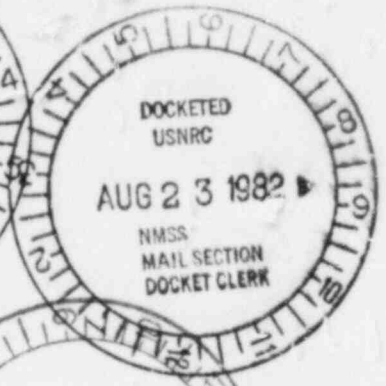
PDR-Return-396-SS

WM-39

33000039110E

Department of Energy
Albuquerque Operations Office
P.O. Box 5400
Albuquerque, New Mexico 87115



JUL 14 1982

Mr. Larry Anderson
Director, Bureau of Mill Tailings
Management
P. O. Box 2500
Salt Lake City, UT 84110

Dear Mr. Anderson:

Enclosed hereto is a copy of draft Modification No. M001 to the Cooperative Agreement with the State of Utah, in support of the UMTRA Program. The draft document reflects revisions agreed upon and/or discussed between Richard A. Marquez of our Office of Chief Counsel, and Fred Nelson, Assistant Attorney General, State of Utah. In addition to these revisions, your attention is invited to Paragraph B. of Article XVI, Cost Limitation and Obligation of Funds, which upon execution of the modification would obligate State funding in the amount of $551,000. This amount would cover the State's ten percent (10%) share of costs incurred and to be incurred by DOE in performing remedial action in Utah.

Please review the draft document and provide to this office your comments regarding the revisions made. Should you have any questions concerning the modification, please contact Donald J. Garcia of my staff at (505) 844-9325 or Richard A. Marquez at (505) 846-2119.

Sincerely,
Original Signed By
Theetis V. Hill

Theetis V. Hill
Contracting Officer
Contracts and Procurement Division

Enclosure (4)

OFFICIAL DOCKET COPY

20592
info only

cc w/enc.:
Fred G. Nelson
Assistant Attorney General
State of Utah

Mr. Ross Scarano
Nuclear Regulatory Commission

cc w/o enc.:
R. H. Campbell, UMTRA, AL HQ
R. A. Marquez, OCC, AL HQ

3300003911OE

MODIFICATION OF COOPERATIVE AGREEMENT

1. Modification No. M001

2. Effective Date:

3. Purchase Request No. 04-81AL16309-000

4. Cooperative Agreement No. DE-FC04-81AL16309

5. Issued By:
Department of Energy
Albuquerque Operations Office
Contracts and Procurement Division
P.O. Box 5400
Albuquerque, NM 87115

6. State
State of Utah
Department of Health
P. O. Box 2500
Salt Lake City, Utah 84110

7. Accounting and Appropriation Data (If Required):

N/A

8. (___) The above numbered Cooperative Agreement is modified to reflect the administrative changes set forth in block 9.
(_X_) This agreement is entered into pursuant to authority of Uranium Mill Tailings Radiation Control Act of 1978, P.L. 95-604. It modifies the above numbered Cooperative Agreement as set forth in block 9.

9. Description of Modification:

(a) The Department of Energy document number was inadvertently omitted from the Cooperative Agreement entered into on the 15th day of May, 1980, between the United States of America (hereinafter called the "Government") acting through the Department of Energy (hereinafter called the "DOE"), and the State of Utah (hereinafter called the "State") acting through its Department of Health, Bureau of Radiation and Occupational Health. This Modification establishes document number DE-FC04-81AL16309 as the DOE identification for said Cooperative Agreement.

(b) The parties have executed the Supplemental Agreement which is attached hereto.

10. (___) State/Indian Tribe is not required to sign this document.
(_X_) State is required to sign this document and return 3 copies to issuing office.

11. Execution of and Concurrence with the Supplemental Agreement:

See page 35 of the Supplemental Agreement.

20592

59y

330000391 10E

Modification No. M001
Supplemental Agreement to
U.S. Department of Energy
Agreement No. DE-FC04-81AL16309

INDEX

Modification No. M001
Supplemental Agreement to
U.S. Department of Energy
Agreement No. DE-FC04-81AL16309

COOPERATIVE AGREEMENT

This SUPPLEMENTAL AGREEMENT, entered into between the UNITED STATES OF AMERICA (hereinafter called the "Government"), acting through the DEPARTMENT OF ENERGY (hereinafter called "DOE"), and the STATE OF UTAH (hereinafter called the "State"), acting through the BUREAU OF MILL TAILINGS MANAGEMENT;

WITNESSETH THAT:

WHEREAS, the Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95-604 (hereinafter called the "Act"), approved November 8, 1978, authorizes the Secretary of DOE to enter into agreements with affected States to cooperatively perform and share the costs of remedial action at those inactive uranium mill tailings sites and associated vicinity properties which have been or will be designated processing sites by the Secretary of DOE; and

WHEREAS, pursuant to the Act, the Secretary of DOE, on November 8, 1979, designated certain Utah inactive uranium mill tailings sites as processing sites, thus making the sites eligible for remedial action; and

WHEREAS, pursuant to the Act, the Secretary of DOE has assessed the potential health hazard to the public from the residual radioactive materials at the Utah inactive uranium mill tailings sites and has established the relative priorities for carrying out remedial action at such sites; and

WHEREAS, DOE and the State entered into a cooperative agreement, effective May 15, 1980, for the purposes of establishing a plan of assessment and remedial action at the Utah inactive uranium mill tailings sites and any associated vicinity sites providing for the acquisition of property by the State where determined appropriate by the Secretary, and formally committing DOE and the State to the undertaking of their respective statutory responsibilities under the Act; and

WHEREAS, DOE and the State are mutually desirous of amending said cooperative agreement in certain respects and to incorporate the entire agreement of the parties into this Supplemental Agreement, including its appendices;

NOW THEREFORE, DOE and the State agree that the cooperative agreement is amended to make this Supplemental Agreement the entire agreement of the parties and provide as follows:

I. DEFINITIONS

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

330000 39 110E

A. The term "Secretary" means the Secretary of Energy or any duly authorized representative thereof.

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

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

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

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

F. The term "State" means the State of Utah or any duly authorized representative thereof.

G. The term "State Site Representative" means the Director of the Bureau of Mill Tailings Management and any duly authorized representative thereof.

H. The term "person" means any individual, association, partnership, corporation, firm, joint venture, trust, government entity, and any other entity, except that such term does not include any Indian or Indian tribe.

I. The term "millsite" means any inactive uranium mill tailings site within the State of Utah, including any residual radioactive materials thereon, which the Secretary has designated (44 F.R. 74891) pursuant to Section 102(a) of the Act to be a "processing site" and which is further described in Appendix A to this Agreement; PROVIDED, That the term millsite shall not include the inactive uranium mill tailings site located near Mexican Hat, Utah, said mill tailings site being located on the Navajo Reservation and subject to a cooperative agreement between DOE and the Navajo Tribe of Indians.

J. The term "vicinity property" means any real property or improvement thereon which: (1) is in the vicinity of a millsite; (2) is determined by the Secretary, in consultation with the State and

20592

the Commission, to be contaminated with residual radioactive materials derived from a millsite; and (3) the Secretary designates, during the term of this Agreement and pursuant to Section 102(e) of the Act, to be a "processing site"; and includes any residual radioactive materials thereon.

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

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

M. The term "EPA Standards" means those standards, promulgated as standards by rule of the Administrator pursuant to Section 275 of the Atomic Energy Act, as amended, of general application for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with residual radioactive materials located at mill sites, vicinity properties and depository sites.

N. The term "depository site" means any site, which may include the mill site or vicinity property, used for the permanent disposition, stabilization and control of residual radioactive materials in accordance with and pursuant to this Agreement and Title I of the Act.

O. The term "remedial action" means the performance, and the assessment, design and technical effort directly related to the performance of stabilization, control or removal of residual radioactive materials located at a millsite, vicinity property or depository site in a safe and environmentally sound manner in order to minimize or eliminate radiation health hazards to the public.

P. The term "Remedial Action Plan" means the document, as further described in Article II, "Description of Remedial Action Program," developed by DOE and, upon mutual agreement between DOE and the State, executed by DOE and the State in order to define the remedial action to be performed at a millsite pursuant to this Agreement, including, where appropriate, removal of residual radioactive materials to a depository site, and which also includes a discussion of the proposed means of accomplishing such remedial action, the estimated costs of design and performance of remedial action, project status and technical information reporting requirements, and a schedule of activities for such remedial action.

Q. The term "Radiological and Engineering Assessment" means the document, as further described in Article II, "Description of Remedial Action Program," developed by DOE and concurred with by the State in order to define the remedial action to be performed at a vicinity property pursuant to this Agreement, and which includes a detailed radiological and engineering assessment of that vicinity property, and an estimated cost of design and performance of the remedial action.

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

S. The term "advance by Treasury check" means a payment made by DOE to the State by Treasury check, in accordance with the provisions of Treasury Circular No. 1075, upon request by the State before cash outlays are made for allowable costs incurred or anticipated to be incurred by the State.

T. The term "reimbursement by Treasury check" means a payment made by DOE to the State by Treasury check upon request by the State for reimbursement for cash outlays made for allowable costs.

U. The term "program income" means the State's share of proceeds from: (1) any sale by the State of a millsite or vicinity property pursuant to Article III, "Acquisition, Disposition and Use of Property;" and (2) any remilling of residual radioactive materials done pursuant to Article II, "Description of Remedial Action Program," and Section 108(b) of the Act. Program income does not

the Commission, to be contaminated with residual radioactive materials derived from a millsite; and (3) the Secretary designates, during the term of this Agreement and pursuant to Section 102(e) of the Act, to be a "processing site"; and includes any residual radioactive materials thereon.

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

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

M. The term "EPA Standards" means those standards, promulgated as standards by rule of the Administrator pursuant to Section 275 of the Atomic Energy Act, as amended, of general application for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with residual radioactive materials located at mill sites, vicinity properties and depository sites.

N. The term "depository site" means any site, which may include the mill site or vicinity property, used for the permanent disposition, stabilization and control of residual radioactive materials in accordance with and pursuant to this Agreement and Title I of the Act.

O. The term "remedial action" means the performance, and the assessment, design and technical effort directly related to the performance of stabilization, control or removal of residual radioactive materials located at a millsite, vicinity property or depository site in a safe and environmentally sound manner in order to minimize or eliminate radiation health hazards to the public.

P. The term "Remedial Action Plan" means the document, as further described in Article II, "Description of Remedial Action Program," developed by DOE and, upon mutual agreement between DOE and the State, executed by DOE and the State in order to define the remedial action to be performed at a millsite pursuant to this Agreement, including, where appropriate, removal of residual radioactive materials to a depository site, and which also includes a discussion of the proposed means of accomplishing such remedial action, the estimated costs of design and performance of remedial action, project status and technical information reporting requirements, and a schedule of activities for such remedial action.

Q. The term "Radiological and Engineering Assessment" means the document, as further described in Article II, "Description of Remedial Action Program," developed by DOE and concurred with by the State in order to define the remedial action to be performed at a vicinity property pursuant to this Agreement, and which includes a detailed radiological and engineering assessment of that vicinity property, and an estimated cost of design and performance of the remedial action.

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

S. The term "advance by Treasury check" means a payment made by DOE to the State by Treasury check, in accordance with the provisions of Treasury Circular No. 1075, upon request by the State before cash outlays are made for allowable costs incurred or anticipated to be incurred by the State.

T. The term "reimbursement by Treasury check" means a payment made by DOE to the State by Treasury check upon request by the State for reimbursement for cash outlays made for allowable costs.

U. The term "program income" means the State's share of proceeds from: (1) any sale by the State of a millsite or vicinity property pursuant to Article III, "Acquisition, Disposition and Use of Property;" and (2) any remilling of residual radioactive materials done pursuant to Article II, "Description of Remedial Action Program," and Section 108(b) of the Act. Program income does not

include any interest earned on advances of Government funds pursuant to this Agreement.

V. The term "subcontractor" means any contractor to the State and all tiers of subcontractors thereunder.

W. Except as otherwise provided in this Agreement, the term "subcontracts" includes purchase orders under this Agreement.

II. DESCRIPTION OF REMEDIAL ACTION PROGRAM

A. The Secretary, pursuant to Section 102 of the Act, has designated millsites located within the State of Utah and the relative priorities for carrying out remedial action as follows:

Millsite	Priority
Salt Lake City	High
Green River	Low

These millsites are further described in Appendix A, Attachments 1 and 2, of this Agreement.

In addition, from time to time during the term of this Agreement, the Secretary shall, pursuant to Section 102 of the Act, designate vicinity properties and relative priorities for carrying out remedial actions at such sites. Upon such designation, DOE shall provide the State with notice of such designation and a description of the vicinity property so designated. The State may submit to the DOE Uranium Mill Tailings Remedial Action Project Office, recommendations that properties near the Salt Lake City or Green River millsite be designated as vicinity properties, whereupon said Project Office shall use its best efforts to obtain consideration of and action upon such recommendations from the appropriate DOE office within a reasonable amount of time.

B. For each millsite, DOE and the State shall develop, in accordance with the relative priority of remedial action to the greatest extent practicable, a Remedial Action Plan for performance of remedial action at such millsite and its associated vicinity properties.

C. Each Remedial Action Plan shall be developed in accordance with the following general procedures:

1. When deemed appropriate by DOE, DOE and the State may initiate site-characterization of potential depository sites. The State shall recommend to DOE in writing at least three

candidate depository sites. DOE shall evaluate at least three of the candidate depository sites in such further detail as it deems necessary and shall, with the concurrence of the State, select any or all of the candidate depository sites for further analysis in a DOE-prepared environmental document. If, after such evaluation or analysis, DOE determines that any candidate depository site is inadequate, then DOE and the State, by mutual agreement, shall select a replacement candidate depository site. The State shall notify each owner of a candidate disposal site, prior to public release of information that the State is evaluating that site, that the site is being considered for a depository site. If either party performs on-site evaluation of a site, then that party shall obtain a prior authorization from the site owner for access onto the property.

2. Prior to preparation of an environmental document, DOE shall prepare a draft Remedial Action Concept Paper (RACP). The draft RACP shall be a scoping document utilized to coordinate initial planning of remedial action with the State and the Commission. The draft RACP shall include a brief evaluation of all reasonable remedial action options and a proposed remedial action option, a schedule for completion of remedial actions, a brief discussion of environmental, health and safety concerns, and a cost estimate. The State and the Commission shall concur in the draft RACP prior to its finalization by DOE. DOE and the State acknowledge that different remedial action options and a different proposed option may ultimately be chosen as a result of fully executing the requirements of the National Environmental Policy Act of 1969, as amended (NEPA).

3. DOE shall prepare an appropriate environmental document and otherwise comply with the requirements of NEPA. The Commission shall be a "cooperating agency," as that term is defined in 40 CFR Section 1508.5, in connection with the preparation of any environmental impact statement, and coordinate with DOE in the development of environmental assessments. The State shall assist DOE, to the extent agreed upon by DOE and the State, in scoping, scoping meetings, draft environmental impact statement hearings, and in connection with other NEPA process matters.

4. DOE, as soon as practicable after promulgation of the EPA Standards, shall prepare a draft Remedial Action Plan for State concurrence. DOE shall forward said draft to the State for review and comment by the State. After mutual agreement between DOE and the State regarding the text of the Remedial

Action Plan, the State shall concur with the Remedial Action Plan. Such concurrence shall not be unreasonably withheld. Upon concurrence by the State, DOE shall obtain Commission concurrence. Upon concurrence by the Commission, the Remedial Action Plan shall be executed by DOE and the State and shall be incorporated into Appendix B to this Agreement and numbered sequentially in order of execution. Either DOE or the State may at any time request in writing that such Remedial Action Plan be revised and both DOE and the State agree to negotiate in good faith concerning any requested revision. Significant revisions to the Remedial Action Plan, as determined by DOE and the Commission, shall be concurred with by the Commission.

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

1. DOE, as soon as practicable after promulgation of the EPA Standards, shall develop a draft Radiological and Engineering Assessment.

2. DOE shall forward said draft to the State for review and comment by the State. After mutual agreement between DOE and the State regarding the Radiological and Engineering Assessment, the State shall concur with the Radiological and Engineering Assessment. Such concurrence shall not be unreasonably withheld. DOE and the State agree to negotiate in good faith concerning any revision of the Radiological and Engineering Assessment.

3. The Commission shall concur with the Radiological and Engineering Assessment only in those instances of an unusualy significant vicinity property which may warrant, in the opinion of DOE and the Commission, an individual Remedial Action Plan or environmental document, or both, because of size, location, cost, remedial action feasibility, or schedular considerations.

E. Subject to the requirements of this article, DOE, or such person as the Contracting Officer may designate, shall perform the remedial action at the millsite, vicinity properties, and the depository site in accordance with the EPA standards. Remedial action shall be carried out, to the greatest extent practicable, in accordance with the priorities established by DOE pursuant to Section 102 of the Act, and published at 44 F.R. 74891, 74892 (1979). Remedial action shall not be implemented until the owner

or owners of the millsite or vicinity property agree to the performance of such remedial action or the State has made any necessary acquisition of the millsite or vicinity property, or an appropriate interest therein, pursuant to Article III, "Acquisition, Disposition and Use of Property."

F. No remedial action will be undertaken before the promulgation by the Administrator of the EPA standards; Provided, that remedial action may be undertaken at any millsite or vicinity property in accordance with the Interim Cleanup Standards for Inactive Uranium Processing Sites, 40 CFR Part 192, Subparts B and C, issued by the EPA effective April 22, 1980 (45 FR 27366). DOE shall use technology in performing the remedial action that will assure compliance with the EPA Standards or the Interim Cleanup Standards, as appropriate, and will assure the safe and environmentally sound stabilization of residual radioactive materials consistent with existing applicable law.

G. Any remedial action taken pursuant to this Agreement shall be in accordance with the applicable provisions of the Act, including the provisions of Section 108(b) regarding the remilling of residual radioactive materials.

III. ACQUISITION, DISPOSITION, AND USE OF PROPERTY

A. From time to time DOE and the State may determine that acquisition of a millsite, any vicinity property, residual radioactive materials at a millsite or vicinity property, or the depository site should be considered. In such cases, upon request in writing by the Contracting Officer the State shall prepare, collect and develop the documentation described in Appendix C of this Agreement in connection with such millsite, vicinity property, residual radioactive materials or depository site.

The State Site Representative shall, within 90 days from such request from the Contracting Officer, furnish to the Contracting Officer two copies of the documentation developed pursuant to this paragraph. DOE, after informing the State of its intent to do so, may prepare, collect and develop any or all of the documentation described in Appendix C in connection with a millsite, vicinity site, or depository site, and the costs associated with such preparation, collection and development shall be an allowable cost in accordance with Article V, "Payments and Allowable Costs."

B. The Contracting Officer shall review the documentation, including the appraisal report, furnished by the State for its adequacy under Appendix C, the Uniform Appraisal Standards for Federal Land

Acquisitions (hereinafter referred to as the "Appraisal Standards") issued by the Interagency Land Acquisition Conference, and "A Procedural Guide for the Acquisition of Real Property by Government Agencies" (hereinafter referred to as the "DOJ Procedural Guide") issued by the Department of Justice. The State shall take such action as is necessary to cure any inadequacies in the documentation and appraisal report of which the State Site Representative has been notified by the Contracting Officer.

C. After consideration of the documentation submitted by the State pursuant to paragraph A of this Article, DOE, with the concurrence of the Commission, shall determine whether acquisition of such property is necessary, and DOE shall establish an amount which it determines to be a just maximum compensation (hereinafter referred to as the "Maximum Amount") for the property, and if DOE, with the concurrence of the Commission, determines that the State should acquire such property, the Contracting Officer shall request the State to make such acquisition by written notice which informs the State of: (1) the acquisition required; (2) the legal description or location of the property to be acquired; (3) the estate or interest in the property to be acquired; (4) the date by which such property is to be acquired; and (5) the Maximum Amount.

Where the appropriate NEPA document has not been finalized for remedial action at the Salt Lake City millsite, and where the Remedial Action Plan for such millsite has not been developed and concurred with as required by Article II, Description of Remedial Action Program, DOE and the State shall mutually determine the necessity of acquisition of: (1) the Salt Lake City millsite or any portion thereof and any improvements thereon; or (2) property to be used for a depository site for the residual radioactive materials located at the Salt Lake City millsite and associated vicinity properties. Such determination shall include: (1) the acquisition required; (2) the legal description or location of the property to be acquired; (3) the estate or interest in the property to be acquired; (4) the date by which such property is to be acquired; and (5) the Maximum Amount. After such determination, the State shall make the acquisition required.

The State shall not be required to acquire: (1) any depository site selected pursuant to this Agreement located on land controlled by the Secretary, made available to DOE by the Secretary of Interior, or otherwise provided by DOE pursuant to Section 106 of the Act; (2) any vicinity property, unless it first gives to the Contracting Officer its written consent to so acquire such site; or (3) any millsite, vicinity property, or residual radioactive materials directly acquired by DOE.

D. Upon receipt of the written notice provided for in Paragraph C of this Article, the State shall promptly make every reasonable effort to negotiate a purchase price and agreement to purchase the property. The State shall not negotiate a price in excess of the Maximum Amount. The negotiation process shall include the following:

1. Negotiator's Report. A written report of negotiations on each parcel must be prepared by the negotiator. The report should be a chronological history of the negotiations, factors considered in evaluating the owner's offer and justification for acceptance or rejection of offer. The State shall submit two copies of such report to the Contracting Officer at the conclusion of negotiations.

2. Time Limits. Negotiations should be completed as quickly as possible.

3. Subsurface Rights. In some acquisitions, it may be necessary to obtain all subsurface rights to minerals, coal, oil, or gas. Under circumstances where these rights need not be obtained, provisions must be made in the offer and the deed to subordinate such rights to protect DOE use. This may be done by restricting these rights so that there will be no interference with DOE and State operations on the property.

4. Interim Occupancy. Under certain circumstances, and with the prior approval of the Contracting Officer, the owner(s) or tenant(s) may be permitted to continue to occupy the property for a limited time under a rental agreement. This should be determined during negotiations and made a part of the formal settlement package.

5. Improvements. Upon a determination by DOE and the State that any buildings, structures or improvements located upon the site must be acquired by the State, the State shall acquire an interest in all such buildings, structures or improvements equal to the interest the State acquires in the site.

6. Fees, Taxes and Other Costs. The State, as soon as practicable and to the extent allowed under State law, shall reimburse the owner of the site for: (i) recording fees, transfer taxes, and similar expenses incidental to conveying title to the site and improvements thereon; (ii) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the site; and (iii) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date that title is

vested in the State, or the effective date of possession by the state, whichever is the earlier.

The State, if unsuccessful in negotiating a purchase price at or below the Maximum Amount, shall then consult with the Contracting Officer for further direction. DOE shall then either: (1) establish a higher Maximum Amount for continued negotiations; or (2) request that the State institute formal condemnation proceedings for acquisition of the property, in which case the State shall institute condemnation proceedings if authorized by State law.

Notwithstanding any provision herein, nothing in this Agreement shall preclude the State from acquiring property by a method other than direct purchase so long as such method is approved in writing, prior to its use, by the Contracting Officer.

E. In the event of condemnation by the State:

1. No owner of a site shall be required to surrender possession before the State pays, to the extent required under State law, the agreed purchase price or deposits with the appropriate State court, for the benefit of the owner, such amounts as are required to authorize the State to take title pending outcome of a condemnation proceeding.

2. In no event shall the State: (1) advance the time for condemnation; (2) defer negotiations or condemnation and the deposit of funds in State court for the use of the owner; or (3) take any other action coercive in nature; in order to compel an agreement on the price to be paid for the site.

F. The State, upon acquisition of a site pursuant to this Article, shall forward to the Contracting Officer: (i) two copies of any accepted sales, donation, or exchange agreement; (ii) two copies of the deed, easement, right of entry, license or other temporary interest conveyance to the State; and (iii) two copies of any declaration of taking or judgment. The State, immediately upon acquisition of a site, must file and record such agreements, deeds, declarations of taking, or judgments in accordance with the requirements of State law.

G. The State, when determined appropriate by DOE, shall pay relocation expenses to all persons relocated in connection with acquisition of property pursuant to this article. Such payment of relocation expenses shall be pursuant to applicable State law of eminent domain; Provided, That such State law substantially conforms with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646,

Sections 201 through 204, inclusive, and the Federal Property Management Regulations, Section 101-18.3; Provided Further, That should there be no applicable State law, any payment of relocation expenses by the State shall be in compliance with the provisions of said Public Law 91-646 and said Federal Property Management Regulations.

H. The State shall assure that DOE, the Commission, the Administrator, and the State shall have: (1) a permanent right of entry to inspect the millsite at any time; (2) if the State acquires the depository site, a right of entry to inspect the depository site at any time from the time the State acquires the depository site until the time the State transfers title to the site to the Government; and (3) a right of entry until completion of remedial action to inspect at any time any vicinity property; in furtherance of the provisions of Title I of the Act and to carry out this Agreement and to enforce the provisions of the Act and any rules prescribed thereunder.

I. Except where the State has acquired fee title to the millsite or a vicinity property pursuant to this article, the State and DOE shall, prior to any remedial action performed pursuant to this Agreement, obtain from any person holding any record interest in the designated millsite or vicinity property, execution of a Remedial Action Agreement, in a form prescribed by the Contracting Officer, which provides for the State and DOE to perform remedial action at the millsite or vicinity property. Such agreement shall: (1) include a waiver by each such person on behalf of himself, his heirs, successors and assigns (i) releasing the Government and State of any liability or claim thereof by such person, his heirs, successors and assigns concerning such remedial action, and (ii) holding the Government and State harmless against any claim by such person on behalf of himself, his heirs, successors, or assigns arising out of the performance of any such remedial action; (2) specify the remedial action to be performed; (3) provide that the remedial action shall be performed only by the DOE or such person as the Contracting Officer designates; and (4) include a consent to the remedial action by such person; (5) include as parties the State, DOE, and each such person holding any record interest in the millsite or vicinity property; (6) provide for the appropriate right of entry as required by paragraph H. of this article; and (7) in the case of vicinity properties, provide for transfer of title to the residual radioactive materials thereon to the Government. Whenever the State and DOE are unable to obtain a Remedial Action Agreement from the landowner, the Contracting Officer shall advise the State in writing: (1) that the State is to acquire the subject site in accordance with the terms of this article; (2) that no remedial action shall

be performed at the subject site; or (3) of such other determination made by DOE in connection with the subject site.

J. In the case of any property acquired by the State pursuant to this article, the State, after the completion of the remedial action and with the concurrence of the Secretary and the Commission, may: (1) sell such property or (2) permanently retain such property, or donate such property to another governmental entity within such State, for permanent use by the State or entity solely for park, recreational, or other public purposes; Provided, That the State shall transfer to the Government, when the Secretary (with the concurrence of the Commission) determines that remedial action is completed in accordance with the EPA Standards and other requirements of Title I of the Act, title to: (1) the residual radioactive materials acquired by the State pursuant to this article, and (2) any depository site acquired by the State pursuant to this article. The Government shall, after such transfer, be responsible for maintenance, monitoring, and control of such property; Provided Further, That upon the request of the Contracting Officer, the State shall transfer title to the residual radioactive materials prior to completion of the remedial action in the event DOE determines that such residual radioactive materials shall be remilled pursuant to Section 108(b) of the Act.

In the event the State sells any lands and interests it acquires under this Agreement, the State shall promptly pay to the Secretary from the proceeds of any such sale an amount equal to the lesser of: (1) that portion of the fair market value of the property which bears the same ratio to such fair market value as the Federal share of the costs of acquisition by the State of such property bears to the total cost of such acquisition; or (2) the total amount paid by DOE with respect to such acquisition. The fair market value of such property shall be determined by DOE. Prior to the sale of the property, the State shall obtain an appraisal of the property which meets the appraisal requirements set forth in Appendix C, paragraph 13.b and shall submit such appraisal to the Contracting Officer. The Contracting Officer shall thereafter notify the State in writing of DOE's determination of fair market value. Before offering for sale any lands and interests therein which comprise the millsite or a vicinity site, the State shall offer to sell such lands and interests at their then fair market value to the person or persons from whom the State acquired them.

K. When the State transfers title to the Government to a depository site pursuant to this Article, the State shall forward to the Contracting Officer a deed which conforms to applicable State law and the "Standards for the Preparation of Title Evidence in Land

Aquisitions by the United States" (hereinafter referred to as the "Federal Title Standards") issued by the Department of Justice, and which:

1. Shows the name of the State as grantor in the body of the deed and its acknowledgment.

2. Conveys the land to the "United States of America and its assigns."

3. Contains a proper description of the land.

4. Conveys all the right, title and interest of the State as grantor in and to any alleys, streets, ways, strips, or gores abutting or adjoining the land.

5. Contains no reservations or exceptions not approved by the Contracting Officer; however, when land is to be conveyed subject to certain rights, such as easements or mineral rights thought to be outstanding in third parties, they must not be excepted from the conveyance, but the deed shall be framed to convey all the State's right, title, and interest subject to the outstanding rights.

6. Refers to the deed(s) to the State, or other source of the State's title, by book, page, and place of record, wherever customary or required by statute.

7. Contains a reference to DOE as the Government agency for which the lands are being acquired. This statement should follow the description of the land and in no instance should it be included in the granting, habendum or warranty provisions of the deed.

8. Is signed, sealed, attested, and acknowledged by the State as grantor as required by applicable State law.

9. If executed by an attorney in fact, is signed in the name of the principal by the attorney, properly acknowledged by the attorney as the free act and deed of the principal, and is accompanied by the original or a certified copy of the power of attorney and satisfactory proof that the principal was living and the power in force at the time of its exercise.

Upon the request of the Contracting Officer, the State shall provide such additional documentation or information that will assist DOE in preparing title evidence and otherwise complying with the Federal Title Standards.

L. The State shall take such action as may be necessary, pursuant to regulations of the Secretary, to assure that any person who purchases a millsite or vicinity property after the removal of radioactive materials from such site shall be notified prior to purchase of the nature and extent of residual radioactive materials removed from the site, including notice of the date when such action took place, and the condition of such site after such action. If the State is the owner of such site, the State shall so notify any prospective purchaser before entering into a contract, option, or other arrangement to sell or otherwise dispose of such site.

IV. PROJECT MANAGEMENT

A. Real Property Acquisition Phase of the Project. Pending the promulgation of the EPA Standards and the development of the Remedial Action Plan, the Contracting Officer, pursuant to Article III, "Acquisition, Disposition, and Use of Property," may request that the State initiate action leading to the acquisition of real property or residual radioactive materials, or both. The State shall not execute an acquisition agreement or otherwise acquire title to any real property hereunder without written authorization of the DOE Contracting Officer.

B. Remedial Action Plan Development Phase. DOE, utilizing the EPA Standards or the Interim Cleanup Standards for Inactive Uranium Processing Sites, and in accordance with Article II, "Description of Remedial Action Program," shall develop a Remedial Action Plan, or a Radiological and Engineering Assessment, or both, and shall submit it to the State, and to the Commission as necessary, for review and comment. This plan or assessment shall include a detailed cost estimate, which will be used to project the financial liabilities of the parties if they choose to proceed with the remedial actions. Prior to implementation of the Remedial Action Plan or Radiological and Engineering Assessment, DOE and the State shall endeavor to insure sufficient authorization of funds from the Congress and Utah Legislature so as to permit the completion of the work under the Plan. Remedial actions shall not begin until both parties have accepted the Remedial Action Plan or Radiological and Engineering Assessment, the Commission has concurred as necessary, and the State and DOE have obligated sufficient funds to complete the scope of work projected for not less than the first fiscal year of the implementation of remedial action.

C. Remedial Action Phase. Unless otherwise agreed by the DOE and the State in writing, DOE shall perform all remedial actions pursuant to the Remedial Action Plan or Radiological and Engineering

Assessment, keeping the State advised as to the status of major milestones and cost incurred.

V. PAYMENTS AND ALLOWABLE COSTS

A. Allowable costs incurred by the State shall be those direct costs, as determined by the Contracting Officer in accordance with Office of Management and Budget Circular No. A-87, incurred to:

1. perform any State responsibility under Article III, "Acquisition, Disposition and Use of Property;"

2. design and perform remedial action pursuant to and in accordance with the terms and conditions of this Agreement; and

3. reimburse, in accordance with the terms and conditions of Section 103(f) of the Act, property owners for remedial action performed at vicinity properties prior to passage of the Act.

Allowable costs incurred by the State shall also include such other costs in connection with performance of the remedial action as may be approved by the Contracting Officer in writing or as otherwise mutually agreed to in writing by DOE and the State. Allowable costs shall not include the administrative costs incurred by the State to develop, prepare, and carry out this Agreement, but shall include the administrative costs associated with the performance by the State of its responsibilities under Article III, "Acquisition, Disposition, and Use of Property," including costs of "compensation for personal services," "legal expenses," "travel," and "communications," as those categories are described in OMB Circular No. A-87.

B. Allowable costs incurred by DOE shall be those direct costs, as determined by the Contracting Officer in accordance with the general principles set forth in OMB Circular No. A-87, incurred to:

1. design and perform remedial action pursuant to and in accordance with the terms and conditions of this Agreement;

2. reimburse, in accordance with the terms and conditions of Section 103(f) of the Act, property owners for remedial action performed at vicinity sites;

3. appraise and acquire property, or any interest therein, pursuant to Section 106 of the Act; and

4. prepare, collect and develop, in accordance with Article III, "Acquisition, Disposition, and Use of Property," any or all of the documentation described in Appendix C in connection with a millsite, vicinity site, or depository site.

C. DOE shall make payment for ninety percent (90%) of all allowable costs by advance or reimbursement by Treasury check, and the State shall make payment for ten percent (10%) of allowable costs by cash contribution. The term "cash contribution" means the State's cash payment from non-Government funds for its share of allowable costs. Such cash payments: (i) shall not be included as contributions for any other Government assistance program; (ii) shall not be made from funds paid by the Government under any other Government assistance program; and (iii) shall otherwise conform to the provisions of this Agreement and the Act.

D. The State shall submit quarterly, or at more frequent intervals by mutual agreement between the State Site Representative and the Contracting Officer, OMB Standard Form 270, "Request for Advance or Reimbursement," to request payment for the DOE share of allowable costs incurred by the State. The State shall submit the OMB Standard Form 270, original and two copies, to the Contracting Officer. DOE shall promptly make advance by Treasury check or reimbursement by Treasury check, or a combination thereof, as payment to the State for a maximum of ninety percent (90%) of allowable costs. In lieu of payment by advance or reimbursement by Treasury check, the State may submit an OMB Standard Form 270 showing allowable costs incurred by the State and requesting that the Contracting Officer offset such costs against the State's share (10%) of the total allowable costs.

E. DOE shall submit quarterly, or at more frequent intervals by mutual agreement between the State Site Representative and the Contracting Officer, Standard Form 1114, "Bill for Collection," supported by a statement of allowable costs incurred by DOE. DOE shall submit the Standard Form 1114, original and two copies, to the State Site Representative. Prompt payment shall be made by the State for ten percent (10%) of allowable costs.

F. Program income earned during the term of this Agreement may, at the State's option, be retained by the State, or used to finance the State's share of the allowable costs.

VI. AUDIT

A. The State shall maintain, and the Contracting Officer or his representatives shall have the right to examine books, records,

20592

documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all allowable costs claimed to have been incurred and anticipated to be incurred for the performance of this Agreement. Such right of examination shall include inspection at all reasonable times of the State's offices, or such parts thereof, as may be engaged in the performance of this Agreement as to cost or pricing data submitted by the State.

B. If the State submitted or submits cost or pricing data in connection with the pricing of this Agreement or any other change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or process set by law or regulation, the Contracting Officer or his representatives who are employees of the United States Government shall have the right to examine all books, records, documents, and other data of the State related to the negotiation, pricing or performance of such Agreement, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. Additionally, in the case of pricing any change or modification exceeding $1,000,000 to formally advertised agreements, the Comptroller General of the United States or his representatives who are employees of the United States Government shall have such rights. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projects used therein.

C. The materials described in paragraphs A. and B. above shall be made available at the offices of the State, at all reasonable times, for inspection, audit or reproduction, until the expiration of three years from the date of final payment under this Agreement or such lesser time specified in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20) and for such longer period, if any, as is required by applicable statute, or by other articles or clauses of this contract, or by 1. and 2. below:

1. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three years from the date of any resulting final settlement.

2. Records which relate to appeals or disputes or litigation or the settlement of claims arising out of the performance of this Agreement, shall be made available until such appeals, litigation, or claims have been disposed of.

D. The State shall insert a clause containing all the provisions of this article, including this paragraph D., in all subcontracts hereunder except altered as necessary for proper identification of the contracting parties and the Contracting Officer under this Agreement.

VII. STATE FINANCIAL MANAGEMENT SYSTEM

The State shall assure that its financial management system provides for:

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

B. Records that identify adequately the source and application of funds for activities supported pursuant to this Agreement. These records shall contain information pertaining to authorizations, obligations, unobligated balances, assets, liabilities, outlays, and program income. For each millsite listed in Appendix A, the State shall maintain separate accounting records for allowable costs associated with such millsite and its associated vicinity properties and depository sites.

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

D. Comparison of actual outlays with budgeted or otherwise authorized amounts.

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

F. Procedures for identifying the reasonableness of costs.

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

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

20592

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

VIII. ADVANCE PAYMENTS

A. At the request of the State, in accordance with Article V, "Payments and Allowable Costs," and subject to the conditions hereinafter set forth, DOE shall make an advance payment, or advance payments from time to time, by Treasury check, to the State. No advance payment shall be made: (1) without the approval of the Contracting Officer as to the financial necessity therefor; and (2) without the submission by the State of OMB Standard Form 270 and properly certified invoice or invoices.

B. Funds advanced to the State by DOE under this Agreement may be used by the State solely for the purposes of making payments for items of allowable cost as defined in Article V, "Payments and Allowable Costs," or to reimburse the State for such items of allowable costs, and for such other purposes as the Contracting Officer may approve in writing. Any interpretation required as to the proper use of such funds shall be made in writing by the Contracting Officer.

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

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

E. Any interest earned by the State on advances of Government funds shall be remitted to the Contracting Officer when earned.

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

G. Any and all advance payments made under this Agreement shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, upon any millsite, vicinity property, depository site, residual radioactive materials, and on all

material and other property acquired for or allocated to the performance of this Agreement, except to the extent that the Government, by virtue of any other provision of this Agreement, or otherwise, shall have valid title to such property as against other creditors of the State. The State shall identify, by marking or segregation, all property which is subject to a lien in favor of the Government by virtue of any provision of this Agreement in such way to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this Agreement; PROVIDED, That in the case of real property, or residual radioactive materials purchased by the State under this Agreement, the State shall not convey or encumber, or suffer to be encumbered, such property except in favor of the Government or to the extent otherwise allowed under this Agreement. The State shall maintain adequate accounting control over such property on its books and records. If the State is authorized to sell or retain property acquired for or allocated to this Agreement, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such property is sold or retained, and to the extent that the proceeds of the sale are applied in reduction of advance payments then outstanding hereunder.

H. Upon a finding by the Contracting Officer that the State has failed to observe any of the covenants, conditions or warranties of this article or has failed to comply with any material provision of this Agreement; the Government, without limiting any rights which it may otherwise have, may, in its discretion and upon written notice to the State, withhold further payments on this Agreement. Upon the continuance of any such failure for a period of thirty (30) days after such written notice to the State, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional actions as it may deem appropriate in the circumstances:

1. Demand immediate repayment of the unliquidated balance of advance payments hereunder; or

2. Take possession of and, with or without advertisement, sell at public or private sale, at which the Government may be the purchaser, all or any part of the property on which the Government has a lien under this Agreement, and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of any other claims of the Government against the State under this Agreement.

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

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

IX. PUBLIC PARTICIPATION AND INFORMATION

A. The State Site Representative shall cooperate with the Contracting Officer in formulating and implementing a public participation plan in order to encourage public participation in carrying out the provisions of the Act, this Agreement and the Remedial Action Plan.

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

X. LOCAL ADVISORY COMMITTEES

The State may, in such fashion as it deems appropriate, establish State advisory committees and consult with local advisory committees in connection with the remedial action to be performed under this Agreement for the purposes of: (1) providing information to and receiving information from the citizens of the State and the localities affected by such remedial action; and (2) evaluating candidate depository sites for recommendation to DOE. DOE shall not be a member of any such committee. DOE shall, however, make every reasonable effort to interface with any such committee to the extent requested by the State or the committee. No costs associated with any committee so established shall be allowable costs under this Agreement.

XI. PROCUREMENT

Unless otherwise agreed by DOE and the State in writing, and except as provided in this Agreement, DOE shall procure, in accordance with applicable DOE procurement policies and procedures and existing Federal law, all supplies, equipment, construction and services necessary for the performance of this Agreement. The applicable standards and guidelines for any procurement by the State of supplies, equipment, construction, and services pursuant to this Agreement shall, except as

provided in Appendix D, be those provided in Attachment O to Office of Management and Budget (OMB) Circular A-102, as that Attachment was revised by OMB on August 1, 1979, and published in the Federal Register, Volume 44, No. 159, August 15, 1979, pp. 47874-47878; Provided, That such standards shall not apply to the State's acquisition of property pursuant to Article III, "Acquisition, Disposition and Use of Property."

XII. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

The State shall comply with the provisions of Part 1040, Chapter X, Title 10 of the Code of Federal Regulations, "Nondiscrimination in Federally Assisted Programs" (10 CFR Part 1040), as published in the Federal Register, Volume 45, No. 116, Friday, June 13, 1980 (pp. 40514-40535). 10 CFR Part 1040 provides that no person shall on the ground of race, color, national origin, sex, handicap, or age be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment where the main purpose of the program or activity is to provide employment or when the delivery of program services is affected by the State's employment practices, in connection with any program or activity receiving Federal assistance from DOE.

XIII. EXAMINATION OF RECORDS

A. The State agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this Agreement or such lesser time specified in the Federal Procurement Regulations, Part 1-20, have access to and the right to examine any directly pertinent books, documents, papers, and records of the State involving transactions related to this Agreement.

B. The State further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under the subcontract or such lesser time specified in the Federal Procurement Regulations, Part 1-20, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding $10,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

C. The periods of access and examination described in A and B, above, for records which relate to (1) litigation or the settlement of claims arising out of the performance of this Agreement, or (2) costs and expenses of this Agreement as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

D. The State shall report to the Secretary promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the State has knowledge.

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

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

XIV. TERM AND TERMINATION

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

B. DOE and the State may terminate this Agreement in whole, or in part, when both parties agree that continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. Neither party shall incure new obligations for the terminated portion

after the effective date. The parties shall cancel as many outstanding obligations as possible.

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

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

E. After receipt of a Notice of Termination by either party, DOE and the State shall close out this Agreement in accordance with the terms and conditions of Article XV, "Closeout Procedures"; Provided, that DOE may, in its discretion, continue unilateral performance of this Agreement, including performance of the State's responsibilities, until such time as the remedial action contemplated by this Agreement is completed.

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

G. In the event appropriated funds are not available to the State to carry out this Agreement:

1. DOE shall have the right to continue unilateral performance of the remedial action contemplated by this Agreement, including performance of the State's responsibilities, without cost to the State, until such time as the remedial action contemplated by this Agreement is completed.

2. DOE and the State shall close out this Agreement pursuant to Article XV, "Closeout Procedures," and such other procedures as mutually agreed to in writing.

20592

330000039110E

H. In the event appropriated funds are not available to DOE to carry out the Act or this Agreement, DOE and the State shall close out this Agreement pursuant to Article XV, "Closeout Procedures," and such other procedures as mutually agreed to in writing by the parties.

XV. CLOSEOUT PROCEDURES

As of the date of receipt of a Notice of Termination pursuant to Article XIV, "Term and Termination," or on the date of expiration of the period of performance or failure of the State or the Government to appropriate funds as provided in Article XIV of this Agreement, and except as otherwise directed by the Contracting Officer:

1. The parties shall:

   a. Stop performance under this Agreement on the date and to the extent specified in the Notice of Termination or on the date when the period of performance expires;

   b. Place no further orders and make no further subcontracts or other agreements, for materials, services, or property except as may be necessary for completion of such portion of the work under this Agreement as is not terminated by any Notice of Termination;

   c. Terminate all orders, subcontracts or other agreements entered into in performing this Agreement, to the extent that they relate to the performance of work terminated by the Notice of Termination or terminated by the expiration of the period of performance of this agreement.

   d. Settle all outstanding liabilities and all claims arising out of such termination of orders, subcontracts and agreements, the cost of which would be reimbursable, in whole or in part, as an allowable cost in accordance with the provisions of this Agreement;

   e. In the event of termination of performance in part, complete performance of such part of the work as shall not have been terminated by the Notice of Termination;

   f. Except as provided in Paragraph J. of Article III, "Acquisition, Disposition and Use of Property," which provides for disposition of property (acquired by the State) after remedial action is completed, arrange for an appropriate disposition of property acquired by the State under this Agreement.

20592

2. DOE shall, upon written request by the State, make prompt payment to the State pursuant to Article V, "Payments and Allowable Costs", for any outstanding allowable costs incurred by the State and not yet paid by DOE as required by this Agreement.

3. The State shall, upon written request by DOE, make prompt payment to DOE pursuant to Article V, "Payments and Allowable Costs," for its outstanding share of allowable costs incurred by DOE and the State in performance of this Agreement.

4. The State shall immediately refund to DOE any balance of cash advanced to the State that is not authorized by the Contracting Officer to be retained by the State.

5. The State shall provide to DOE, within ninety days after either the date of expiration of the period of performance or the date of termination of performance, or at such time designated by the Contracting Officer, all financial, performance, and other reports required pursuant to this Agreement. The Contracting Officer shall grant extensions when requested by the State if such extensions are reasonable. An independent audit may be requested by either party.

6. In the event a final audit has not been performed by DOE prior to closeout of this Agreement, either party shall, until such final audit is performed, retain the right to recover any outstanding share of allowable costs from the other party.

XVI. COST LIMITATION AND OBLIGATION OF FUNDS

A. The total estimated allowable costs which will be incurred from the effective date of this Agreement through September 30, 1983 (such period hereinafter referred to the Cost Estimate Period) are as follows:

1. State - $-0-;

2. DOE - $5,510,000; and

3. State and DOE - $5,510,000 (hereinafter referred to as the Total Cost Limitation).

At such time as either party has reason to believe that the allowable costs it will incur in performing its responsibilities under this Agreement will be greater than the estimated allowable costs shown above, then such party shall notify the other in writing to that effect, giving its revised estimate of allowable costs, and

20592

DOE shall issue a unilateral modification to this Agreement appropriately revising the estimated allowable costs shown above; Provided, that, prior to being included as part of the Total Cost Limitation, the estimated allowable costs associated with remedial action shall be established and revised by execution and modification of Remedial Action Plans and Radiological Engineering Assessments, as appropriate, pursuant to the article of this Agreement entitled "Description of Remedial Action Program."

B. The State, for the Cost Estimate Period, has obligated funds in the amount of $551,000, for payment of its share of allowable costs under this Agreement. The State shall not be liable in an amount in excess of the funds it has obligated herein; however, DOE shall not be required to continue performance of this Agreement beyond such time as the Total Cost Limitation exceeds an amount 10 times the amount of the funds obligated by the State. Prior to each Government fiscal year or from time to time during the performance of this Agreement, as necessary, the State shall increase the amount of funds obligated by written notice to the Contracting Officer specifying the amount of such increase. Upon such written notice DOE may issue a unilateral modification to this Agreement which reflects the increased obligation of funds by the State.

C. DOE, for the Cost Estimate Period: (1) has obligated funds in the amount of $-0-, for payment to the State for DOE's share of allowable costs which the State incurs under this Agreement; and (2) will obligate funds in an amount sufficient to pay to DOE contractors and subcontractors DOE's share of those allowable costs which DOE incurs under this Agreement. DOE shall not be liable to the State in an amount in excess of the funds it has obligated herein for payment to the State; however, the State shall not be required to continue performance of this Agreement beyond such time as such amount obligated by DOE is less than 90% of the amount shown in paragraph A.1. of this article. Prior to each Government fiscal year or from time to time under this Agreement, as necessary, DOE shall increase the amount of funds obligated by unilateral modification to this Agreement which reflects the increased obligation of funds by DOE.

D. The State shall not be required to pay for allowable costs incurred in excess of 10% of the Total Cost Limitation as it may be amended from time to time by modification to this Agreement. DOE shall use its best efforts to perform its responsibilities under this Agreement within the estimated allowable costs set forth in paragraph A.2. of this article. However, the Government and DOE do not guarantee the correctness of any such estimate of allowable

costs and there shall be no liability on the part of the Government or DOE by reason of errors in the computation of estimates or differences between such estimates and the actual allowable costs.

E. DOE shall not be required to pay for allowable costs incurred in excess of 90% of the Total Cost Limitation as it may be amended from time to time by modification to this Agreement. The State shall use its best efforts to perform its responsibilities under the Agreement within the estimated allowable costs set forth in paragraph A.1. of this article. However, the State does not guarantee the correctness of any such estimate of allowable costs and there shall be no liability on the part of the State by reason of errors in the computation of estimates or differences between such estimates and the actual allowable costs.

XVII. REPORTING REQUIREMENTS

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

B. Upon the request of the Contracting Officer, the State shall submit to the Contracting Officer progress and financial reports of its activities in the acquisition of real property under this Agreement.

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

D. The State shall supply to DOE such additional financial information as is requested in writing by DOE to comply with Congressional requirements.

20592

XVIII. STATE AUDIT AND EXAMINATION OF DOE RECORDS

A. DOE shall maintain, in accordance with Government policy and practice, and the State Site Representative or his representatives shall have the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all allowable costs claimed to have been incurred and anticipated to be incurred for the performance of this Agreement. Such right of examination shall include inspection at all reasonable times of DOE's facilities, or such parts thereof, as may be engaged in the performance of this Agreement as to cost or pricing data submitted by the DOE.

B. The materials described in paragraph A. above shall be made available at the offices of the Contracting Officer, at all reasonable times, for inspection, audit or reproduction, until the expiration of three years from the date of final payment under this Agreement and for such longer period, if any, as is required by applicable statute, or by other articles or clauses of this contract, or by 1. and 2. below:

1. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three years from the date of any resulting final settlement.

2. Records which relate to appeals or disputes or litigation or the settlement of claims arising out of the performance of this Agreement, shall be made available until such appeals, litigation, or claims have been disposed of.

C. Upon request by the State, the DOE shall transfer to the State copies of proposals, vouchers, supporting documentation and any technical and financial reports submitted by prime contractors selected to perform work under this Agreement, when the State determines that the records possess long-term retention value. In order to avoid duplicate record-keeping, the State may make arrangements with the DOE to retain copies of any such records that are continuously needed or joint use.

XIX. NOTICE ADDRESS

Except as otherwise specifically provided herein, any notice, letter, or grievance given or payment made pursuant to the terms of this Agreement shall be sent to the respective party at its address designated below:

STATE:

Director
Bureau of Mill Tailings Management
P.O. Box 2500
Salt Lake City, UT 84110

DOE:

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

XX. CONCURRENCES AND CONSULTATIONS

Whenever in performing this Agreement or in carrying out the Act a concurrence from or consultation with another Government agency is required, DOE shall seek such concurrence and be responsible for undertaking such consultation.

XXI. DISPUTES

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

330000 39110E

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

XXII. RULES AND REGULATIONS

All activities under this Agreement shall be carried out pursuant to applicable Federal, State and local regulations, including but not limited to such rules and regulations promulgated or to be promulgated by the Secretary pursuant to Section 109 of the Act.

XXIII. OTHER REMEDIES

Nothing in this Agreement shall prevent the Secretary from enforcing any provision of Title I of the Act, any regulation promulgated thereunder, or any provision of this Agreement, by injunction or other equitable remedy, or as otherwise provided by Section 110 of the Act.

XXIV. ENTIRE AGREEMENT

This written Agreement constitutes the entire agreement of the parties hereto. No representations, promises, terms, conditions, or obligations whatsoever referring to the subject matter hereof, other than those expressly set forth herein, shall be of any binding legal force or effect whatsoever.

XXV. EFFECTIVE DATE

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

XXVI. CONTRACTING OFFICER'S REPRESENTATIVE

The work to be performed by DOE under this Agreement will be managed for DOE by the Manager, Uranium Mill Tailings Remedial Actions (UMTRA) Project. The work to be performed by the State under this Agreement is subject to the monitoring of the Manager, Uranium Mill Tailings Remedial Actions (UMTRA) Project Office, who has been designated by the Contracting Officer as "Contracting Officer's Representative" (COR). A copy of such designation shall be furnished to the State. Said designation shall set forth the COR's responsibilities regarding this Agreement. The COR shall not make any commitments or authorize any changes which affect the Agreement scope, price, terms or conditions; any request for such changes shall be referred to the Contracting Officer for action.

20592

XXVII. ORDER OF PRECEDENCE

In the event of an inconsistency between provisions of this Agreement, the inconsistency shall be resolved by giving precedence as follows:

(a) Agreement Articles;

(b) Remedial Action Plan (when executed);

(c) Other provisions of this Agreement, whether incorporated by reference or otherwise.

XXVIII. COVENANT AGAINST CONTINGENT FEES

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

XXIX. OFFICIALS NOT TO BENEFIT

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

XXX. STANDARD FORMS

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

XXXI. APPENDICES

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

Appendix A - Site Descriptions & Ownerships;
Appendix B - Remedial Action Plans;
Appendix C - Site Acquisition Documentation;
Appendix D - General Provisions.

330000 39110E

Modification No. M001
Supplemental Agreement to
U.S. Department of Energy
Agreement No. DE-FC04-81AL1o309

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

THE UNITED STATES OF AMERICA
DEPARTMENT OF ENEPGY

BY: _____
Theetis V. Hill
Contracting Officer
Contracts & Procurement Division
Albuquerque Operations Office
P.O. Box 5400
Albuquerque, New Mexico 87115

DATE: _____

STATE OF UTAH

BY: _____
James L. Mason, M.D., D.P.H.
Executive Director
Utah State Department of Health
150 West North Temple
Salt Lake City, UT 84114

DATE: _____

CONCURRENCE:
NUCLEAR REGULATORY COMMISSION

BY: _____

TITLE: _____

DATE: _____

20592

3300003911OE

Modification No. M001
Supplemental Agreement to
U.S. Department of Energy
Agreement No. DE-FC04-81AL16309

APPENDIX A

SITE DESCRIPTIONS AND OWNERSHIPS

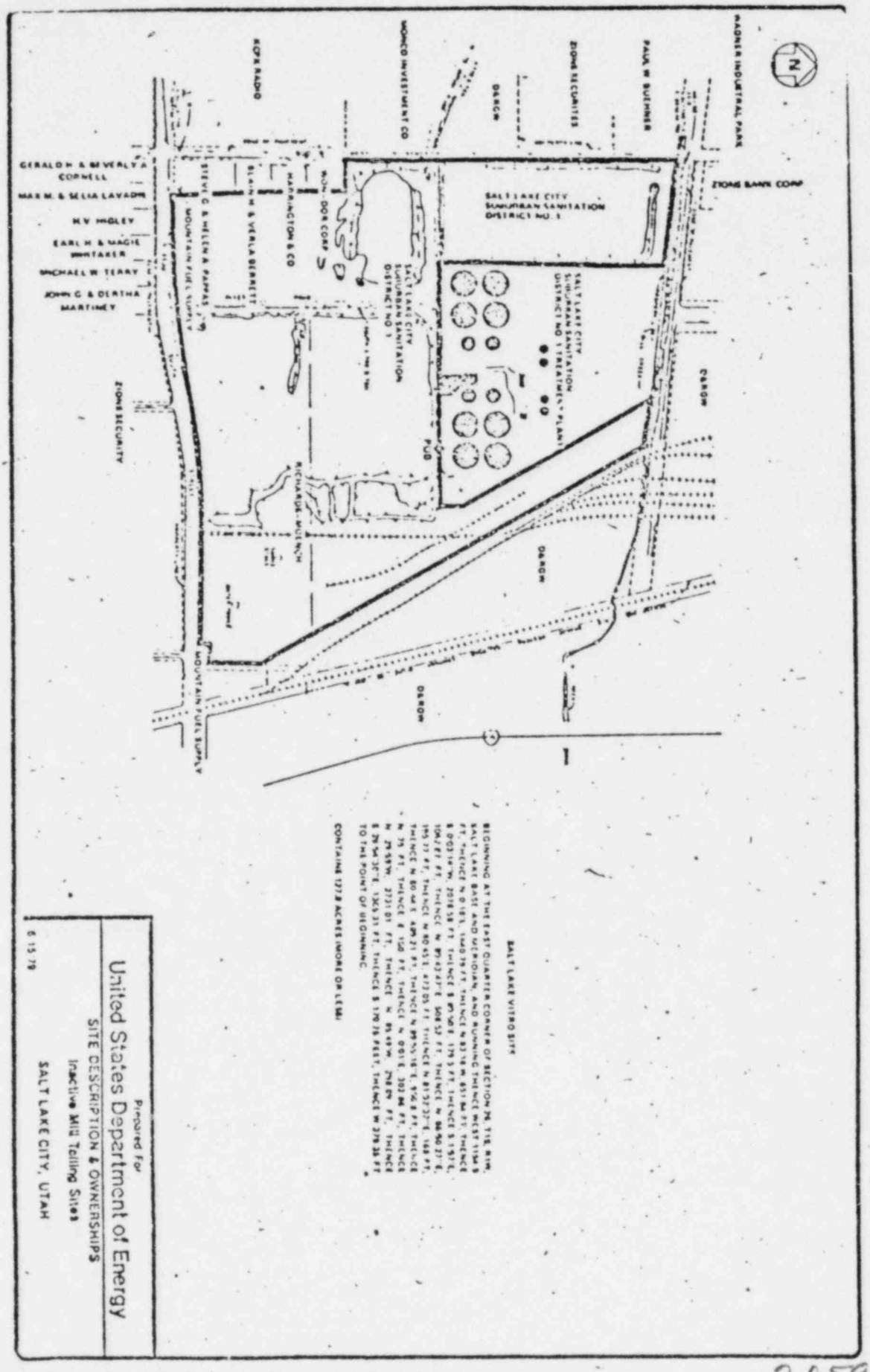
Attachment 1 - Salt Lake City

Attachment 2 - Green River

20592

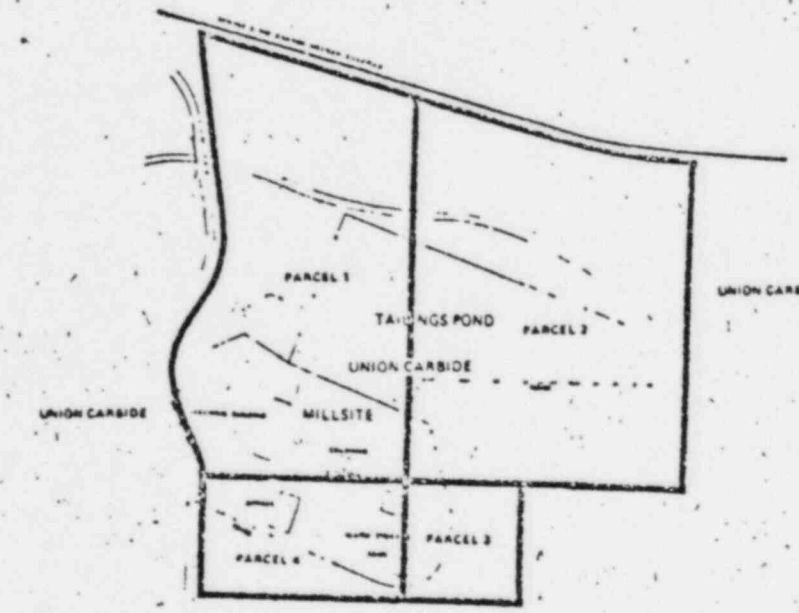
330000 39110E

U. S. Department of Energy
Agreement No. DE-FC04-81AL16309



20592

Appendix A
Attachment 1



GREEN RIVER SITE
(PARCELS 1 THRU 4)

PARCEL 1

THAT PORTION OF LAND LOCATED IN THE S.W. 1/4 OF THE S.E. 1/4 SECTION 15, T21S, R16E, SALT LAKE MERIDIAN, LYING ADJACENT TO AND EAST OF A COUNTY ROAD FROM ELGIN TO THE GREEN RIVER MISSLE SITE AND SOUTH OF THE D&R.G.W. RAILROAD R/W.

PARCEL 2

THAT PORTION OF LAND LOCATED IN THE WEST 800 FT. OF THE S.E. 1/4 OF THE S.E. 1/4 OF SECTION 15, T21S, R16E, SALT LAKE MERIDIAN LYING SOUTH OF AND ADJACENT TO THE D&R.G.W. RAILROAD R/W.

PARCEL 3

THAT PORTION OF LAND LOCATED IN THE WEST 300 FT. OF THE NORTH 1/2 OF THE NORTH 1/2 OF THE S.E. 1/4 OF THE N.E. 1/4 OF SECTION 22, T21S, R16E, SALT LAKE MERIDIAN.

PARCEL 4

THAT PORTION OF LAND LOCATED IN THE NORTH 1/2 OF THE NORTH 1/2 OF THE N.W. 1/4 OF THE N.E. 1/4 OF SECTION 22, T21S, R16E, SALT LAKE MERIDIAN, LYING EAST OF AND ADJACENT TO A COUNTY ROAD FROM ELGIN TO THE GREEN RIVER MISSLE SITE.

CONTAINS 38 ACRES (MORE OR LESS)

Prepared For
United States Department of Energy

SITE DESCRIPTION & OWNERSHIPS
Inactive Mill Tailing Sites
GREEN RIVER, UTAH

0 15 30

Modification No. M001
Supplemental Agreement to
U.S. Department of Energy
Agreement No. DE-FC04-81AL16309

APPENDIX B

REMEDIAL ACTION PLANS

(To be developed at a later date)

330000039110E

Modification No. M001
Supplemental Agreement to
U.S. Department of Energy
Agreement No. DE-FC04-81AL16309

APPENDIX C

SITE ACQUISITION DOCUMENTATION

Pursuant to Article III, "Acquisition, Disposition and Use of Property," data described below will be collected or developed by the State upon written instruction from the Contracting Officer.

1. Description of Real Estate or Real Estate Interests. A general description of the real estate to be acquired, total acreage, availability for purchase and possible method of acquisition.

2. Parcel Descriptions. Perimeter and parcel descriptions, to be provided and used for acquisition by purchase or condemnation. A perimeter or tabular description of the total area will be based on acceptable survey data. Parcel descriptions will be furnished for each separate ownership from available public records.

3. List of Owners. A list of the owners of all parcels, including the owners of easements and other rights, and their addresses.

4. Taxes. Name and address of the taxing authority, amount of the taxes paid during the preceding tax years, current assessed value of the property to be acquired, and current tax rate.

5. Easements. A list of existing easements for rights-of-way for utilities, access roads and other purposes.

6. Vicinity Map. A vicinity map showing the location of the real property to be acquired and its proximity to major highways, railroads, rivers, airfields, and metropolitan areas. Any significant features in its immediate and general vicinity which might affect its acquisition or its proposed use will be noted.

7. Current Use. Present residential, industrial, commercial or agricultural uses, described in enough detail so that DOE will have a full understanding of the present utilization of all parcels.

8. Property Map. A property map showing:

   (1) Exterior boundaries of the real property to be acquired and each parcel.

   (2) General location of major improvements and structures.

   (3) Location of existing rights-of-way for roads, highways, railways, utilities, and for other purposes.

20592

   (4) Approximate location and direction of flow of natural water courses.

(5) Other pertinent information that may affect acquisition or use of the real property.

9. Subsurface Rights.

(1) Information on any mining, oil or gas activities within the parcels proposed for acquisition as well as in the general area.

(2) Identify: minerals currently being removed or removed since January 1, 1978; subsidence; the period during which the mining operations have taken place; possibility of termination of such operations; and whether surface or subsurface mining operations are conducted. Identify mineral interests under separate ownership and include the names and addresses of the owners.

10. Topographical and Boundary Survey. A survey made to identify individual parcels, land rights, and the metes and bounds description. A right of entry for survey and exploration must be obtained if the surveyor is going to enter the land. The survey will be accomplished so that the legal description contained in the title evidence is checked and verified. A notification should be sent to the property owners that the survey will be made.

11. Title Evidence. One of the following types of title evidence will be obtained:

(1) Certificate of Title. A contract in which a title company certifies that title to a specific parcel of land is good and unencumbered except for the defects and encumbrances shown.

(2) Title Insurance Policy. A contract insuring interests acquired in property against all defects in title.

(3) Abstract of Title. A summary of all instruments of record affecting the title to a specific parcel. Abstracts are the least acceptable and should only be used when it is impossible to obtain Certificates of Title or Title Insurance Policy.

The title evidence shall conform with the requirements of the "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States," issued by the Department of Justice. Requests for title services should be made to those companies that are acceptable to the Department of Justice. These usually include the major title companies. The local United States Attorney may assist by identifying such companies. Another source is "The Directory of the American Land Title Association" published by the American Land Title Association, 1828 L Street, Northwest, Washington, District of Columbia, 20036.

12. Relocation Assistance. An estimate of the funds needed to cover payments and services given to persons who will be displaced as a result of the

acquisition, and which are authorized either under State law or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646. Relocation assistance includes providing funds for moving and related expenses, costs incurred in searching for another location, and for actual direct losses experienced as a result of the move.

13. Appraisal. Appraisals are made to determine fair market value of each parcel of land and compensation to which each owner is entitled. The State shall, as soon as possible, obtain one appraisal for each separately owned parcel of the site. Upon the request of the Contracting Officer, the State shall obtain two appraisals for each separately owned parcel of the site whenever the Contracting Officer determines that the site acquisition is controversial or that the estimated cost of the site acquisition is over $100,000.00.

The appraisal(s) shall be:

a. Performed by a professional appraiser and, by experts qualified to determine and testify to the extent to which the presence of the residual radioactive materials actually diminishes or enhances the market value of the millsite. If the appraisal is contracted for by the State, the contract shall include a provision for a minimum of two updatings. The appraisal shall be updated in the event more than six months has elapsed from the time of the initial appraisal to the anticipated commencement of negotiations, and shall be updated as of the date any property is acquired by condemnation.

b. Procured and prepared in accordance with the "Uniform Appraisal Standards for Federal Land Acquisitions" (hereinafter referred to as the "Appraisal Standards") issued by the Interagency Land Acquisition Conference, and "A Procedural Guide for the Acquisition of Real Property by Government Agencies" (hereinafter referred to as the DOJ Procedural Guide).

The State shall cause the appraiser to prepare an appraisal report which conforms with the requirements of the Appraisal Standards and the DOJ Procedural Guide.

3300003911OE

Modification No. M001
Supplemental Agreement to
U.S. Department of Energy
Agreement No. DE-FC04-81AL16309

APPENDIX D

GENERAL PROVISIONS

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

1. Inspection

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

2. Convict-Labor

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

3. Clean Air and Water

a. The State agrees as follows:

(1) To comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by P.L. 91-604 and P.L. 95-95) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, et. seq., as amended by P.L. 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this Agreement.

(2) That no portion of the work required by this Agreement will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when

20592

330000 39 110 E

this Agreement was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.

(3) To use its best efforts to comply with clean air standards and clean water standards at the facility in which the Agreement is being performed.

(4) To insert the substance of this clause into any nonexempt contract, including this paragraph 5.a.(4).

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

(1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857, et. seq., as amended by P.L. 91-604 and P.L. 95-95).

(2) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S. 1251, et. seq., as amended by P.L. 92-500).

(3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in Section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively, of the Air Act (42 U.S.C. 1857(c)-6(c) or (d)), or an approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

(4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).

(5) The term "compliance" means compliance with clean air or water standards during and after remedial action. Compliance shall also mean compliance with a schedule or plan ordered or

20592

approved by a court of competent jurisdiction, the Environmental Protection Agency or an air or water pollution control agency in accordance with the requirements of the Air Act or Water and regulations issued pursuant thereto.

(6) The term "facility" means any building, plant, installation, structure, mine, vessel, or other floating craft, location, or site of operations, owned, leased, or supervised by a participant or subcontractor, to be utilized in the performance of an agreement or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

4. Flood Insurance

The State will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The State will comply with provisions prescribed by the Federal Insurance Administrator in 24 CFR Chapter X, Subchapter B.

5. Permits and Licenses

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

6. Authorization and Consent

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

33000039 110E

Modification No. M001
Supplemental Agreement to
U.S. Department of Energy
Agreement No. DE-FC04-81AL16309

7. Safety and Health

a. The State shall take all reasonable precautions in the performance of the work under this Agreement to protect the health and assure the safety of employees and the public. The State shall comply with all applicable Federal, State, and local health and safety regulations and requirements including but not limited to those established pursuant to the Occupational Safety and Health Act and with any additional safety and health standards and requirements (including reporting requirements) established by DOE which is to include compliance with DOE Order 5481.1, Safety Analysis and Review System.

The State shall submit a management program and implementation plan to the Contracting Officer for review and approval within 30 days after this Agreement is in effect.

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

20592