actions identified by DOE under § 600.105(b), shall be paid for out of the Nuclear Waste Fund.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

B. Continuation Awards. The Tribe may request from DOE that any specific project of the Tribe be funded on a multi-year basis. The parties agree that certain of the Tribe's activities are of the type that "require an extended funding commitment by DOE and for which an annual continuation review is inappropriate."

DOE agrees, therefore, that a single budget period exceeding twelve (12) months may be proposed by the Tribe and will be approved if all other grant application requirements are met.

Should the Hanford Site be eliminated from consideration under Section 118(b)(5) of the NWPA during a period covered by a budget period exceeding twelve months, the parties shall commence negotiations within forty-five (45) days on revisions to the Tribe's grant to comply with Section 118(b)(5).

DOE PROPOSAL

B. Continuation Awards. The Tribe may request from DOE that any specific project of the Tribe be approved on a multi-year basis with annual funding provided.

STATUS: BOTH PARTIES TO REVIEW AND RESPOND BY 9/9/87

NEZ PERCE PROPOSAL

C. No Cost Sharing. The parties agree that the Nuclear Waste Policy Act requires that all costs to the Tribe arising from its activities undertaken in connection with matters relating to the disposal of high-level nuclear waste shall be paid from the Nuclear Waste Fund. The Tribe, therefore, shall not be required to bear any of the cost of such activities.

DOE PROPOSAL

C. No Cost Sharing. The parties agree that the Nuclear Waste Policy Act requires that all allowable costs to the Tribe arising from its activities undertaken in connection with matters relating to the disposal of high-level nuclear waste shall be paid from the Nuclear Waste Fund. The Tribe, therefore, shall not be required to bear any of the allowable costs of such activities.

STATUS: AGREEMENT ON DOE PROPOSAL

NEZ PERCE PROPOSAL

D. Unobligated Balances. The parties agree that DOE may authorize all or part of any unobligated balance remaining at the end of a budget period for expenditure by the Tribe in the subsequent budget period. Where an unobligated balance remains and work is not yet complete on the project, DOE shall approve the use of such unobligated balance freely. Such unobligated balances shall not be offset in the subsequent budget period against the new DOE funding provided for the subsequent budget period.

DOE PROPOSAL

D. Unobligated Balances. The parties agree that DOE may authorize all or part of any unobligated balance remaining at the end of a budget period for expenditure by the Tribe in the subsequent budget period. Where an unobligated balance remains and work is not yet complete on the project, DOE shall approve the use of such unobligated balance to complete the project work. Such unobligated balances shall not be offset in the subsequent budget period against the new DOE funding provided for other program activities in the subsequent budget period.

STATUS: NEZ PERCE TO REVIEW AND RESPOND BY 9/9/87

NEZ PERCE PROPOSAL

E. Financial Management Systems. DOE agrees to provide grant money from the Nuclear Waste Fund to the Tribe for the purpose of reviewing tribal financial management systems for their compliance with applicable regulations, including, without limitation, the compliance of tribal financial management systems with OMB Circular A-87 and attachments, and OMB Circular A-102 and attachments.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

F. Payment. The parties agree that advance payments shall be made to the Tribe through a letter of credit. The Tribe agrees to comply with Treasury Circular 1075 guidelines and instructions from the administering payment office in making withdrawals under the letter of credit and in reporting on cash disbursements and balances.

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

G. Budget and Project Revisions. The parties anticipate that, as the program progresses, projects, schedules, and deadlines will change regularly. Moreover, the parties agree that new issues requiring technical analyses by the Tribe will arise frequently during the course of the program. The parties acknowledge, therefore, that budget and project revisions will be necessary from time to time. DOE agrees that where the Tribe requests a budget change or a project change during the course of any budget period, DOE will process such revision within sixty (60) days. If DOE is unable to approve such revisions, it shall provide the Tribe with a detailed and final statement of reasons why the revisions cannot be approved, and provide any and all assistance needed by the Tribe to make any necessary corrections to the proposed revisions within thirty (30) days. Should DOE fail to approve or disapprove a proposed revision within sixty (60) days, the revision shall be deemed approved and the Tribe may proceed as if DOE had approved the revision. Costs incurred while engaging in activities within the scope of the requested revision shall be deemed allowable for any and all purposes.

DOE further agrees that when a budget or project revision on grant assistance provided under the NWPA is submitted, such revisions shall receive the immediate attention of the Contract Officer before any other matters pending before the Contract Officer.

DOE PROPOSAL

G. Budget and Project Revisions. The parties anticipate that, as the program progresses, projects, schedules, and deadlines will change regularly. Moreover, the parties agree that new issues requiring technical analyses by the Tribe will arise frequently during the course of the program. The parties acknowledge, therefore, that budget and project revisions will be necessary from time to time. DOE agrees that where the Tribe requests a budget change or a project change during the course of any budget period, DOE will process such revision within sixty (60) days. If DOE is unable to approve such revisions, it shall provide the Tribe with a detailed and final statement of reasons why the revisions cannot be approved, and provide any and all assistance needed by the Tribe to make any necessary corrections to the proposed revisions within thirty (30) days subsequent to the communication of the final statement of reasons. Should DOE fail to approve or disapprove a proposed revision within sixty (60) days, a meeting shall be held within five (5) working days to resolve the issue.

The Contract officer will acknowledge in writing receipt of any budget or project revision from the Tribe within five (5) working days of receipt.

STATUS: BOTH PARTIES TO REVIEW AND RESPOND BY 9/9/87

NEZ PERCE PROPOSAL

H. Performance Reports.

The Tribe agrees to submit quarterly performance reports under § 600.115(c)(1). The parties agree that the Tribe will not be required to submit any other performance reports, including the Management Summary Report referred to in § 600.115(f).

STATUS: AGREEMENT ON NEZ PERCE PROPOSAL

NEZ PERCE PROPOSAL

I. Financial Reports. The parties agree that the Tribe will provide the information required to be contained in a financial report under § 600.116 in machine usable format or computer printout instead of on the prescribed report forms. The Tribe shall not be required to use these forms to obtain financial information from a sub-grantee.

DOE PROPOSAL

I. Financial Reports. The parties agree that the Tribe will provide the information required to be contained in a financial report under § 600.116 in a mutually acceptable machine usable format or computer printout instead of on the prescribed report forms. The Tribe shall not be required to use these forms to obtain financial information from a sub-grantee.

STATUS: AGREEMENT ON DOE PROPOSAL

NEZ PERCE PROPOSAL

J. Procurement Under Grants and Sub-grants. The Tribe will submit to the Department of Interior a newly created procurement system. The purpose of the submission to the Department of Interior is to have the procurement system certified as being in compliance with OMB Circular A-102. Should the Department of Interior so certify, DOE shall rely on such certification for a period of 24

months, and shall not interfere in the Tribe's procurement of goods and services, so long as such procurement is accomplished in accordance with such tribal procurement system.

STATUS: DOE TO REVIEW AND RESPOND BY 9/9/87

ARTICLE VII. GRANT REVIEW SCHEDULE

NEZ PERCE PROPOSAL

The parties agree to be bound by the following schedule in the submission, review, and approval of applications by the Tribe for grant financial assistance from the Nuclear Waste Fund.

A. Submission of Grant Application. The Tribe shall submit its application for financial assistance on or before August 31st of any given year for the financial assistance needed for the following calendar year. BWIP shall, within five (5) days of receipt of the grant application, acknowledge in writing the receipt of the application and set a schedule therein for the review of that application. Such schedule shall not exceed a period of ninety (90) days.

STATUS: BOTH PARTIES TO REVIEW AND RESPOND BY 9/9/87

NEZ PERCE PROPOSAL

B. BWIP Review. BWIP shall analyze the grant application and prepare and transmit written recommendations to headquarters within thirty (30) days of receipt of the grant application. Said analyses and recommendations shall be final, and BWIP shall not at a later date raise any objections or concerns that are not raised in the initial analyses and recommendations. BWIP shall send to the Tribe a copy of the analyses and recommendations sent to headquarters simultaneously with the transmission of said analyses and recommendations to headquarters.

DOE PROPOSAL

B. BWIP Review. BWIP shall analyze the grant application and prepare and transmit written recommendations to headquarters within thirty (30) days of receipt of the grant application. Said analyses and recommendations shall be transmitted to headquarters and BWIP shall make every attempt not to raise at a later date any objections or concerns that are not raised in the initial analyses and recommendations. BWIP shall meet with the Tribe to discuss the analyses and recommendations concerning the grant prior to sending them to headquarters.

STATUS: NEZ PERCE TO REVIEW AND RESPOND BY 9/9/87

NEZ PERCE PROPOSAL

C. Headquarters Review. DOE headquarters shall review the analyses and recommendations of BWIP within fourteen (14) days of the date on which BWIP transmits the analyses and recommendations to head-quarters. Any concerns or objections headquarters may have to the grant application or to the analyses and recommendations of BWIP shall be communicated in writing to BWIP and to the Tribe within the same fourteen (14) day period. Any objections or concerns identified by headquarters shall constitute the final list of such objections and concerns, and no further objections or concerns may be raised at a later date.

DOE PROPOSAL

C. Headquarters Review. DOE headquarters shall review the analyses and recommendations of BWIP within fourteen (14) days of the date on which BWIP transmits the analyses and recommendations to headquarters. Any concerns or objections headquarters may have to the grant application or to the analyses and recommendations of BWIP shall be communicated in writing to BWIP within the same fourteen (14) day period. Headquarters shall make every attempt not to raise at a later

date any objections or concerns that are not raised in the analyses and recommendations communicated to BWIP.

STATUS: NEZ PERCE TO REVIEW AND RESPOND BY 9/9/87

NEZ PERCE PROPOSAL

D. Joint Tribal/BWIP/Headquarters Review. In the event any concerns or objections remain outstanding after review by headquarters of the Tribe's grant application, representatives of the Tribe, BWIP, and headquarters shall meet within seven (7) days of the expiration of the fourteen (14) day period described in Section C to resolve any remaining concerns. Said meeting shall be conducted at the offices of the Nez Perce Nuclear Waste Policy Act Program. The parties agree that DOE and the Tribe will give their best efforts to resolving all outstanding concerns or objections at said meeting. Based upon the out-come of that meeting, BWIP shall prepare the necessary documents to finalize the financial assistance award, and the proposed award documents shall be transmitted to headquarters within five (5) days of the meeting between the Tribe, BWIP, and headquarters. Headquarters shall review and concur in the award documents within seven (7) days of their transmission by BWIP.

DOE PROPOSAL

D. Joint Tribal/BWIP/Headquarters Review. In the event any concerns or objections remain outstanding after review by headquarters of the Tribe's grant application, representatives of the Tribe, BWIP, and headquarters shall meet within seven (7) days of the expiration of the fourteen (14) day period described in Section C to resolve any remaining concerns. Said meeting shall be conducted at the offices of the Nez Perce Nuclear Waste Policy Act Program. The parties agree that DOE and the Tribe will give their best efforts to resolving all out-

standing concerns or objections at said meeting. Based upon the out-come of that meeting, BWIP shall prepare the necessary documents to finalize the financial assistance award, and the proposed award documents shall be transmitted to headquarters within seven (7) days of the meeting between the Tribe, BWIP, and headquarters. Headquarters shall review and concur in the award documents within seven (7) days of their transmission by BWIP.

STATUS: NEZ PERCE TO REVIEW AND RESPOND BY 9/9/87

NEZ PERCE PROPOSAL

E. Notice of Financial Assistance Awards. Within seven (7) days of the receipt of final concurrence from headquarters on the financial assistance award documents, BWIP shall issue to the Tribe a Notice of Financial Assistance Award embodying the scope of activities agreed upon at the meeting of the Tribe, BWIP, and headquarters described in Section D.

STATUS: NEZ PERCE TO REVIEW AND RESPOND BY 9/9/87

NEZ PERCE PROPOSAL

F. Follow-up Schedule. Should any disagreement remain between the Tribe and DOE concerning the financial assistance award made under Section E, BWIP shall meet with the Tribe at the offices of the Nez Perce Nuclear Waste Policy Act Program within seven (7) days to discuss and resolve any issues remaining. In the event agreement is not reached on such issues at said meeting, the Tribe shall have the option of continuing informal discussions with BWIP, or pursuing any administrative or judicial remedies it may have. For purposes of pursuing further administrative or judicial remedies, the Notice of Financial Assistance Award

referred to in Section E shall be deemed final agency action, notwithstanding any informal discussions that may be continuing.

If informal discussions between the Tribe and BWIP fail to produce agreement, the Tribe also shall have the option of addressing the matter to the Director of the Office of Civilian Radioactive Waste Management. Said Director shall issue a decision on the matter within seven (7) days of receipt of notice from the Tribe of its desire that he intervene in the matter.

Should the Tribe and BWIP agree to a resolution of issues remaining after the notice of the Financial Assistance Award has been approved, BWIP shall prepare new award documents reflecting the agreement within five (5) days and transmit same to headquarters and to the Tribe. Headquarters shall review and approve or disapprove said documents within seven days of their receipt from BWIP.

DOE PROPOSAL

F. Follow-up Schedule. Should any disagreement remain between the Tribe and DOE concerning the financial assistance award made under Section E, BWIP shall meet with the Tribe at the offices of the Nez Perce Nuclear Waste Policy Act Program within seven (7) days to discuss and attempt to resolve any issues remaining. In the event agreement is not reached on such issues at said meeting, the Tribe shall have the option of continuing informal discussions with BWIP, or pursuing any administrative or judicial remedies it may have. For purposes of pursuing further administrative or judicial remedies, the Notice of Financial Assistance Award referred to in Section E shall be deemed final agency action, notwithstanding any informal discussions that may be continuing.

If informal discussions between the Tribe and BWIP fail to produce agreement, the Tribe also shall have the option of addressing the matter to the Director of the Office of Civilian Radioactive Waste Management. Said Director shall issue a

decision on the matter within fourteen (14) days of receipt of notice from the Tribe of its desire that he intervene in the matter.

Should the Tribe and BWIP agree to a resolution of issues remaining after the notice of the Financial Assistance Award has been approved, BWIP shall prepare new award documents reflecting the agreement within seven (7) days and transmit same to headquarters and to the Tribe. Headquarters shall review and approve or disapprove said documents within seven (7) days of their receipt from BWIP.

STATUS: NEZ PERCE TO REVIEW AND RESPOND BY 9/9/87

NEZ PERCE PROPOSAL

G. Effect of Failure to Meet Deadlines. Should the Tribe fail to meet the deadline for submission of its grant application, DOE may extend the schedule detailed in this Article by an amount of time equal to the amount of time by which the application was late. Should DOE fail to meet any deadline under this Article, the amount of time by which the schedule was exceeded shall be deducted from the amount of time available for the next step in the process. Should DOE fail to complete its review and issue a Notice of Financial Assistance Award within ninety (90) days of receipt of the Tribe's grant application, the application shall be deemed approved, and the Tribe may undertake any and all activities described in the application. No agency, office, bureau, department, or other entity of the United States may penalize, sanction, or otherwise commence any adverse action against the Tribe for the reason that said activities are beyond the scope of the grant. Nothing in this provision shall relieve the Tribe of its obligation to spend grant funds in accordance with applicable federal regulations.

H. Effect of Failure to Object. DOE acknowledges that it has, in its past relations with the Tribe, continually raised new concerns and objections to tribal

grant applications even after initial reviews have been completed. The parties agree that this practice has delayed Tribal implementation of programs ultimately found to be within the scope of grant assistance provided to the Tribe. In order to prevent this practice from recurring, DOE agrees that, the written analyses and recommendations prepared by BWIP under Section B of this Article shall constitute a final list of concerns and objections, and no further concerns or objections may be raised later in the process. In like fashion, the review of BWIP's analyses and recommendations by headquarters under Section C of this Article shall be final and headquarters shall raise no other objections or concerns in connection with the Tribe's grant assistance application.

DOE PROPOSAL

G. Timely Response

It is imperative that in order for the Tribe to meet its statutory responsibilities under the NWPA that adequate and timely financial assistance by the DOE be provided. Time is of the essence in such matters. The DOE will provide such timely financial assistance through diligent adherence to the procedures set forth in this Agreement. Failure to pursue such diligent adherence will adversely affect the Tribe's ability to fulfill its independent monitoring responsibilities under the NWPA and result in lost credit ability to the DOE. A delay in the overall scheduled of more than 20 days past the original 90 days will be considered by both parties "serious breach of good faith" and will require a letter of explanation, signed by the Director, OCRWM, and co-signed by the Manager, RL. This letter, to be accompanied by a corrective action plan, will be sent to the Tribal Chairman no later than ten (10) days following such breach.

STATUS: BOTH PARTIES TO REVIEW AND RESPOND BY 9/9/87

AGREEMENT
BETWEEN THE
NEZ PERCE TRIBE
AND THE
UNITED STATES DEPARTMENT OF ENERGY
GOVERNING THE NEGOTIATION
OF A
CONSULTATION AND COOPERATION AGREEMENT

THIS AGREEMENT, made and entered into this 6th day of August, 1987, between the Nez Perce Tribe (hereinafter "the Tribe"), by and through the Chairman of the Nuclear Waste Subcommittee (hereinafter "the Subcommittee") of the Nez Perce Tribal Executive Committee (hereinafter "the NPTEC"), and the United States Department of Energy (hereinafter "DOE"), by and through the Assistant Manager for Commercial Nuclear Waste, DOE Richland Operations Office (hereinafter "the Assistant Manager").

WITNESSETH:

1. Background; Purposes. The Nuclear Waste Policy Act of 1982 (hereinafter "the NWPA" or "the Act") directs the Secretary of Energy (hereinafter "the Secretary") to seek to enter into agreements with, inter alia, Indian tribes that have been designated by the Secretary of the Interior as "affected Indian tribes," to govern the process of consultation and cooperation between the parties during the conduct of DOE activities under the NWPA. The Tribe is an "affected Indian tribe" and has accepted the Secretary's invitation to begin negotiations on such a Consultation and Cooperation Agreement. The parties agree that procedures for the conduct of negotiations are necessary and desirable to expedite the progress of negotiations and to provide a clear record of events. To meet these goals, the parties agree to be bound by the procedures detailed in this agreement.

The parties recognize that no set of procedures can anticipate all circumstances that will arise during the course of negotiations, and this

agreement should be construed liberally to avoid devotion to procedure over substance and to achieve its purposes. Nevertheless, the failure of either party to abide by the letter and spirit of this agreement shall constitute good cause for the termination of negotiations.

2. Good Faith. The parties enter negotiations with the expectation of reaching a mutually satisfactory Consultation and Cooperation Agreement. As a showing of their good faith, the parties agree that negotiations will be terminated only for good cause. Good cause shall include, by way of explanation but not of limitation: material changes to the NWPA that alter the relationship between the Tribe and DOE; withdrawal of the Hanford Site from further consideration as a candidate site for a nuclear waste facility; failure to progress toward resolution of differences concerning the contents of a Consultation and Cooperation Agreement; bad faith on the part of either party; and the failure of either party to abide by the letter and spirit of the procedures detailed in this agreement.

3. Modifications. This agreement may be modified by the parties by a writing duly executed by the Chairman of the Subcommittee and the Assistant Manager.

4. Principles Governing Negotiations. The parties acknowledge the following principles as reflecting their respective and appropriate interests in the consultation and cooperation process:

A. As acknowledged in the President's Policy Statement of January, 1983, a government-to-government relationship exists between the United States and the Tribe under which the United States is obliged to protect and enhance the proprietary and governmental rights of the Tribe;

B. By virtue of its treaties with the United States, the Tribe has prior and paramount reserved rights to certain natural resources, and the Department is obliged to take all reasonable measures to avoid harm to those resources;

C. The Tribe has a critical interest in protecting the natural resources in the Tribe's possessory and usage rights area, and Departmental activities should be designed to avoid adverse impacts on those resources;

D. The Tribe has a critical interest in maintaining the environmental integrity of the Columbia River and its tributaries, and Departmental activities should be designed to avoid adverse impacts on the River;

E. The provisions of Section 117(c) of the NWPA do not constitute a limitation on the contents of a Consultation and Cooperation Agreement, and all issues arising from the NWPA program are open for discussion;

F. The Tribe's role in the NWPA program is one of independent oversight directed at protection of Tribal treaty rights, the health and welfare of Tribal constituents, the social and economic well-being of Tribal constituents, and the environmental quality of Tribal interest areas;

G. As a result of the trust relationship existing between the Tribe and the United States, ambiguities in the Act that cannot be resolved by referring to other sections of the Act or to the legislative history are to be construed in favor of the Tribe;

H. The NWPA is the vehicle by which Congress has chosen to resolve the hazards posed by the existence of high-level radioactive waste, and the activities of both parties must be guided by the NWPA;

I. The process of consultation and cooperation envisioned by Congress in Section 117(c) of the NWPA is one of honest, open, and comprehensive consultation and cooperation;

J. The consultation and cooperation process should be carried on in an orderly, predictable, and fair manner, and is assisted by the existence of a Consultation and Cooperation Agreement between the Tribe and DOE; and

K. Tribal and DOE activities under the NWPA must be conducted with due regard for the statutory obligation of DOE to develop a permanent repository and for DOE's role as trustee of the Nuclear Waste Fund.

5. Official Record of Negotiations

A. A Court Reporter certified by the state in which any negotiating session occurs shall record the proceedings of such negotiating session. Said Court Reporter shall be required to deliver a transcript of each negotiating session to a designated member of each negotiating team within seven (7) days of the date on which the session occurred. After editing by the negotiating teams for clerical errors, which shall be completed within fourteen (14) days of their receipt, an original and two (2) copies of the corrected transcript shall be delivered to each negotiating team. Said transcript shall become the official record of the negotiating session and may be relied upon in any court, tribunal, or forum in discerning the intent of the parties in relation to any provision of any Consultation and Cooperation Agreement between the parties.

B. By mutual consent of the parties, and upon the order of the chair, discussions may be held off the record at any time during a negotiating session.

6. Sites of Negotiating Sessions. The parties shall host negotiating sessions on an alternating basis. The party hosting a session will name a member of its negotiating team to chair the session and shall have the right to select

the site of the session. The parties agree that sites other than the offices or places of business of members of the negotiating teams will allow the negotiating teams to devote their full attention to the negotiations. The parties, therefore, will agree to other mutually convenient sites.

7. Negotiating Teams. The negotiating team of the Tribe consists of: Allen V. Pinkham, NPTEC Chairman; Del T. White, NPTEC Nuclear Waste Subcommittee Chairman; Ronald T. Halfmoon, Program Manager, Nez Perce Nuclear Waste Policy Act Program ("NP-NWPA"); B. Kevin Gover, Special Counsel, NP-NWPA; and John Hutchins, Council of Energy Resource Tribes. The negotiating team of DOE consists of: John Anttonen, Assistant Manager for Commercial Nuclear Waste, DOE Richland Operations Office; O. Lee Olson, Acting Director, Basalt Waste Isolation Division; Max Powell, Institutional Liaison, Basalt Waste Isolation Division; Eugene Pride, Chief Counsel, DOE Richland Operations Office; and Barry G. Gale, Chief, Economic and Intergovernmental Analysis Branch, DOE Office of Civilian Radioactive Waste Management (hereinafter "OCRWM"). Each party reserves the right to designate persons to replace members of its negotiating team. The parties anticipate that only persons succeeding members of the negotiating teams in their current capacities within the organizational structure of the parties shall be named to the respective negotiating teams, provided that, in the event the capacity, title, or position of any member of either negotiating team should change, that change does not require his or her removal from the negotiating team, and his or her successor in capacity, title, or position does not become a member of the negotiating team of the Tribe or DOE absent the affirmative act to that effect of the NPTEC or the Assistant Manager, respectively.

8. Persons Attending Negotiating Sessions. Negotiating sessions shall be closed to the public. Only members of the negotiating teams may be present

without the express consent in writing of each party, provided that members of the NPTEC, the NP-NWPA Intergovernmental Coordinator, one member of the Tribe's Multidisciplinary Team, the Director of the Portland Area Office of the Bureau of Indian Affairs or his designate, and the Director of the Portland Area Office of the Indian Health Service or his designate may attend any negotiating session as observers; and provided further that either party may request of the other in writing, at least seven (7) days prior to such negotiating session, permission to allow (an)other person(s) to attend a negotiating session as (an) observer(s) or participant(s) and such permission shall be given freely.

9. Quorum. The presence of three (3) members of each negotiating team shall constitute a quorum. Negotiating sessions may proceed only when a quorum is present.

10. Schedule. The parties agree to the desirability of completing a Consultation and Cooperation Agreement on or before December 31, 1988. To that end, the parties agree to conduct one negotiating session every six (6) weeks from the date of this agreement to December 31, 1988, except that any session may be cancelled or postponed with the mutual consent of the parties. Negotiating sessions shall be scheduled to last two (2) days. On the first day of a negotiating session, the session shall commence not prior to 1:00 p.m. local time.

The parties agree to the following dates for the first six (6) negotiating sessions:

August 5-6, 1987 (to be hosted by DCE)

September 9-10, 1987 (to be hosted by the Tribe)

October 21-22, 1987 (to be hosted by DOE)

December 10-11, 1987 (to be hosted by the Tribe)

January 20, 22, 1988 (to be hosted by DOE)

March 10-11, 1988 (to be hosted by the Tribe).

11. Agendas for Negotiating Sessions. The items for discussion at any negotiating session shall be communicated in writing at least two (2) weeks prior to such session by the host party. The parties anticipate that the items for discussion at a given session shall be mutually agreed upon at the previous session. Items not on the agenda may be discussed at a given session only with the mutual consent of the parties, which consent may be withdrawn by either party at any time during the session.

12. Recording Proposals and Counterproposals. The parties anticipate that the Tribe will be responsible for making most formal proposals for provisions to be included in the Consultation and Cooperation Agreement. Either party, however, is free to present formal proposals. Any proposal shall be marked clearly to reflect the identity of the party submitting the proposal, the issue to which the proposal is directed, and the date upon which the proposal is mailed or delivered to the other party. Each such proposal or counterproposal shall be made a part of the record at any negotiating session at which the issue to which the proposal is directed is discussed. A proposal shall be deemed proper and open for discussion only when made in writing and mailed or delivered to each member of the other party's negotiating team.

The parties should provide proposals and counterproposals at least one (1) week prior to the negotiating session at which such proposal or counterproposal is to be discussed.

13. Preliminary Ratification. When the negotiating teams have reached agreement on a provision, that provision shall be transmitted to the NPTEC and the Director of the DOE Office of Geologic Repositories (hereinafter "OGR") for their

review and preliminary approval. While such review and preliminary approval shall not constitute the final approval of the parties, or render the provision an Interim Agreement under Section 15 herein, or otherwise bind the parties to the provision, the parties agree that such review and preliminary approval indicates a strong likelihood that the provision ultimately will be approved and included in the Consultation and Cooperation Agreement between the parties. The NPTEC and the Director of OGR shall complete their review and render their written preliminary approval or disapproval within thirty (30) days of the negotiating session at which the negotiating teams reached agreement on the provision.

14. Deadlock; Communication of Concerns to Higher Levels of Authority

A. If an item has been on the agenda and discussed at three (3) negotiating sessions, and the negotiating teams have not reached agreement concerning that item, either party, or both of them, may declare a deadlock on that item and invoke the procedures described in Subsections 14.B, 14.C, 14.D, or 14.E herein. A declaration of deadlock on an item shall not prevent discussion of other items.

B. Upon the declaration of a deadlock as to a given item, the parties may agree to table the item. The tabling of an item shall prevent discussion of the item during the two (2) negotiating sessions immediately following the declaration of deadlock.

C. If the Tribe declares a deadlock on any item, it may, within fifteen (15) days of the declaration, submit to the Director of OGR a written petition for his intervention in the negotiations. Such written petition shall recite the provision proposed by the Tribe's negotiating team, the response (including any proper counterproposal) of the DOE negotiating team, and argument supporting the Tribe's proposal. A copy of the petition shall be delivered to each member of

DOE's negotiating team. The DOE negotiating team shall respond in writing within fifteen (15) days of receipt of the Tribe's petition, and shall deliver a copy of its response to each member of the Tribe's negotiating team. The Tribe's negotiating team then may reply to said response within ten (10) days of receipt of the response and shall deliver a copy of said reply to each member of DOE's negotiating team. The Director of OGR shall respond in writing to the Tribe's petition within thirty (30) days of receipt of the Tribe's reply and shall explain in detail the reasons for his decision. The decision of the Director of OGR shall not be binding on the Tribe, and the Tribe may accept or reject the provision proposed by the Director.

D. If DOE declares a deadlock on any item, it may, within fifteen (15) days of the declaration, submit to the NPTEC a written petition for its intervention in the negotiations. Such written petition shall recite the provision proposed by DOE's negotiating team, the response (including any proper counteroffer) of the Tribe's negotiating team, and argument supporting DOE's proposal. A copy of the petition shall be delivered to each member of the Tribe's negotiating team. The Tribe's negotiating team shall respond in writing within fifteen (15) days of receipt of DOE's petition and shall deliver a copy of its response to each member of DOE's negotiating team. DOE's negotiating team then may reply to said response within ten (10) days of receipt of that response and shall deliver a copy of said reply to each member of the Tribe's negotiating team. The NPTEC shall respond in writing to DOE's request within thirty (30) days of receipt of DOE's reply and shall explain in detail the reasons for its decision. The decision of the NPTEC shall not be binding on DOE, and DOE may accept or reject the provision proposed by the NPTEC.

E. Should differences continue to exist between the parties after the completion of the process described in Subsections 14.C and 14.D, whichever should apply, the parties may mutually agree upon arbitration proceedings. Within thirty (30) days after notification by the Director of OGR or the NPTEC of his or its decision under Subsection 14.C or 14.D, respectively, the negotiating teams shall appoint as the hearing officer one (1) mutually agreed upon, independent, recognized expert in the particular field involved. Within fifteen (15) days after such appointment, the parties each shall submit to the hearing officer a written statement of their respective proposals and the bases therefor. The hearing officer may hear oral presentations at his discretion. Nothing herein shall preclude the parties from asking for and receiving from the hearing officer a reasonable extension of the time limit for good cause. The hearing officer shall compile and maintain an accurate record of all written submissions and a transcript of any oral presentations made to him. The hearing officer shall consider all written submissions and oral presentations in the record and shall make written recommendations on the matters before him. The hearing officer shall transmit his written recommendations along with a copy of the record and transcript to the Director of OCRWM and to the negotiating teams within thirty (30) days following his receipt and consideration of all written submissions and authorized oral presentations.

Within ten (10) days following receipt of the hearing officer's written recommendations, the record, and the transcript, the negotiating teams may submit their own written comments and recommendations to the Director of OCRWM, which comments and recommendations shall be made a part of the record. Each party shall simultaneously transmit a copy of any such comments and recommendations to the other party. Within twenty-five (25) days following receipt of the written

recommendations of the hearing officer, the record, and the transcript, the Director of OCRWM shall issue a written decision on the matters before him, which decision shall include a description of the basis in the record for such decision. The responsibility of issuing a decision under this subsection may not be delegated by the Director of OCRWM. Copies of the decision shall be transmitted to the parties. The decision of the Director of OCRWM shall constitute the final action of DOE. Such decision shall not be binding on the Tribe, and the Tribe shall remain free to accept or reject the decision of the Director of OCRWM.

F. Nothing herein waives, modifies, abrogates, limits, or otherwise affects the right of the Tribe to request information under Section 117(a)(2) of the NWPA.

15. Interim Agreements. Prior to the completion of negotiations on the contents of a Consultation and Cooperation Agreement, the parties may agree to execute and implement Interim Agreements on items upon which the parties have reached a mutually satisfactory accord. Any such Interim Agreement shall be entered into under the authority of Section 117(c) of the NWPA and shall be binding and enforceable in accordance therewith. Said Interim Agreement(s) shall be signed by the Chairman of the NPTEC and the Director of OGR for the Tribe and DOE, respectively.

The parties agree that the provision of financial assistance grants to the Tribe from the Nuclear Waste Fund is an item of urgent importance and should be the subject of an Interim Agreement. The parties further agree that they shall devote their best efforts to finalizing such an Interim Agreement before November 30, 1987.

16. Ancillary Working Agreements. The Consultation and Cooperation Agreement to be negotiated by the parties is intended to endure throughout the

process of characterization and the possible licensing, construction, operation, decommissioning, closure, and post-closure monitoring of a nuclear waste facility at the Hanford Site. The details of the consultation and cooperation process during any given phase of the NWPA program shall be left to ancillary agreements between the parties. Such ancillary agreements shall be incorporated by reference into the Consultation and Cooperation Agreement. An ancillary agreement governing consultation and cooperation during the characterization phase will be executed simultaneously with the Consultation and Cooperation Agreement. Nothing herein shall prevent the parties from executing further ancillary agreements during the characterization phase.

17. Expenses of Negotiations. The costs of all activities of the parties pertaining to this agreement shall be paid from the Nuclear Waste Fund.

18. Definitions. As used in this agreement, the term:

A. "Consultation and Cooperation Agreement" means a binding, written agreement between the Tribe and the United States entered into pursuant to Section 117(c) of the NWPA;

B. "NPTEC" means the Nez Perce Tribal Executive Committee, the governing body of the Tribe;

C. "Nuclear waste facility" means a repository, a monitored retrievable storage facility, a test and evaluation facility, or an interim federal storage facility, as those terms are used and defined in the NWPA;

D. "Nuclear Waste Fund" means the Nuclear Waste Fund established in Section 302(c) of the NWPA;

E. "NWPA" means the Nuclear Waste Policy Act of 1982, Pub. L. 97-425, 96 Stat. L. 2201-2263, 42 U.S.C. Sections 10101-10226;

F. "OCRWM" means the Office of Civilian Radioactive Waste Management established in Section 304(a) of the NWPA;

G. "OGR" means the Office of Geologic Repositories of OCRWM;

H. "Secretary" means the Secretary of Energy;

I. "Subcommittee" means the Nuclear Waste Subcommittee of the NPTEC;

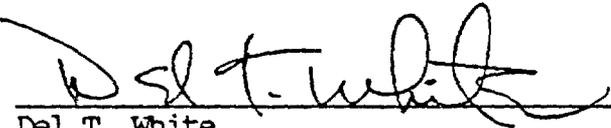
and

J. "Tribe" means the Nez Perce Tribe, an Indian tribal government whose members are eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians.

WHEREFORE:

The duly authorized representatives of the parties have set their hands and seals hereunto, and this agreement becomes effective on the 6th day of August, 1987.

FOR THE NEZ PERCE TRIBE:



Del T. White
NPTEC Nuclear Waste Subcommittee Chairman

Date: Aug 6, 1987

FOR THE UNITED STATES DEPARTMENT OF ENERGY:



John Anttonen
Assistant Manager for Commercial Nuclear Waste
Richland Operations Office

Date: Aug. 6, 1987